

# A12 Chelmsford to A120 widening scheme

**TR010060**

## 4.1 Statement of Reasons

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# A12 Chelmsford to A120 widening scheme

## Development Consent Order 202[ ]

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### Statement of Reasons

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# 1 Introduction

## 1.1 Executive Summary

- 1.1.1 This Statement of Reasons (**this Statement**) relates to the A12 Chelmsford to A120 Widening Scheme (**the proposed scheme**), and has been submitted by National Highways (**the Applicant**) to the Planning Inspectorate acting on behalf of the Secretary of State for Transport (**the SoS**). It relates to an application for a development consent order (**DCO**) to permit and enable implementation of the proposed scheme made under section 37 of the Planning Act 2008 (as amended) (**PA 2008**).
- 1.1.2 This Statement has been prepared in accordance with the requirements of 5(2)(h) of the Infrastructure Planning (Applications: 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**).

### The Scheme

- 1.1.3 The proposed scheme is a highway nationally significant infrastructure project (**NSIP**) within sections 14(1)(h) and 22(1)(b) of the PA 2008 and the proposed scheme also includes the diversion of a high pressure gas pipeline, which meets the thresholds set out in section 20 of the PA 2008 and is therefore treated as an NSIP. Further information regarding how the Scheme qualifies as an NSIP can be found in the Explanatory Memorandum [TR010060/APP/3.2].
- 1.1.4 As the proposed scheme is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a DCO must be made to the Secretary of State under section 37 of the PA 2008.
- 1.1.5 In summary the proposed scheme comprises improvements to the A12 between junction 19 (Boreham interchange) and junction 25 (Marks Tey interchange), a distance of approximately 24km, or 15 miles. The proposed scheme involves widening the A12 to three lanes throughout (where it is not already three lanes) with a bypass between junctions 22 and 23 and a second bypass between junctions 24 and 25. It also includes safety improvements, including closing off existing private and local direct accesses onto the main carriageway, and providing alternative provision for walkers, cyclists and horse riders (**WCH**) to existing routes along the A12, which would be removed. A full description of the proposed scheme is set out in section 2 of this Statement.
- 1.1.6 A more detailed description of the proposed scheme can be found in Chapter 2, The proposed scheme of the Environmental Statement (**ES**) [TR010060/APP/6.1].

### Compulsory acquisition

- 1.1.7 In its application for development consent (**DCO Application**) for the proposed 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 and is set out in more detail in **Annex A** of this Statement.

## Land interests

- 1.1.8 The extent of the land interests affected by the compulsory acquisition and temporary possession powers sought by the Applicant in relation to the land (**the Land**) is described in Chapter 4 of this Statement.
- 1.1.9 The Applicant has carried out diligent inquiry, as set out in the APFP Regulations and the CA Guidance, to identify all persons with an interest in the Land (the land shown on the Land Plans [TR010060/APP/2.7]) and persons with a potential claim for compensation as a result of the proposed scheme. These persons have been consulted pursuant to section 42 of the PA 2008. The categories of persons identified and the methods used to identify them are described in Section 4 of this Statement.
- 1.1.10 The Applicant has entered into negotiations to acquire other parties' interests voluntarily and is progressing those discussions. These negotiations are not yet complete. The current position on these negotiations is set out in **Annex B** of this Statement.
- 1.1.11 Due to the number of interests within the Order Land it is necessary to seek powers to allow the Applicant to acquire the land interests by way of compulsory acquisition (in the event that voluntary agreements are not reached). This is in order to enable the proposed scheme to be delivered within a reasonable time frame. Further details are set out in Section 4 of this Statement. The Applicant is satisfied that the acquisition of all of the land interests is necessary to enable the proposed scheme to proceed.
- 1.1.12 The Applicant owns a number of plots which are subject to the rights of others which are incompatible with the construction and operation of the proposed scheme. In order to ensure that any such rights can be removed (and the persons benefitting from them are compensated for such removal) the Applicant's own land has been included within the Land to which the compulsory powers sought will apply.

## The case for compulsory acquisition

- 1.1.13 This Statement sets out the reasons for the inclusion of compulsory acquisition powers within the draft development consent order that form part of the DCO Application (**Draft DCO**) in order that the Applicant can acquire the land interests required for the construction and operation (including maintenance) of the proposed scheme that is not already in its possession. It also explains why powers are necessary to enable the Applicant to use land temporarily and acquire, suspend, interfere with or extinguish rights over land and impose restrictive covenants. This is in order to construct and maintain the proposed 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. This compelling case is set out in the Case for the Scheme [TR010060/APP/7.1] and evidenced further in the wider documentation that accompanies the DCO Application.

- 1.1.14 The Applicant is satisfied that the powers of compulsory acquisition and temporary possession sought in the DCO are necessary, proportionate and justified. The Applicant is further satisfied that the powers sought are in accordance with all relevant statutory and policy guidance.
- 1.1.15 The Applicant is firmly of the view that there is a compelling case in the public interest for the compulsory acquisition and temporary possession powers sought as set out in Section 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.

### **Human rights and Equality duties**

- 1.1.16 In preparing the Draft DCO, the Applicant has had regard to the European Convention for Human Rights, the Human Rights Act 1998 and the Equality Act 2010. Section 6 of this Statement considers how the proposed scheme complies with this legislation notwithstanding any infringement of the private rights of those whose interests in the land may be affected by the exercise of powers of compulsory acquisition and temporary possession.

### **Special considerations**

- 1.1.17 Chapter 7 and **Annex A** of this Statement and the Replacement Land Statement [TR0100600/7.9] identifies all special category land which is affected by the compulsory acquisition powers sought in the Draft DCO. The Applicant has engaged with the relevant persons responsible for the special category land and with a view to avoiding the need for special parliamentary procedure in accordance with the relevant sections of the PA 2008. The Applicant has further considered what other consents are required in order to enable the proposed scheme to proceed and set out how these will be secured.

### **Compliance with statutory requirements and policy guidance**

- 1.1.18 This document has been prepared in accordance with the requirements of Regulation 5(2)(h) of the APFP Regulations, and the CA Guidance.
- 1.1.19 This Statement is required because the Draft 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.
- 1.1.20 This Statement forms a suite of documents accompanying the application submitted in accordance with section 55 of the PA 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 DCO [TR010060/APP/3.1]
  - Explanatory Memorandum [TR010060/APP/3.2]
  - Book of Reference [TR010060/APP/4.3]



- Land Plans [TR010060/APP/2.7]
- Works Plans [TR010060/APP/2.2]
- Special Category Land Plans [TR01006/APP/2.5]
- Streets, Access and Rights of Ways Plans [TR010060/APP//2.6]
- De-trunking Plans [TR010060/APP/2.10]
- Traffic Regulation Measures – Movement Restrictions Plan [TR0100600/APP/2.3.2]
- Funding Statement [TR010060/APP/4.2]
- Case for the Scheme including the National Policy Statement National Networks (NPS NN) Accordance Table [TR0100600/TR010060/APP/7.1]
- Consents and Licenses Position Statement [TR0100600/APP/3.3]

## Objectives of the proposed scheme

1.1.21 The key objectives of the proposed scheme are:

- **Support economic growth:** supports the growth identified in Local Plans, by reducing congestion related delay; improving journey time reliability and increasing the overall transport capacity of the A12;
- **Improve safety for users:** by improving safety design, private accesses to the strategic road network closed off and alternative access to local roads provided by the proposed scheme;
- it improves road user safety; and
- improves road worker safety during maintenance operation.
- **Improve transport for users:** reduces current and forecast congestion related delays and therefore increased journey time and reliability;
- improves accessibility for walkers, cyclists, horse riders, and public transport users; and
- Improves customer satisfaction, and reduces customer impact during construction.
- **Environmental improvements:** reduces the visual, air and noise quality impacts of the proposed scheme on affected communities on the route;
- reduces the capital carbon and biodiversity impact of the proposed scheme; and
- reduces the impact of severance of communities along the route;
- **Accessibility:** improves accessibility for cyclists, walkers and horse riders and those who use public transport

- **Resilience:** the proposed scheme has been designed to consider the impacts of other RIS schemes.

## 2 The Proposed Scheme

### 2.1 Description of the Proposed Scheme

- 2.1.1 The proposed scheme comprises the improvement of the A12 in Essex between junctions 19 (Boreham interchange) and 25 (Marks Tey interchange). It is proposed to improve safety, solve strategic traffic problems arising from inadequate and varying route standards, and reduce congestion and delay, which will collectively increase resilience along this key part of the Strategic Road Network (SRN).
- 2.1.2 The Applicant is seeking powers to widen the existing A12 to three lanes (where it is not already three lanes) between junction 19 and junction 25. The proposed works extend for a total of 15 miles (24km).
- 2.1.3 The proposed scheme also includes safety-related improvements, including closing off existing private and local direct accesses onto the main carriageway, and alterations and improvements to existing non-vehicular routes along the A12 for walking, cycling and horse riding (WCH).
- 2.1.4 A detailed description of the proposed scheme can be found in Chapter 2: The proposed scheme, of the Environmental Statement (ES) [TR010060/APP/6.1].
- 2.1.5 The section of the A12 to be altered is located wholly within the administrative area of Essex County Council (which is the local highway authority for roads not forming part of the SRN in Essex). The proposed scheme is mainly within the administrative areas of Braintree District Council and Colchester Borough Council, with parts also being within the Chelmsford City Council and Maldon District Council administrative areas.
- 2.1.6 Chelmsford is located to the south-west of the proposed scheme and Colchester to the north-east. The settlements of Boreham, Hatfield Peverel, Witham, Rivenhall End, Kelvedon, Feering and Marks Tey are along the route. The A12 runs parallel and to the south of the Great Eastern Main Line (GEML) railway (which connects London with Colchester, Ipswich and Norwich) for most of its length between junctions 19 and 25.
- 2.1.7 Major connecting roads include the A130, which joins the A12 at junction 19, and the A120, which joins the A12 at junction 25. The B1137 links Boreham to junction 19 and Hatfield Peverel, and the B1018 and the B1019 link Maldon to Witham and Hatfield Peverel respectively. The B1023 Inworth Road/Kelvedon Road links Kelvedon to Tiptree, and Braxted Park Road connects Tiptree to Rivenhall End. These are the main local roads that connect directly to the A12 and therefore will be subject to some associated development to integrate the proposed scheme with the local traffic network.
- 2.1.8 The proposed scheme will also require the diversion and alteration of utilities, including apparatus for electricity, communications, water and gas. One of the high-pressure gas main diversions has the potential to be an NSIP in its own right under section 20 of the Planning Act 2008.

## Proposed scheme's main components

### Alteration of the A12 and associated highway development

2.1.9 This includes the following:

- Widening of A12 junction 19 Boreham Interchange Bridge from two to three lanes in each direction and associated roundabouts to increase capacity and to enable the A12 to be widened to three lanes at the junction (to tie in with the current three-lane section between Boreham and Hatfield Peverel (junction 20a)).
- Two new three-lane dual carriageway sections, between the existing junctions 22 and 23 and between junctions 24 and 25.
- The remaining sections of the existing A12 to be altered will be widened online.
- Three new all movement junctions (dumbbell layout) would be provided at junctions 21, 22 and 24, which would replace junctions 20a, 20b and 23. Junctions 21 and 22 will be above ground level with a bridge over the A12 to connect both roundabouts. Junction 24 will be built in cutting, with the A12 at ground level and an underpass to connect both roundabouts.
- Junction 25 will be improved with the south roundabout replaced by a signalised junction and a new local road connection (London Road) where the new section of A12 joins the existing mainline.

### Utilities

2.1.10 The proposed scheme will have to divert existing utilities which are either located on existing A12 verges or will be affected by the widening works (embankments, retaining walls and associated works). The diversion will include: water mains; wastewater; low, medium and high voltage cables; gas main (low and high pressure) and telecommunications.

2.1.11 To enable construction of the proposed scheme, several existing utilities will need to be temporarily diverted. This will safeguard the existing supplies during construction while the permanent diversion routes are being constructed. The quantity and length of temporary diversions will be minimised where practicable and will include all of the affected utilities mentioned above.

### Biodiversity, ecology and open spaces

2.1.12 The proposed scheme will maximise biodiversity value with several proposed green areas where habitats, hedgerows and native species of trees and hedges are intended to improve and connect wildlife corridors. Landscape screening is proposed, including retaining existing vegetation, where practicable.

2.1.13 The proposed green areas are to be located adjacent to the A12 and comprise flood and drainage mitigation areas, together with a new network of ditches, pipes and drainage systems.

- 2.1.14 As the proposed scheme will impact on some open space and a Local Nature Reserve (**LNR**), National Highways will provide new open space of at least an equivalent area to that required for the proposed scheme.

### **Mitigation of operational effects**

- 2.1.15 The proposed scheme includes design and mitigation measures to avoid or reduce its operational and construction effects. The following are examples of measures that are embedded into the proposed scheme design:
- Mitigation planting to screen views of the proposed scheme, including planting of woodland, individual trees, hedgerows, shrubs, and grassland.
  - Noise bunds and use of low noise road surfacing to reduce noise impacts from vehicles using the proposed scheme.
  - Provision of sustainable drainage systems and attenuation to reduce flood risk and mitigate water quality impacts.
- 2.1.16 Additional mitigation measures have also been developed to mitigate likely significant adverse effects during construction and operation, including the following:
- Habitat creation and enhancements to replace habitat lost to the proposed scheme
  - Use of noise barriers and surfacing with better noise reducing properties than a conventional low noise surface to mitigate significant noise impacts
  - Flood storage areas to mitigate increased flood risk
  - Use of bank protection measures, baffles and pool-riffle sequences to mitigate impacts on hydromorphology

### **Compounds, haul roads and borrow pits**

- 2.1.17 The proposed scheme includes two main compounds, one located north of junction 21 and another north of junction 22, adjacent to Eastways Industrial.
- 2.1.18 The main compounds will have offices, welfare facilities, parking, training rooms, materials storage, asphalt and concrete batching plants.
- 2.1.19 Three small satellites compounds are also proposed adjacent to the other junctions in the proposed scheme. There will also be laydown areas (self-contained small compound) throughout the proposed scheme.
- 2.1.20 There will be a prefabrication site compound west of Hatfield Peverel which will allow offline construction of some bridge elements.
- 2.1.21 Throughout the proposed scheme will be soil storage areas to store topsoil during construction and haul routes parallel to the A12 to connect borrow pits, site compounds and construction areas, reducing construction traffic on the Local Road Network (LRN) and SRN.
- 2.1.22 There are four proposed borrow pits in total, which would be located as follows:

- North of the proposed junction 21
- South of the A12 to the east of junction 21
- East of Rivenhall End between the A12 and GEML railway
- South of the A12 to the west of the proposed junction 24

2.1.23 These borrow pits will be used to extract materials from the order land for the construction of the proposed scheme and reduce the import of inert materials from other quarries.

2.1.24 Junction 22 will be built on a currently active quarry (owned by Brice Aggregates), where extraction is being expedited to prevent sterilisation of minerals.

### **Slow moving traffic and WCH infrastructure**

2.1.25 The proposed scheme will improve the quality and capacity of existing WCH infrastructure, seek opportunities for new routes and address historic severance. This includes controlled and uncontrolled crossings at junctions and adjacent local roads.

2.1.26 The proposed scheme will also create new WCH routes to connect north and south of the A12 and connect existing routes along the A12. This includes seven pedestrian and cyclist bridges. There will be four additional new accommodation bridges to provide local residents and farmers access to their land.

2.1.27 The speed limit would be reduced on local roads within villages (Boreham and Hatfield Peverel) and standardise speed limits put in place between villages of Boreham to Hatfield, Inworth to Tiptree and de-trunked sections of the A12) to improve safety, especially for home-to-school transport, and other walking and cycling activity on local roads.

2.1.28 WCH, horse-drawn carriages and slow moving vehicles would be prohibited from using the A12 mainline between junctions 21 and 25 (Witham South interchange to Marks Tey interchange). These user groups will be accommodated on local roads, including being diverted to safe alternative routes, including de-trunked sections of the existing A12, once realigned sections have been implemented

2.1.29 Roadside technology will be added between junctions 21 and 25 to smooth traffic flow, reduce speed limits in congestion to improve safety and to close lanes when vehicles break down or other incidents occur, to reduce the likelihood of collisions. Messages on electronic signs will inform drivers of reasons for lane closures or reduced speed limits.

### **Works to the local highway network, including those parts of the existing A12 which will no longer form part of the SRN**

2.1.30 Works to the local highway network, including those parts of the existing A12 which will no longer form part of the SRN.

- 2.1.31 The proposed scheme also includes the de-trunking of two sections of the A12 which will become local roads managed by Essex County Council. These are at Rivenhall End and between Feering and Marks Tey.
- 2.1.32 There will be traffic management improvements to Boreham (Main Road), Hatfield Peverel (The Street), Little Braxted Road and B1023 Inworth Road.
- 2.1.33 New alignments with new overbridges over the A12 are proposed for Braxted Road, Easthorpe Road. The proposed scheme will also provide three accommodation overbridges along Kelvedon bypass at Highfields Lane, Ewell Overbridge, Prested and Threshelfords Bridges.
- 2.1.34 Widening from two to three lanes in both directions between Hatfield Peverel to Marks Tey.
- creating a new three-lane bypass at Rivenall End (junctions 22 to 23),
  - creating a bypass between junctions 24 - 25,
  - Improvements made to junctions 19 and 25
  - creating three new junctions to replace junctions 20 A, 20B, and 23, and
  - creating new and improved walking, cycling and horse riding routes.
- 2.1.35 A more detailed description of the proposed scheme can be found in Chapter 2, The proposed scheme of the ES [TR010060/APP/6.1].

## 2.2 Need for the proposed scheme

- 2.2.1 The A12 is an important economic link in Essex and across the east of England. It provides the main south-west/north-east route through Essex and Suffolk, connecting Ipswich to London and to the M25.
- 2.2.2 The section between Chelmsford and Colchester (junction 19 Boreham Interchange to junction 25 Marks Tey Interchange) carries high volumes of traffic, with up to 90,000 vehicles every day. Heavy goods vehicles are between 9% and 12% of the traffic on this section due to it connecting with important freight destinations, especially to Felixstowe and the other Haven Ports.
- 2.2.3 This section of the A12 is also an important commuter route between Chelmsford and Colchester. The resulting congestion leads to delays and means that, during the morning commute, a driver's average speed is particularly slow in both directions for a dual carriageway A-road of its kind. If no intervention is made, this situation is expected to continue to worsen and the route will exceed capacity by the design year (2042) and beyond, resulting in continued and worsened unreliable journey times and delay.
- 2.2.4 The A12 has previously been improved in stages and is now a dual carriageway for its entire length between the M25 and A14. However, this has resulted in a road constructed to varying standards with sections that are dual two- and three-lane, and locations where at-grade accesses to residential, commercial and agricultural properties have been retained.

- 2.2.5 The proposed scheme has been prepared to address the traffic related issues arising between junctions 19 and 25 and the direct connections, and is proposed to improve highway performance and safety, and improve non-vehicular routes along the A12 for walkers, cyclists and horse riders.
- 2.2.6 The widening of the A12 to three lanes between junction 19 (north of Chelmsford) and junction 25 (A120 interchange) were announced by the Government's 2015 - 2020 Road Investment Strategy 1 (RIS1) (DfT 2015).
- 2.2.7 In March 2020 the Government published the 2020-2025 Road Investment Strategy 2 (RIS2) (DfT 2020) which covers investment in, and management of, the SRN for this period. The proposed scheme is committed in the RIS2.
- 2.2.8 The proposed scheme is needed for the following reasons:
- **Network Safety:** improve safety for road users, especially at the junctions and slip roads through better design while also removing the current direct private accesses onto the A12. The collision history for the propose scheme show that the collision rate per mile travelled on this section of A12 has increased and is above the average for this type of road, whereas before it was below the average. There are concentrations of collisions at junctions, as is typically seen on most roads, but the reason for the increase in the frequency of collisions in the more recent period is not clear at present. There are no particular differences in terms of which types of vehicle are involved or road user groups, such as pedestrians, cyclists, motorcyclists and so on.

Further analysis will be undertaken in the detailed design period.

The proposed scheme incorporates traffic monitoring and driver information technology to improve the safety of the road after opening in the section between J21 and J25. This proven technology has been shown to smooth traffic flow, with benefits for safety and journey reliability, and improve driver information, as well as to protect users of broken down vehicles.

- **Relieve Congestion:** reduce traffic congestion by increasing the capacity of the road, making journey times more reliable. The proposed scheme will save motorists as much as 1.5 hours in a working week if they travel daily between junctions 19 and 25. The proposed scheme will take long-distance traffic off the local roads and put it back on to the A12 where it belongs, so that local roads aren't used as rat runs, affecting local villages and their communities. It will ensure that the road can cope with the predicted increase in traffic from more jobs and homes in the area, and it will make improvements for walkers, cyclists, horse riders and public transport users, to give them better connections and safer, more enjoyable journeys.
- **Economic Growth:** Substantial housing and employment growth is planned to be delivered in the four host authorities identifying significant growth in their current and emerging Local Plan periods. The population growth in Essex is expected to remain high. Employment growth is expected, particularly due to the ongoing major developments at

Felixstowe and Harwich, business investment and the year-on-year growth of Stansted Airport. The proposed scheme will have a marked impact on the economy, connectivity and accessibility, and is needed to unlock both planned and long term future growth.

2.2.9 Considering all factors above, there is a clear need to take action to address the increasingly congested A12 between junctions 19 and 25. Intervention is required to meet the objectives which include: alleviating congestion, reducing journey times, improving safety, creating additional capacity which would remove a barrier to planned economic growth and improve the SRN.

2.2.10 Chapter 7 of the Case for the Scheme [TR010060/APP/7.1] sets out the case for the proposed scheme by reference to the NPS NN and other national and local policy.

### **Diversion of high pressure gas main**

2.2.11 The proposed scheme will also require the diversion and alteration of utilities, including apparatus for electricity, communications, water and gas. These include the diversion of the Witham South to Little Braxted Gas Governor high pressure gas main (herein referred to as “HP Gas Main Diversion”) owned and operated by Cadent Gas Limited (Cadent), which runs parallel to the A12 between Maldon Road Bridge (B1018) and Colemans Bridge (B1389) (Appendix 5.2 of the ES [TR010060/APP/6.3]). The proposed HP Gas Main Diversion meets the criteria to be considered an NSIP in its own right under section 20 of the PA 2008. However, the HP Gas Main Diversion is required only in order to facilitate the highway scheme, and so forms part of the Application. Therefore, the DCO Applicant has also had regard to the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) and is satisfied this Statement is also consistent with those national policy statements.

## **2.3 Benefits of the Scheme**

### **Monetised Benefits**

2.3.1 The benefits and disbenefits of the proposed scheme have wherever possible have been monetised. This allows them to be directly compared against the proposed scheme costs. The benefits are assessed over a sixty year period. Full details on the methodologies and results are provided in the Combined Modelling and Appraisal Report (ComMA) [TR010060/APP/7.3]. The travel time benefits are summarised as:

- Business users and providers - £235.5 million
- Commuter users - £78.3 million
- Other users - £121.1 million

2.3.2 There is also a benefit of £29.1 million in indirect tax revenues accrued to the Government, primarily due to an increase in fuel consumption as more vehicles move at a faster speed.



- 2.3.3 The total number of accidents saved by the proposed scheme is forecast to be two fewer fatalities, 200 hundred fewer serious casualties and 469 fewer slight casualties. Although the change in the overall number of accidents due to the proposed scheme will be an increase of 262, the monetised benefit from improved highway safety is £13.1 million.
- 2.3.4 The improvement in journey time reliability would result in benefits of £180.7 million.
- 2.3.5 The proposed scheme would also lead to productivity in the wider economy and provide overall benefits of £253.9 million. These comprise of improvements in journey time that the proposed scheme provides between and within urban areas (to £216 million). There are also benefits from increasing labour supply (£6 million) as some people decide to enter the workforce as travel costs fall, and from other increased in business output (£31 million).
- 2.3.6 The benefits described above can be summed up to give an overall value known as the Present Value of Benefits of £775.4 million

### Environmental Considerations

- 2.3.7 It is predicted that there will be an increase in carbon dioxide emissions of 1,535,559 tonnes over the assessed period of 60 years. This equates to a monetary disbenefit of -£113.4 million.
- 2.3.8 With regards to air quality, predicting that the proposed scheme would over a 60 year period cause an increase of 292,376 tonnes of carbon dioxide emissions giving a monetary disbenefit of -£30.0 million. And a predicted increase in NO<sub>x</sub> emissions, equating to a total value of the change in air quality as a disbenefit of -£16.3 million.
- 2.3.9 Table 2.1 sets out the analysis of monetised costs and benefits.
- 2.3.10 Table 2.1

Analysis of monetised costs and benefits	
Noise	-£6,550
Local Air Quality	-£16,325
Greenhouse Gases	-£113,418
Accidents	£13,090
Economic Efficiency: Consumer Users (Commuting)	£78,305
Economic Efficiency: Consumer Users (Other)	£121,078
Economic Efficiency: Business Users and Providers	£235,454
Wider Public Finances (indirect Taxation Revenues)	£29,140

<b>Analysis of monetised costs and benefits</b>	
Wider Economic Impacts	£253,917
Journey Time Reliability	£180,747
<b>Present Value of Benefits (PVB)</b>	£775,438
<b>Present Value of Costs (PVC)</b>	£452,122
Overall impacts:	
<b>Benefit to Cost Ratio (BCR)</b>	1.72

### Summary of economic analysis

- 2.3.11 The initial Benefit to Cost Ratio (**BCR**) for the proposed scheme and the inclusion of the wider economic impacts and journey time reliability benefits gives an adjusted BCR of 1.72. This means that for £1 spent on the proposed scheme there will be a £1.72 return to society in benefits. Impacts which cannot be monetised have also been considered. These include adverse impacts on landscape, the historic environment and biodiversity, and beneficial impacts from improved journey quality, security and severance. Overall, taking into account the monetised and non-monetised benefits, as well as various sensitivity tests, the proposed scheme is considered to represent medium value for money.
- 2.3.12 A detailed summary of the benefits of the proposed scheme is set out in Section 6 of the Case for the Scheme [TR010060/APP/7.1].

## 2.4 The authorised works

- 2.4.1 A full description of the works and associated development, referred to in the Draft DCO as "the authorised works" is set out in Schedule 1 of the Draft DCO [TR010060/APP/3.1]
- 2.4.2 In order to facilitate the carrying out of the authorised works listed in Schedule 1 of the Draft DCO, the powers in the Draft DCO would further authorise the Applicant to carry out ancillary development and works within the area of land (shown as a red line on the Land Plans [TR010060/APP/2.7] (**the Order Limits**) and Works Plans [TR010060/APP/2.2] comprising such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development.
- 2.4.3 These ancillary works include: Alterations to streets; provision of laybys; refurbishing existing bridges; strengthening, alteration or demolition buildings bridges or structures; accesses, footpaths, cycle tracks and crossings; embankments, abutments, foundations, retaining walls, barriers, drainage

facilities, lighting, gantries, fencing and culverts; street works; provision of street furniture, traffic signals and apparatus; works to watercourses; landscaping, bunds and works associated with the provision of ecological mitigation; works for the benefit or protection of land and apparatus; site preparation works, site clearance and remediation of contamination; the felling of trees; compounds and working sites, temporary vehicle parking, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads; pavement works, kerbing and paved areas works, signing, signals, gantries; such other works, necessary the construction of the authorised development.

- 2.4.4 The works described above would be subject to specific mitigation requirements, for example, landscaping and environmental mitigation. These requirements are set out in Schedule 2 to the Draft DCO.

## 2.5 Proposed scheme Evolution, Alternatives and Flexibility

- 2.5.1 In March 2015 the Department for Transport (**Dft**) announced as part the Government's 2015- 2020 Road Investment Strategy 1 (**RIS1**) (DfT 2015a) major new investment for the A12 as part of the widening of the A12 widening to three lanes between junction 19 and 25. RIS1 listed schemes to be delivered by Highways England (HE) in the Regional Investment Programme over this period.
- 2.5.2 In March 2020 the Government published the 2020- 2025 Road Investment Strategy 2 (**RIS2**) which covers investment in, and management of the Strategic Road Network from April 2020 to March 2025. The A12 widening between junctions 19 and 25 (A120 interchange), traffic technology improvements and a package of associated mitigation schemes were again identified.
- 2.5.3 As part of the design process, the proposed scheme has been subject to a process of staged development and evolution between its inception and Draft DCO submission. Details of the alternatives considered are set out in Chapter 3 Assessment of alternatives of the ES [TR010060/APP/6.1]. In addition, the Consultation Report [TR010060/APP/5.1] provides further detail on how comments made by stakeholders have been taken into account in the development of the proposed scheme.
- 2.5.4 The proposed scheme was identified in the RIS1 and RIS2 and was subject to consideration of alternatives as part of the investment decision making the process that informed its inclusion as a committed scheme in those documents.
- 2.5.5 Paragraph 4.27 of the NPS NN (DfT 2014) states:
- "Where projects have been subject to full options appraisal in achieving their status within Road or Rail Investment Strategies or other appropriate policies or investment plans, options 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".*

- 2.5.6 In accordance with the NPS NN, it is therefore not necessary for the Examining Authority or the SoS to consider the option testing stage of design development, but they must be satisfied that such an assessment took place.
- 2.5.7 The Applicant has undertaken an optioneering process of the design and development of the proposed scheme. The main stages of the optioneering process took place between 2017 and 2019. Details of this are set out in Chapter 3 paragraph numbers 3.1.5 to 3.3.20 of the Case for the Scheme [TR010060/APP/7.1] and Chapter 3 Assessment of Alternatives of the ES [TR010060/APP/6.1].
- 2.5.8 There have been many different options identified and assessed during a number of stages of the proposed scheme. This started with a long list of 23 options that could meet the overall objective of improving the A12, and ended with a short-list of four options that were taken forward to the public consultation in 2017. These options were as follows:
- Option 1 – widening the existing A12 throughout and provision of a local access road to provide alternative access to existing single tier junctions
  - Option 2 – widening the existing A12 with two new sections of three-lane dual carriageway between junctions 22 and 23 and between junctions 24 and 25.
  - Option 3 – widening the existing A12 with a new section of three-lane dual carriageway between junctions 22 and 23.
  - Option 4 – widening the existing A12 with a new section of three-lane dual carriageway between junctions 24 and 25.
- 2.5.9 The preferred route for the proposed scheme was selected based on several factors, including environmental impacts, journey times, complexity of build, affordability, feedback from the public and advice given by the Planning Inspectorate on the joint Local Plan for the area.
- 2.5.10 Feedback obtained from the non-statutory consultation Monday 23 January until Friday 3 March 2017 identified that the most popular option with the public was Option 2. Following feedback from the consultation and further technical, economic and environmental assessments, the preferred route option was based on Option 2.
- 2.5.11 The iterative process of identifying and assessing likely significant effects has influenced the route options selection and design development. Examples of where the proposed scheme design has been altered to avoid or reduce environmental effects include, but are not limited to, the following:
- Using Wellington Bridge to connect Hatfield Peverel to the new junction 21 (Witham South interchange), instead of a new link road south of the A12, to avoid noise increases along the B1137/The Street.
  - Shortening the length of the new section of three-lane dual carriageway between junctions 22 (Colemans interchange) and 23 (Kelvedon South interchange) to avoid impacting a scheduled monument and to reduce the area of the proposed scheme in the River Blackwater floodplain.

- Working with the owner of Colemans Farm Quarry to design the proposed junction 22 to reduce impacts on the operational quarry and to prevent unnecessary sterilisation of mineral resources.
- Revising the position of the new junction 24 to reduce impacts on the grade II listed Prested Hall.
- Changing the layout of the new section of three-lane carriageway between junctions 24 (Kelvedon North interchange) and 25 (Marks Tey interchange) to avoid having to cut down a veteran tree located near Easthorpe Road; and
- Discounting certain proposed borrow pit and construction compound locations due to likely disruption to local communities.
- Re-arrangement of junction 21; design changed as a result of various rounds of consultation. We changed the design because there was a significant noise effect from the originally proposed design.

2.5.12 Following further modelling and detailed assessment it is proposed to resurface the southern carriageway of the A12 between junction 19 and existing junction 20a (Bury Lane) with an improved noise-reducing road surface. This is expected to mitigate the predicted increase in noise caused by the proposed scheme from traffic using the A12.

2.5.13 The speed limit on Main Road between Hatfield Peverel and junction 19 is proposed to be reduced to 40mph outside Boreham (where it is currently the national speed limit) and 30mph within Boreham (where it is currently 40mph). This is expected to encourage more vehicles to use the new proposed junction 21 rather than Main Road in Boreham and aligns with feedback we received at the consultation.

2.5.14 Feedback obtained from the non-statutory consultation from Monday 21 October until Sunday 1 December 2019 demonstrated that the preferred option for the proposed scheme was the most popular with 49% of respondents expressing it as their preferred option. The assessments also demonstrated that the current route presented the best value for money, and provided the greatest economic return compared to the other options.

2.5.15 In relation to the land required for the proposed scheme, the Applicant has taken into account requests for changes to the proposed scheme arising as part of the consultation and where possible changes have been made in response to comments received from landowners affected by the proposed scheme. Significant changes made include:

- At junction 19, environmental mitigation has been relocated to another area to reduce the impact on a business.
- Through engagement and design it was also possible to reduce the footprint of the environmental mitigation and drainage ponds to mitigate the impact of the proposed scheme on the land to the south of Junction 19.

- Payne's Lane Bridge was re-designed to include new walking, cycling and horse-riding bridge and its northern approach was re-configured following engagement with the developer of the site and the relevant local authorities to reduce the impact on the development land to the north of Junction 19 and to provide a better connection to the consented new railway station.
- To the west and south of the proposed junction 21 the location and size of environmental mitigation and drainage ponds have been altered and reduced where possible to reflect landowner feedback to reduce the impact on the farming and fishing businesses.
- To the north and south of junction 22 the Order Limits have been amended and reduced where possible to take into account feedback from the landowners to mitigate the impact on the quarry and the consented commercial development to the north of the existing A12.
- To the east of the proposed junction 24 we have been working closely with the Crown Estate and taking into account their feedback to make changes to the scheme design, proposed areas of acquisition and overall footprint to reduce any impact on their proposed residential development.

- 2.5.16 The above examples of changes have resulted in reducing the size of the land take, improved the provision of WCH, improved safety and reduced noise of the proposed scheme on sensitive receptors.
- 2.5.17 The Applicant believes all of the Land in the Order Limits is necessary to deliver the proposed scheme. The Applicant will continue to seek to acquire only the land and interests in land it believes are required and will seek to minimise the effects on land interests.

## 3 Compulsory acquisition

### 3.1 Scope of compulsory acquisition powers sought

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 proposed scheme. The specific compulsory acquisition powers sought by the Applicant are set out in full in Part 5 of the Draft DCO [TR010060/APP/3.1].

3.1.2 Section 122 of the PA 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 Secretary of State for Transport) in respect of the Application must be satisfied that certain conditions are met. The way in which the proposed 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 PA 2008 provide that the Draft DCO may make provisions relating to, or matter ancillary to the development in respect of which a DCO is sought. The matters in respect of which provision may be made included (but is not expressly limited to) matters listed in Schedule 5 of the PA 2008, including:

- The acquisition of land, compulsorily, or by agreement (paragraph 1).  
The creation, suspension or extinguishment of, or interference with, interest in right over land, compulsorily, or by agreement (paragraph 2).
- The abrogation or modification of agreements relating to the land (paragraph 3).
- 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 Articles 27 (compulsory acquisition of land) and 30 (compulsory acquisition of rights and restrictive covenants) of the Draft DCO and **Annex A** of this Statement provides a description of the land which is subject to powers of outright acquisition in terms of Article 27 of the Draft DCO. 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 30 allows rights over land to be acquired instead of outright acquisition. This allows flexibility in approach and a reduction in the impact on interests of the land interest. Compulsory acquisition of rights and the compulsory imposition of restrictive covenants is authorised by Article 30. **Error! Reference source not found.** 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 Applicant or, where relevant, the operator of the installed apparatus is able to fulfil their functions.

- 3.2.3 Other compulsory acquisition powers are sought in the Draft DCO (identified in paragraph 3.3 below) and these similarly relate to land and will, or may, authorise interfere with property, rights and interests.
- 3.2.4 In addition, powers are sought in the Draft DCO to enable the temporary possession and use of land to carry out the authorised development.
- 3.2.5 In each case, the owner of the land, or the interest or right in the land, may be entitled to compensation.

### **3.3 Other compulsory acquisition-related powers**

- 3.3.1 The other powers sought by the Applicant in the Draft DCO include:

#### **Article 31: Private rights over land**

- 3.3.2 Article 31 of the Draft DCO provides for the extinguishment of all existing 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.
- 3.3.3 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 shall be extinguished to the extent that continuing those private rights or restrictive covenants would be inconsistent with the new right acquired or restrictive covenant imposed.
- 3.3.4 With regard to land that the Applicant may take temporary possession of under the Draft DCO, Article 31 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.
- 3.3.5 The power to extinguish existing rights is required to ensure that such rights do not interfere with the construction and operation of the proposed scheme.
- 3.3.6 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 31) is entitled to reasonable compensation.

#### **Article 32: Power to override easements and other rights**

Article 32 of the Draft DCO provides an additional power for the Applicant to override existing easements and other rights for its statutory purposes and to allow this overriding to benefit successors in title also. This power may be used where the relevant land is not subject to compulsory acquisition because either the land is already held by the Applicant or because of agreements reached with other parties, but a power to override existing interests such as easements in land is still required to be available to the Applicant.

#### **Article 38: Acquisition of subsoil or airspace only**

- 3.3.7 Article 38 of the Draft DCO provides that where the Applicant has, in respect of any land, powers of compulsory acquisition under Articles 27 and 30 above 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 the



airspace over the land with consequentially less impacts on affected landowners. 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 proposed scheme, leaving land interests in possession of the valuable part of the land. This allows the acquisition of the minimum interests to deliver the proposed scheme.

3.3.8 Article 38 of the Draft DCO would authorise the Applicant to:

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

3.3.9 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 powers under this Article 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 Draft DCO, powers to take temporary possession of land to carry out and thereafter maintain the proposed scheme. **Error! Reference source not found.** of **Annex AAnnex A** of this Statement provides a description of the land which may be occupied temporarily. The powers of temporary possession in the Draft DCO are as follows:

### **Article 40: Temporary use of land for carrying out the authorised development**

3.4.2 Article 40 of the Draft DCO would authorise the Applicant to take temporary possession of:

- the land specified in columns 1 and 2 of Schedule 7 to the DCO;
- any other land within the limits of the Draft DCO intended for permanent acquisition, so long as the Applicant has not served a notice of entry or executed a general vesting declaration (**GVD**) in respect of that land.

3.4.3 In addition to taking possession of the land, the Article would authorise the Applicant to:

- remove any buildings and vegetation from the land;
- construct temporary works (including accesses) and buildings on the land; and
- construct any works on the land as specified in Schedule 7 to the Draft DCO.

- 3.4.4 The power to take temporary possession of land would be subject to the time limits set out in Article 29 and, unless the owner of the land agrees, the Applicant cannot remain in possession:
- of any land specified in columns 1 and 2 of Schedule 7 to the Draft DCO, for more than a year after completing that part of the proposed scheme specified in relation to that land in column 3 of Schedule 7; and
  - as regards to any other 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).

### **Article 41: Temporary use of land for maintaining the authorised development**

- 3.4.5 Article 41 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 proposed scheme, at any time during the maintenance period (i.e. five years from the date on which that part of the proposed scheme is first opened for use).
- 3.4.6 Article 41 would allow the Applicant to construct temporary works and buildings on the land, so far as reasonably necessary for the purpose of carrying out the 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.
- 3.4.7 The Applicant would only be able to 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 proposed scheme for which possession was taken. Before giving up possession of the land, the Applicant would be required to remove all temporary works and restore the land to the owner's reasonable satisfaction.
- 3.4.8 The powers to use land temporarily for carrying out the proposed 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.
- 3.4.9 The powers to use land temporarily for maintaining the proposed scheme ensures that the land is available for maintenance works during a five-year period from when that part of the proposed scheme is first opened for use. This is in the public interest as it ensures that it is possible to maintain the proposed 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 on the Applicant other rights and powers that may interfere with property rights and private interests. These additional powers are:

- Article 19: Temporary alteration, diversion, prohibition and restriction of use of streets;
- Article 20: Permanent stopping up and restriction of use of streets and private means of access;
- Article 26: Authority to survey and investigate the land
- Article 46: felling or lopping of tree preservation orders

3.5.2 In each case (for both 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.

### 3.5.3 Acquisition of new rights for the HP Gas Main Diversion

3.5.4 Schedule 5 includes rights to divert and install the high pressure gas main, which principally forms Work No.U69. The new rights are sought within a corridor width of approximately 100 metres. This is to allow for sufficient working space for installation and also some flexibility in routing of the gas main detailed design within the corridor, with a view to reducing ecological impacts and to retain vegetation where possible. A broad corridor is also required from installation of the diverted gas main under the River Blackwater by way of horizontal directional drill or similar trenchless installation method. Whilst the whole of the corridor is shown as being subject to the proposed permanent new easement and restrictive covenants, the permanent high pressure pipe easement is anticipated in most cases to be reduced in width and it is anticipated the permanent rights sought, including a protection area and permanent access for maintenance and inspection, will reflect this reduced cross section once the position centreline of the pipeline is known.

3.5.5 It cannot yet be confirmed exactly where within the corridor that the pipe will be laid, or where only temporary possession would be sufficient, as the detailed alignment will be determined following ground investigations along the route. The exact location of the pipe will be the subject of further discussion with affected landowners and Cadent and following additional surveys and ground investigations.

## 4 Land interests

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

4.1.1 The full extent of the Land subject to powers of compulsory acquisition and required in order to enable the Applicant to construct the proposed scheme as described in Chapter 2 of this Statement is shown on the Land Plans [TR010060/APP/2.7] and the Works Plans [TR010060/APP/2.2]. It is further

described in the Book of Reference [TR010060/APP/4.3]. Table 4.1 provides a summary of the full extent of land required and proposed acquisition type in order to construct the proposed scheme.

#### 4.1.2 Table 4.1 Summary of Land required for the proposed scheme

Acquisition Type	Colour on Land Plans	Area (hectares)
Permanent Acquisition of all interests in land	Pink	648
Land to be used temporarily and new rights to be acquired permanently	Blue	56
Land to be used temporarily	Green	132
Permanent acquisition of all interests in the airspace over land	Yellow	0.05
Permanent acquisition of all interests in the subsoil	Purple	0.01
Land not subject to powers of compulsory acquisition or temporary possession	Orange	0.05
<b>Total</b>		<b>836</b>

4.1.3 The proposed scheme will use land currently owned by National Highways. Table 4.2 provides a summary of National Highways land required for the proposed scheme.

#### 4.1.4 Table 4.2 Summary of National Highways Land required for the proposed scheme

Acquisition Type	Colour on Land Plans	Area (hectares)
Permanent Acquisition of all interests in land	Pink	167
Land to be used temporarily and new rights to be acquired permanently	Blue	0.15
Land to be used temporarily	Green	19
<b>Total</b>		<b>187</b>

4.1.5 The Applicant has sought powers of compulsory acquisition (or rights to use) in respect of all plots of land required for the proposed scheme even where it already holds an interest or presumes it holds an interest in the land. This approach has been taken 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 believe it owns and clearing the title would be necessary.

- 4.1.6 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 location of the Land is shown on the Scheme Location Plan [TR010060/APP/2.1].
- 4.2.2 The Land is located wholly within Essex County Council (which is the local highway authority for roads not forming part of the SRN in Essex) and passes through the administrative boundary of Braintree District Council and Colchester Borough Council, Chelmsford City Council and Maldon District Council.
- 4.2.3 Chelmsford is located to the south-west of the proposed scheme and Colchester to the north-east. The settlements of Boreham, Hatfield Peverel, Witham, Rivenhall End, Kelvedon, Feering and Marks Tey lie adjacent to the proposed scheme.
- 4.2.4 There are also individual business and residential properties which front directly onto the A12.
- 4.2.5 The A12 runs parallel and to the south of the Great Eastern Main Line (**GEML**) railway (which connects London with Colchester, Ipswich and Norwich) for most of its length between junctions 19 and 25.
- 4.2.6 Major connecting roads include the A130 which joins the A12 at junction 19 (Boreham interchange) and the A120 which joins the A12 at junction 25 (Marks Tey interchange). The B1137 links Boreham to junction 19 and Hatfield Peverel, the B1018 and the B1019 link Maldon to Witham and Hatfield Peverel respectively. The B1023 Inworth Road/Kelvedon Road links Kelvedon to Tiptree and Braxted Park Road connects Tiptree to Rivenhall End. These are the main local roads that connect directly to the A12 and therefore will be subject to some associated development to integrate the scheme proposals with the local traffic network.

## 4.3 Existing Land Use

- 4.3.1 The existing land conditions within the Order Limits and surrounding area are reported in Chapters 6-15 of the ES [TR010060/APP/6.1].
- 4.3.2 Land use outside of built-up areas is generally arable land with pockets of other farming types. There are a number of large commercial plots (over 100 hectares in size) along the route. Soils are generally classed as agriculturally 'good' or 'moderate', with localised areas of 'very good'.
- 4.3.3 The A12 crosses seven main rivers between junctions 19 and 25. These are Boreham Brook, River Ter, River Brain, Rivenhall Brook, River Blackwater, Domsey Brook and Roman River.
- 4.3.4 Existing vegetation includes highway vegetation, the pattern of small woodland blocks and copses scattered throughout the wider surrounding landscape, hedgerow boundaries, watercourses lined with trees, and the woodland and locally distinctive willow plantations along the River Blackwater.

- 4.3.5 Key environmental designations and features along the route include the Whetmead Local Nature Reserve to the east of the A12 at Witham; Boreham House and New Hall Boreham Registered Parks and Gardens at junction 19; Rivenhall Long Mortuary Enclosure Scheduled Monument, located south of the A12 to the east of Rivenhall End; a geological Site of Special Scientific Interest to the north of junction 25; and listed buildings, trees with Tree Preservation Orders, and veteran trees throughout along the route.
- 4.3.6 There is habitat capable of supporting various protected and notable species is located along the route of the proposed scheme. These include bats, badgers, great crested newt, breeding birds, barn owl, reptiles, water vole, otters and aquatic species.
- 4.3.7 There are several noise important areas along the route, including at Boreham, Hatfield Peverel, Witham, Rivenhall End, junction 24 (Kelvedon North interchange) and Marks Tey.
- 4.3.8 Most of the area long the route is classed as a Mineral Safeguarding area due to the underlying sand and gravel resources in the region.

## **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 in section 44 of the PA 2008.
- 4.4.2 Such persons are listed in the Book of Reference [TR010060/APP/4.3] and have been consulted about the DCO application in accordance with section 42 of the PA 2008 and described in the Consultation Report [TR010060/APP/5.1].
- 4.4.3 Diligent inquiry to identify affected landowners, those with interests in land, and those with a potential claim was undertaken by the Applicant's land referencing supplier. The categories of persons identified and the methods used to identify them are described below.
- 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 making of the DCO to ensure that any changes in ownership are identified and to ensure that any new owners will be consulted and subject to engagement. Any changes will also be recorded and updated in the Book of Reference.

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

- 4.5.1 Identification of Category 1 and 2 persons, as defined in section 44 of the PA 2008, was undertaken at the early stages of development of the proposed scheme in order to inform the design of the proposed scheme and the preparation of the DCO Application.
- 4.5.2 A polygon of the search area, being the proposed land requirements (before the Order Limits shown on the Land Plans was defined), was initially submitted to the Land Registry so that a Polygon Plus search could be completed in June 2019. This was further refreshed ahead of the preferred route announcements

for the project in October 2019 and August 2020. Ongoing Land Registry searches, including edition date checks and polygon plus have been conducted throughout the preparation of the DCO Application at key project milestones including ahead of formal land referencing commencing in February 2021 and ahead of Statutory Consultation in June 2021 and Supplementary Consultation in November 2021 to ensure that any changes in title were identified. The official copies of the 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 proposed scheme were identified. A search of the Index Map was obtained in July 2022 ahead of DCO Application.

4.5.3 All relevant freehold, leasehold, mortgagee, beneficiary, other charges and restrictive covenants information was extracted and stored in a land referencing database, routinely updated during preparation of the DCO Application. 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 form (**RFI**) to all parties and issuing further forms to any new parties identified through returns. Where RFIs were not returned, further follow up letters were issued and site visits were conducted to visit properties to verify information. The forms have been supported by a number of emails, telephone calls and landowner engagement meetings to verify and confirm information. This process is ongoing.

4.5.4 On completion of the above initial desk based exercise, the extent of unregistered land interests became known. In order to establish ownership of unregistered land that falls within the proposed land requirements, public sources of information were used, including site visits, the Planning Portal, Companies House website, the relevant Highway Authority, records held by Statutory Undertakers, electoral registers and online resources (such as Experian and TracelQ). Discussions have also been held as part of the ongoing engagement and consultation with affected landowners which revealed a number of interested parties in unregistered land.

4.5.5 The information obtained from the above exercises was used to populate Part 1, Part 2 and Part 3 of the Book of Reference [TR010060/APP/4.3].

## **4.6 Category 3 persons who may fall under section 10 of the Compulsory Purchase Act 1965 (CPA 1965) and/or section 152(3) of the PA 2008**

4.6.1 Category 3 persons are those with potential claims under the above legislation should the proposed 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 interference with a right or interest as a result of the proposed scheme, although the land in question is not acquired outright.

4.6.2 Identification of Category 3 persons, as defined in section 44 of the PA 2008, was undertaken at the early stages of development of the proposed scheme, in order to inform the design of the proposed scheme and preparation of the DCO Application.

4.6.3 In order to identify potential Category 3 persons who may have a claim pursuant to section 10 of the CPA 1965, a desk-based assessment was carried out to identify properties with a potential claim. In addition, site visits were used in order to assess properties that the team may not have been aware of from their desk based assessment. Notifications under section 42 of the PA 2008 were being made and ceased approximately two months before the DCO Application was submitted to the Planning Inspectorate. Notices under section 56 of the PA 2008 continue to be provided to any additional parties that the Applicant becomes aware of post the acceptance of the DCO Application by the Planning Inspectorate .

## 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 LCA 1973, physical factors and the impact of the proposed scheme were considered, including:

- Properties closest to the highway within the Order Limits; and
- Properties identified as a receptor as a consequence of the property being located outside the Order Limits but close to the highway;

4.7.2 The Applicant's land referencing team were provided with guidance from environmental specialists involved in the compilation of the Environment Statement [TR010060/APP/6.1]. This guidance was based on the topography of the land and the likely significant effects arising from the proposed scheme. For example, the noise assessments had regard to information available at that time regarding:

- Existing noise levels
- projected noise levels from the proposed scheme
- Background noise levels; and
- Distances to receptors.

4.7.3 Based on the above information, professional judgement was used to ascertain whether a person may have a relevant claim for compensation as a result of a reduction in value of their property as a result of the use of the proposed scheme caused by physical factors under section 57(4) of the PA 2008, based on a worst case assessment. Further details about the noise assessments and other environmental assessments undertaken can be found in Chapter 12, Noise and Vibration of the ES [TR010060/APP/6.1].

## 4.8 **Contact referencing**

4.8.1 Following the initial non-contact methods above, persons identified as having an interest in the Land or a potential claim were issued with a letter and questionnaire requesting return of information about their interests in the Land. This was then followed up by telephone and letter contact and the offer of a face-to-face meeting confirming that the proposed scheme was in development



and because there could be impact on their land interest the Applicant needed to ensure the correct information was held.

- 4.8.2 Initial requests for information were issued between 12 February 2021 and 28 February 2021, with further requests sent when new parties were identified as part of ongoing land referencing. This included developers with a freehold interest in planning consents that were disposing of properties. Postal schedules were provided from the developers confirming all properties to be included in the completed development(s). TracelQ checks have been undertaken at regular intervals ahead of submission of the DCO Application to confirm when a property is occupied. This interest was then subsequently included in ongoing consultation and the Book of Reference. The identification process will continue ahead of and during the DCO Examination.

## 4.9 Negotiations to acquire by agreement

- 4.9.1 As well as consulting all persons with an interest in the Land about the proposed scheme proposals in accordance with section 42 of the PA 2008, the Applicant is aware of the requirement (paragraph 25 of the CA Guidance) to seek to acquire land by negotiation wherever practicable.
- 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 negotiated agreement. 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 landowners with a registrable interest 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 on this point. Letters have been issued to affected landowners (owners and occupiers) where permanent acquisition and permanent rights are required. This process is ongoing. As a result, the Applicant is in the process of engaging with a significant proportion of landowners with regard to the acquisition of land by agreement; and negotiations with this objective will be ongoing throughout the DCO process. The status of such negotiations is set out in **Annex B** to this Statement.
- 4.9.4 **Land in unknown Ownership**
- 4.9.5 There are further parcels of land in unknown ownership for which despite diligent inquiry, the Applicant has not been able to identify an owner. As a result these cannot be acquired by agreement.
- 4.9.6 Diligent inquiry included review of Land Registry records, physical inspection and posting of site notices seeing information from the landowner of the relevant land
- 4.9.7 Therefore the Applicant has concluded that the proposed scheme is unlikely to be capable of being delivered without compulsory acquisition powers.

- 4.9.8 Land already owned by the Applicant is included in the Draft DCO in order to ensure that no known or unknown third party rights, which might impede delivery of the proposed scheme, remain over the land.

## 4.10 Land required for Construction Compounds

Name	Location	Size/Area (m2)	Purpose
J20b Main Compound	Hatfield Peverel, J20b	80000	A main construction compound of approximately 80000 square metres in area between the Great Eastern Mainline Railway and the A12 northbound carriageway, and to the east of the A12 existing junction 20b, Hatfield Peverel.
J22 Main Compound	Witham, J22	78500	A main compound of approximately 78500 square metres in area west of Whitelands, Witham.
J19 Satellite Compound	Boreham, J22	11000	A satellite compound and traffic management and recovery yard of approximately 11000 square metres in area, between the B1137, Main Road and the A12 southbound carriageway.
Easthorpe Road Satellite Compound	Easthorpe Road	34000	A satellite compound and traffic management recovery yard of approximately 34000 square metres in area, south of the A12 and east of the existing Easthorpe Road, Easthorpe.
J25 Satellite Compound	Marks Tey, J25	12000	A satellite compound of approximately 9500 square metres in area north-east of Hall Chase, Marks Tey.
Main Traffic Management Recovery Area	Gershwin Boulevard	8000	A temporary traffic management and recovery area of approximately 8500 square metres in area situated to the north of Gershwin Boulevard, between Owers Road and Hawkes Road, Witham
J26 - J27 Traffic Management Recovery Area	J26 – 27 Southbound Layby	1200	A traffic management recovery area of approximately 1200 square metres in area on the A12 southbound carriageway between junction 27 and junction 26 of the A12, Stanway.

- 4.10.1 The compound outline designs and layout has been developed in accordance with the Applicant's policies, industry best practice, the Construction Design and

Management Regulations 2015, the Health and Safety executive, Workplace health, safety and welfare (approved code and practice and guidance) document. This has informed the land area requirements, which have been benchmarked against other National Highways schemes of a similar scope and size.

4.10.2 Development of compound proposals has taken place over the course of design development of the proposed scheme, to account for the requirements of the construction works. Feedback relating to local landowner considerations has also been factored into the selection of the compound locations using the following principles:

- All compounds will include provision for temporary site offices, welfare facilities, service connections, private vehicle parking, and storage of construction plant, equipment and materials as deemed necessary for the works.
- Allowance for potential precast yard, earthworks materials storage and processing areas. These areas also allow the facility to receive, stockpile and process imported aggregates which will be required for the construction of the proposed scheme, including ground improvement areas, pavement foundation layers, drainage and structural backfill.
- Allowance for construction working space (including sufficient space for large earthworks plant such as tracked excavators, dozers and articulated dump trucks to operate safely) and temporary storage of topsoil at the side of the mainline.
- Creation of new or removal/diversion of existing utility assets.
- Installing drainage outfalls into a nearby receiving watercourses (includes drainage outfalls to main rivers and ordinary watercourses/field drains and ditches).
- Detailed design change within the limits of deviation.

## 4.11 Utility Diversions

4.11.1 A number of existing utility services are located in the surrounding area that would be affected by the proposed scheme. The relevant major utility diversions are summarised below and have been defined as specific works within the development listed within Schedule 1 of the Draft DCO [TR010060/APP/3.1]. These works are also shown on the Works Plans Utility Divisions [TR010060/APP/2.2.2].

4.11.2 Utilities existing in the Order limits that would require diversion include potable water mains, storm drains and sewers, overhead and buried electricity cables, overhead and buried communication cables and gas pipes of a lower pressure rating than those mentioned previously. Utility diversions are shown on the Works Plans Utility Divisions [TR010060/APP/2.2.2].

- 4.11.3 Water pipes differ in size and construction and range from 90mm diameter polyethylene up to 900mm diameter concrete, and are either pressurised or gravity fed mains.
- 4.11.4 Electricity cables include both low and high voltage, up to 11kVA. Generally, existing overhead services that require diversion would be buried to suit the Distribution Network Operator's preference and further safeguard their assets. This may not be true for all electricity cable diversions and would depend on the surrounding infrastructure and reason for diversion.
- 4.11.5 Communication cables include both fibre and copper type cables on overhead poles and also those buried in cable ducts. They are generally located along adopted highway routes. With the A12 being a trunk road, the communications assets, particularly for Open Reach, are generally 'trunk route' type systems that are significant in scale, compiling vast numbers of cables feeding information across East Anglia. Diversion of these utilities would generally be into the verge of an adopted highway, such as the A12 and its surrounding side roads.
- 4.11.6 Low and medium pressure gas mains, ranging from 90mm diameter to 250mm diameter polyethylene pipes, are buried across areas of the proposed scheme transmitting gas supplies to individual properties and businesses. Intermediate pressure steel construction gas mains also exist within the proposed scheme extents and potentially require diverting.
- 4.11.7 Utility diversions seek to keep service interruptions to a minimum with diverted routes being constructed first, followed by a short shut down period during off-peak traffic hours to tie-in the new asset and reinstate the service. This would not be possible in all scenarios and short disruption of service may be experienced if space and logistical constraints prevent the former option from being carried out. Any disruptions to supplies would be communicated to all affected parties in advance of the works taking place.
- 4.11.8 The diverted location of utilities is currently being explored with the relevant statutory undertakers. The solutions will range from being included within the adopted highway boundary to being located in private land, depending on the existing location of the service and its long-term maintenance requirement.
- 4.11.9 Utility diversions may also include asset protection, such as constructing protection slabs over the existing asset to protect it from construction activities and overburden from new road construction.

### **Gas main diversions**

- 4.11.10 The assets affected vary from low pressure pipelines to assets which operate at high-pressure, and which are therefore deemed important for considerations as part of the Environmental Statement.
- 4.11.11 The underground high and intermediate pressure gas mains affected by the proposed scheme are:
- 4.11.12 Work No. U2 - As shown on sheet 1 of the Works Plans Utility Divisions [TR10060/APP/2.2.2]. The diversion of a 600mm diameter pipe with a proposed diversion length of 200m commencing at the A12 northbound verge and terminating at the A12 southbound verge, south of the existing junction 19.

- 4.11.13 Work No. U69 - As shown on sheets 7, 8 and 9 of the Works Plans Utility Divisions [TR10060/APP/2.2.2]. The diversion of a buried local high pressure gas pipeline of approximately 3200 metres in length between Dengie Farm, via Blue Mill Hill and to a point east of the A12, north of Barrows Creep Underpass, Witham.
- 4.11.14 Work No. U89 - As shown on sheet 10 of the Works Plans Utility Divisions [TR10060/APP/2.2.2]. The diversion of a 600mm diameter pipe with a proposed diversion length of 970m commencing at Little Braxted Lane and terminating Whitelands, Rivenhall End.
- 4.11.15 Work No. U90 - As shown on sheet 10 of the Works Plans Utility Divisions [TR10060/APP/2.2.2]. The diversion of a 200mm diameter pipe, with a proposed diversion length of 400m commencing at Little Braxted Lane and terminating at Rosewood Business Park, Witham.
- 4.11.16 Work No. U76 - As shown on sheet 10 of the Works Plans Utility Divisions [TR10060/APP/2.2.2]. The diversion of a 300mm diameter pipe with a proposed diversion length of 180m commencing at Freebournes Road to the west of the A12 and terminating at Colemans Fishery, to the east of the A12, Witham.
- 4.11.17 Work No. U69 – As shown on sheets 7, 8 and 9 of the Works Plans Utility Divisions [TR10060/APP/2.2.2]. The diversion of this 600mm diameter pipe is of particular importance due to the extent of the diversion required (this is referred to as ‘the gas main diversion’ throughout the Environmental Statement). This asset is owned and operated by Cadent Gas Limited (Cadent), and runs parallel to the A12 between Whetmead LNR and north of Colemans Bridge (B1389).
- 4.11.18 The route of the proposed gas main diversion corridor as shown as the Work No.U69 on the Works Plans Utility Diversions [TR10060/APP/2.2.2]. The corridor diverts from the existing gas main at approximately national grid reference TL 821 130 (Dengie Farm, Witham), west of Maldon Road (B1018). It diverts south-east, away from the A12 and around Maldon Road and then returns north-east to run alongside the existing A12 mainline before diverting east away from the A12 again, crossing the River Blackwater to go around Whetmead LNR, avoiding the potential contaminated land, before continuing north towards the A12. It re-joins the existing gas main at approximately national grid reference TL 830 144 (Barrows Creep underpass, Witham), south-west of Little Braxted.
- 4.11.19 As discussed in Chapters 1 and 5 of the ES [TR010060/APP/6.1], the HP Gas Main Diversion forming Work No. U69 could result in significant environmental effects and is therefore a Nationally Significant Infrastructure Project in its own right (but included within the DCO Application).

## 5 The case for compulsory acquisition

### 5.1 Introduction

5.1.1 In seeking compulsory acquisition and temporary possession powers in the Draft DCO [TR010060/APP/3.1], the Applicant has had regard to the conditions in section 122 of the PA 2008 and to the tests set out in the CA Guidance.

### 5.2 The statutory conditions and CA Guidance

5.2.1 Section 122 of PA 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 is:
  - required for the development to which the development consent relates;
  - required to facilitate or is incidental to that development; or
  - replacement land which is to be given in exchange for the order land under sections 131 or 132 of the PA 2008; 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 Secretary of State will take into account in deciding whether the condition in subsection (2) has been met. It states:

- In respect of whether the 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.
- 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 than is reasonably necessary for that purpose and that it is proportionate.

5.2.4 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. 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:

- That all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.
- 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.
- That the applicant has a clear idea of how they intend to use the land which is to be acquired.
- That there is a reasonable prospect of the necessary funds for acquisition [and implementation](#) becoming available.
- That the purposes for which the 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 the compulsory acquisition powers are sought

5.3.1 The Applicant is satisfied that the condition in section 122(2) of the PA 2008 is met. It considers that the Land subject to compulsory acquisition powers is either needed for the development, or is needed to facilitate the development, or is incidental to the development.

5.3.2 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 5 of the Draft DCO. The proposed use of the Land is set out in Section 2 and **Annex A** of this Statement.

5.3.3 The need for and justification of the compulsory acquisition of replacement land under sections 131 and 132 of the PA 2008 is considered in Chapter 7 of this Statement.

5.3.4 The Applicant has sought to achieve a balance between minimising land-take and securing sufficient land to deliver the proposed scheme, noting that the detailed design is yet to be developed. Land is required for the permanent works which includes new highway infrastructure and environmental mitigation. Land is also required to enable the installation, operation and maintenance of

utilities, and to create the temporary working space to construct the proposed scheme.

- 5.3.5 Where utilities need diversion or protection as a result of the permanent works or temporary works (such as haul routes running over their existing alignment) then the route of any diversion has been assessed, together with the appropriate safe working space as well as access arrangements, both during construction and operation. Consideration has been given to working method, particularly where obstructions such as the existing A12 or watercourses need to be crossed and the need or otherwise for trenchless crossing techniques to be used. Wherever practicable, land required for permanent works has also been used for utility diversion routes, working space or access.
- 5.3.6 Temporary land-take is required to create a safe construction environment to provide temporary facilities for the workforce and to allow the storage of plant and materials. In particular, to support earthworks operations (and other vehicle movements) a network of haul routes is required, which facilitate safe and efficient construction, but also reduces the need for construction vehicles to use the public road network, reducing both disruption and hazard to the local communities. These routes have been assessed to avoid, where practicable, nearby residential or ecologically sensitive receptors.
- 5.3.7 The Applicant considers that the land included in the Draft DCO is the minimum land-take required for safe and efficient construction, to operate, maintain and mitigate the proposed scheme necessary to achieve the objectives of the proposed scheme.
- 5.3.8 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 Draft DCO. It also explains why it is necessary to include compulsory purchase powers in the Draft DCO so that the Applicant can acquire the land required for the construction of the proposed scheme that it 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 or extinguish rights over land in order to construct the proposed 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 comprises the DCO Application.
- 5.4.2 The Applicant is satisfied that the condition in section 122(3) of the PA 2008 is met and that there is a compelling case in the public interest for compulsory acquisition.
- 5.4.3 The need for and the benefits of the proposed scheme are summarised in Section 1 of this Statement and in the other application documents, including the Case for the Scheme [TR010060/APP/7.1]. Together, they demonstrate that there is a compelling case in the public interest for compulsory acquisition.



- 5.4.4 The need for and the benefits of the proposed scheme are set out in Section 2 of this Statement and in other application documents, including the Case for the Scheme [TR010060/APP7.1]. Together they demonstrate that there is a compelling case in the public interest for the proposed scheme to be delivered.
- 5.4.5 In particular, as set out at Chapter 2 of the Case for the Scheme, paragraph 2.2 of the National Policy Statement for National Networks (**NPS NN**) identifies 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.
- 5.4.6 The way in which the strategic objectives of the proposed scheme are aligned with the NPS NN is set out in detail at Chapters 1 and 2 of the Case for the Scheme. General compliance with the NPS NN is set out in the National Policy Statement (**NPS**) Accordance Report & Table [TR010060/APP/7.1]. This clearly demonstrates that there would be substantial public benefits arising from the implementation of the proposed scheme.
- 5.4.7 The proposed scheme is included within DfT's RIS 2015 to 2020 and retained in the RIS 2 for 2020 to 2025. In the RIS the Government sets out its investment plans for the long term investment in the road network, and particularly the SRN, including the A12 between junctions 19 and 25.
- 5.4.8 The proposed scheme aligns with making the network safer, supporting smooth flow of traffic, encouraging economic growth and improving facilities for cyclists, walkers and other vulnerable users of the network.
- 5.4.9 The applicant is firmly of the view that there is a compelling case in the public interest for the compulsory acquisition powers sought as set out in Chapter 5 of this Statement.
- 5.4.10 The Applicant is satisfied that the condition in section 122(3) of the PA 2008 is met and that there is a compelling case in the public interest for compulsory acquisition.
- 5.4.11 Section 2 of this Statement and other application documents, including the Case for the Scheme APP10060/APP/7.1], both demonstrate that there is a very strong and compelling case in the public interest for the proposed scheme to be delivered.

## 5.1 Consideration of alternatives

- 5.1.1 As explained in Chapter 2 of the Consultation Report [TR010060/APP/5.1], Chapter 3 Assessment of alternatives of the ES [TR010060/APP/6.1] and Chapter 3 of the Case for the Scheme [TR010060/APP/7.1] the Applicant has explored alternative options and modifications to the proposed scheme.
- 5.1.2 In designing the proposed scheme and determining the land to be subject to compulsory acquisition and temporary possession powers, the Applicant has considered alternatives and modifications to the proposed 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 all of the relevant issues. This process is described in detail in Chapter 3 of the ES [TR010060/APP/6.1].

- 5.1.3 Four options for the proposed scheme were taken forward to public consultation from January to March 2017, and the Applicant selected the most appropriate option which was also the preferred option in the public consultation (see Chapter 3 of the Case for the Scheme [TR010060/APP/7.1]. This selection took into account various factors, including, amongst others, views of consultees including persons with a land interest. Other factors included environmental impacts, meeting the objectives of the proposed scheme, affordability, value-for-money, safety and construction and operational considerations.
- 5.1.4 The preferred option was then required to consider the Colchester Braintree Borders Garden Community (**CBBGC**) which was included the North Essex Authorities draft Section 1 Local Plan. Given the uncertainty that the CBBGC introduced to the proposed scheme option development, two Preferred Route Announcements were made for the proposed scheme: one covering junctions 19 to 23 announced on 21 October 2019, and another covering junctions 23 to 25 announced on 28 August 2020 following removal of the CBBGC from the North Essex Authorities draft Section 1 Local Plan.
- 5.1.5 None of the alternatives or modifications considered would obviate the need for the compulsory acquisition and temporary possession of the Land.

## 5.2 Reasonable prospect of funding

- 5.2.1 The Applicant is content that there is a reasonable prospect of the necessary funds for acquisition being available for the reasons set out in the Funding Statement [TR010060/APP/4.2].

## 5.3 Acquisition by agreement

- 5.3.1 The Applicant recognises that the authority to acquire land compulsorily should only be sought if attempts to acquire are unlikely to secure the required land within a reasonable timeframe. 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.
- 5.3.2 The Applicant sets out in Chapter 4 and **Annex B** of this Statement the discussions it has had with landowners to acquire the Land by agreement. It is satisfied that compulsory acquisition and temporary possession powers are required to ensure that the proposed 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.

## **5.4 Conclusions**

- 5.4.1 The Applicant is satisfied that the conditions in section 122 of the PA 2008 are met and that the tests in the CA Guidance are satisfied.
- 5.4.2 All of the Land subject to compulsory acquisition and temporary possession powers is necessary to construct, operate, maintain and mitigate the proposed scheme necessary to achieve the objectives of the proposed scheme. The extent of the Land sought is reasonable and proportionate.
- 5.4.3 Further there is a compelling case in the public interest to include the compulsory acquisition powers sought by the Applicant in the Draft 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 proposed scheme, therefore the public benefits of the proposed scheme would not be realised.

## 6 Human rights and Equalities

### 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 ECHR includes provisions in the form of Articles, which aim to protect the rights of the individual. 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 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 Draft DCO, if made, may infringe the human rights of persons with an interest in land. This infringement is authorised by law provided that:

6.1.5 There is a compelling case in the public interest for the compulsory acquisition powers included within the Draft DCO, and that proper procedures are followed.

6.1.6 Any interference with a human right is proportionate and otherwise justified.

6.1.7 There are 21 residential properties within the Order Limits affected by the compulsory acquisition of land in the proposed scheme. A detailed schedule of meetings with the landowners is provided at **Appendix B** of this Statement.

### **Bury Lane Hatfield Peverel**

#### **1 The Sorrells Bury Lane (plot No.5/22a)**

6.1.8 There will be restricted access to this property during the construction of the proposed scheme. It is therefore required to be vacant during construction. A blight notice was received and accepted in May 2020 and the purchase for the property was completed April 2022.

**2 The Sorrells Bury (plot No.5/23a)**

- 6.1.9 There will be restricted access to this property during the construction of the proposed scheme. It is therefore required to be vacant during construction. A blight notice was received and accepted in April 2020. Negotiations are ongoing with the district valuer.

**Peveler Lodge Hatfield Peveler (plots No5/19a and 5/18b)**

- 6.1.10 There will be restricted access to this property during construction of the proposed scheme. It is therefore required to be vacant during construction. Land to the rear of this property is also to be acquired (plot 5/18b). A blight notice was received and accepted in February 2020. Negotiations are ongoing with the district valuer.

**Station Road Hatfield Peveler****Crofton Station Road (plot No. 5/32a)**

- 6.1.11 There will be restricted access to this property during the construction of the proposed scheme. It is therefore required to be vacant during construction. The landowners have been in various discussions with the Applicant. There will be approximately 6 months when access to the property will be restricted. The landowner has advised that they would like to be temporarily re-housed during this time. The Applicant has agreed in principle with this request and discussions are ongoing.

**Springfield Station Road (plot No. 5/31a)**

- 6.1.12 There will be restricted access to this property during construction of the proposed scheme. It is therefore required to be vacant during construction. The landowners ideally want to remain in the property. There will be approximately 6 months when access to the property will be restricted. The landowner has advised that they would like to be temporarily re-housed during this time. The Applicant has agreed in principle with this request and discussions are ongoing.

**Primrose Lodge Station Road (plot No5/33a)**

- 6.1.13 There will be restricted access to the property during the construction of the proposed scheme. The Applicant has engaged with the landowners through various means as set out in **Annex B** of this Statement. The current landowners were aware of the proposed scheme before they purchased the property. The Applicant's proposal is to provide access to Primrose Lodge across the frontage of Acres Down during the bridge replacement works (plot No. 5/34a). Highclere Station Road (plot No 5/26a)
- 6.1.14 Part of the rear garden and driveway is required of this property to accommodate a temporary footbridge whilst Station Road bridge is being replaced. The landowner has advised they wish to remain at the property during construction which can be accommodated.

## **Maldon Road Witham (Oliver's Bridge)**

### **13 Pantile Close (plot No 8/1f)**

- 6.1.15 Part of the property is required permanently for the widening of the bridge, removal of a gas main and construction of a retaining wall and haul route. A blight notice was received and accepted in March 2020 by the Applicant. The property purchase completed in April 2021.

### **14 Pantile Close (plot No 8/1f)**

- 6.1.16 Part of the property is required for the widening of the bridge, removal of a gas main and construction of a retaining wall for the A12 and a haul route. A blight notice was received and accepted in March 2020 by the Applicant. The purchase of the property completed in May 2021.

## **The Gables Maldon Road (plot no 8/1c and 8/1d)**

- 6.1.17 Part of the garden of this property is required to provide a retaining wall for the A12, haul route, for utility works, a temporary works area and for the re-provision of open space. A blight notice was received and accepted in April 2020 by the Applicant. The purchase was completed in August 2021.

## **Segenhoe Maldon Road (plot No 8/18a and 8/18b)**

- 6.1.18 Part of the garden of this property is required permanently for the provision of a retaining wall for the A12, haul route, a temporary works area, for utility works and the re-provision of open space. A blight notice was received and accepted in July 2020 by the Applicant. Negotiations are ongoing with the district valuer. The engagement is set out in **Annex B** of this Statement.

## **Talofa Maldon Road (plot no 8/17a and 8/17b)**

- 6.1.19 Part of the garden of this property is required permanently for a retaining wall for the A12, a haul route, utility works, a temporary works area and the re-provision of open space. Engagement has been carried out with the landowners of the property through various means as set out in **Annex B** and is ongoing.

## **The Hollies Maldon Road (plot no 8/19 and 8/19b)**

- 6.1.20 Part of the garden of this property is required permanently for a retaining wall for the A12, a haul route, utility works, a temporary works area and the re-provision of open space. Engagement has been carried out with the landowners of the property through various means as set out in **Annex B** of this Statement and is ongoing.

## **Rowanbank Maldon Road (plot no 8/41b)**

- 6.1.21 Part of the garden of this property is required permanently for a retaining wall for the A12, a haul route, utility works, a temporary works area and the re-provisions of open space. A blight notice was received and accepted January 2022 by Applicant.

## **Rivenhall End**

### **Badgers London Road (plot No 12/8a)**

- 6.1.22 The property is proposed for demolition and the land is directly required for the widening / realignment of the A12. A blight notice was received and accepted in October 2021 by the Applicant. The Applicant is seeking to conclude the acquisition of the property.

### **Hare Lodge London Road (plot No 12/21a)**

- 6.1.23 The property is proposed to be demolished and the land is directly required for the widening / realignment of the A12. A blight notice was received and accepted in March 2022 by the Applicant. The Applicant is seeking to conclude the acquisition of the property.

### **1 Burghley Cottages Plot No 10/24a**

- 6.1.24 Part of the garden of this property is required for permanent rights for a utility diversion. Engagement has been carried out with the landowners. The landowners are content with the proposed road and the scheme requirements.

### **2 Burghley Cottages Plot No 10/25a**

- 6.1.25 Part of the garden is required for permanent rights for a utility diversion. Engagement has been carried out with the landowners. The landowners are content with the proposed road and the scheme requirements.

## **Marks Tey**

### **161 London Road (plot no 8/17a)**

- 6.1.26 Part of the garden of the property is required permanently for tying in from the off line section of the road. A blight notice was received and accepted in November 2020 by the Applicant. The purchase of the property was completed in December 2021.

### **Easthorpe Green Farm (plot no 17/1d)**

- 6.1.27 The paddock next to the property is required permanently for the off-line section of the A12. A blight notice was received and accepted in February 2021 by the Applicant. The purchased of the property completed in February 2022.

## **Inworth**

### **Westacres Kelvedon Road (plot no.14/20c)**

- 6.1.28 Part of the garden of this property is required along the western boundary fronting on to B1023 Kelvedon Road which is required for improvement works to the road and junction. A blight notice was received and accepted in March 2022 by the Applicant. The Applicant is seeking to progress the purchase.

## **6.2 Compliance with the Convention**

- 6.2.1 The Applicant recognises that the proposed scheme may have an impact on individuals but considers that the significant public benefits that will arise from

the proposed scheme as set out in this Statement outweigh any harm to those individuals. The powers in the Draft DCO strike a fair balance between the public interest in seeing the proposed scheme proceed (which is unlikely to happen in the absence of the powers in the DCO) and the private rights which will be affected by the compulsory acquisition.

- 6.2.2 In relation to both Article 1 of the First Protocol and Article 8, the compelling case in the public interest for the compulsory acquisition powers included within the Draft DCO demonstrated in Section 5 of this Statement and in the Case for the Scheme [TR010060/APP/7.1]. The land over which compulsory acquisition powers are sought as set out in the Draft DCO is the minimum necessary to ensure the delivery of the proposed scheme. The proposed 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 the proper procedures have been followed for both the consultation on the propose scheme and in determining the compulsory acquisition powers included within the Draft DCO. Throughout the development of the proposed 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 landowners. The Applicant has had regard to landowner feedback in both the initial design of the proposed scheme and in iterative design changes throughout the life of the proposed scheme. Examples of design changes are provided within the Consultation Report [TR010060/APP/5.1] and Design and Access Statement [TR010060/APP/7.4].
- 6.2.4 Furthermore, any individuals affected by the Draft DCO may submit representations by way of an objection to the Application in response to any notice given under section 56 of the PA 2008, the examination of the Application by the examining authority, any written representations procedure which the examining authority decides to hold and in particular, any compulsory acquisition hearing held under section 92 of the PA 2008, at which each affected person is entitled to make oral representations about the compulsory acquisition request.
- 6.2.5 If the Draft 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 PA 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 relevant article provisions of the Draft DCO. The Applicant has the resources to pay such compensation and has demonstrated (in the Funding Statement [TR010060/APP/4.2]) that these resources are available.
- 6.3.2 Any dispute in respect of the compensation payable may be referred to the Upper Tribunal (Lands Chamber), an independent tribunal, for determination.



## **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 carried out an Equality Impact Assessment (**EqIA**) [TR010060/APP/7.5] to consider how the proposed scheme could directly impact and contribute to equality effects for equality groups. The assessment concludes that the developed embedded mitigation measures in combination with the ongoing actions outlined in the EqIA should provide benefits for those equality groups and help to minimise any adverse impacts of the proposed scheme.
- 6.4.3 The EqIA will continue to be developed throughout the remaining design and construction stages of the proposed scheme. It will ensure that due regard is made towards the needs of people with protected characteristics under the Equality Act 2010. It will also help identify opportunities for enhancing equality of opportunity and fostering good relations between those who have protected characteristics and those who do not. The EqIA concludes that the proposed scheme is likely to provide a range of benefits that can be shared by equality groups. This includes direct benefits such as improved WCH provision as well as safer and more efficient conditions for drivers. The proposed scheme has been designed considering issues that could be experienced by equality groups including the needs of WCH. Access to community facilities will be improved by the Applicant facilitating bringing bus stops back into use as a consequence of the proposed scheme.
- 6.4.4 This degree of impact and the scope for building mitigation into the proposed scheme leads to the conclusion that there is no impediment to the proposed scheme and monitoring will be ongoing to ensure that remains the case.

## **6.5 Conclusions on Human Rights and Equalities**

- 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 Draft DCO including the grant of compulsory acquisition and related powers.

## 7 Special considerations

### 7.1 Crown land

- 7.1.1 This section deals with the special considerations that apply to particular types of land and ownerships included within the Order Limits over which powers are required for the proposed scheme.
- 7.1.2 Section 135 of PA 2008 provides that a DCO may authorise, with the consent of the Crown, the compulsory acquisition of an interest held in Crown land which, for the time being, is held otherwise than by or on behalf of the Crown.
- 7.1.3 The Applicant has made provision in the Draft DCO for the acquisition of those land interests in Crown land comprising the plots listed in Table 7.1, and as shown in Part 4 of the Book of Reference [TR010060/APP/4.3] and on the Crown Land Plans [TR010060/APP/2.8]. The consent of the Secretary of State for Transport, the Secretary of State for Environment Food and Rural Affairs and the Crown Estate Commissioners respectively to the compulsory acquisition of these land interests is required.
- 7.1.4 Table 7.1 Crown land required for the proposed scheme

Interest	Nature of Interest	Plots
Secretary of State for Transport	Category 1	8/3a
	Category 2	2/12a, 5/26a, 5/33a, 6/4a, 6/26a, 7/7a, 8/6m, 8/19a, 8/19b, 8/19d, 8/41a, 8/41b, 8/41d, 15/8a, 15/8b
Secretary of State for Environment, Food and Rural Affairs	Category 1	N/A
	Category 2	19/14a
Crown Estate Commissioners	Category 1	14/5a, 14/5b, 14/5c, 14/5d, 14/5e, 14/5f, 14/6a, 14/7a, 14/17b, 15/8a, 15/8b, 15/8c, 15/8d, 15/8e, 15/8f, 15/8g, 15/8h, 15/8i, 15/8j
	Category 2	14/12a, 15/1a, 15/1b, 15/7a,

- 7.1.5 The Applicant has contacted the Government Legal Department and has requested the relevant consent. The Applicant has not yet been able to secure the necessary consents from the Secretary of State for Transport, the Secretary of State for Environment, Food and Rural Affairs and the Crown Estate Commissioners to the compulsory acquisition but will continue to endeavour to secure it before making of the Draft DCO.

### 7.2 Special category land comprising land forming part of open space

- 7.2.1 As shown in Part 5 of the Book of Reference [TR010060/APP/4.3] and the Special Category Land Plans [TR010060/APP/2.5], the Draft DCO makes

provision for the acquisition of special category land, comprising open space namely:

**River Chelmer, Boreham**

- 7.2.2 The land that is open space is within plots 1/11g and 1/14a, and comprises 1165 square metres of land where permanent new rights are required.
- 7.2.3 **Land at Gershwin Boulevard and Olivers Drive** - The land that is open space is within plots 7/16d, 7/16f, 7/17d, 7/19g, 7/19h, 8/11b, 8/11d, 8/12d, 8/13b and 8/14a and comprises 22,215 square metres of land to be permanently acquired.
- 7.2.4 **Land at Blackwater Rail Trail** - The land that is open space is within plots 8/6h, 8/6i, 8/6j and 8/6m and comprises 172 square metres of land to be permanently acquired and 4,558 square metres of land required temporarily where permanent rights are required for access.
- 7.2.5 **Land North of Market Lane, Witham** – The land that is open space is within plots 8/11q, 8/11r and 8/11s and comprises 291 square metres of land to be permanently acquired.
- 7.2.6 **Land at Maldon Road Crossing of River Brain Witham** – The land that is open space is within plots 8/11h, 8/11i and 8/27a and comprises 464 square metres of land where permanent rights are required for access/maintenance/other.
- 7.2.7 **River Brain, Witham** – The land that is open space is within plots 8/11aa, 8/11ac, 8/11af and 8/11ah and comprises 371 square metres of land to be permanently acquired.
- 7.2.8 **Land east of Witham, at Whetmead Nature Reserve** – The land that is open space is within plots 8/47a, 9/10d and 9/11a and comprises 7687 square metres of land to be permanently acquired and 19,123 square metres of land where permanent rights are required for access/ maintenance/ over plots 8/47b, 9/10e and 9/11b.
- 7.2.9 **Freebournes Road, Witham** – The land that is open space within plots 9/8c, 9/8e and 10/8d and comprises 12,792 square metres of land to be permanently acquired.
- 7.2.10 **Station Road, Marks Tey** – The land is open space within plots 19/2g, 19/2h, 19/4d, 19/4e, 19/7a and 19/7c and comprises 1,026 square metres of land to be permanently acquired.
- 7.2.11 **Land at Copford** - The land that is open space is within plot 19/17b and comprises 2,340 square metres of land to be permanently acquired.
- 7.2.12 The Replacement Land Statement that accompanies the application for Development Consent explains in detail the case for dealing with open space and sets out in the Annex to that document the applications for certification that are sought from the Secretary of State. Additional information on special category land and replacement land is also to be found at **Annex C** to this statement.

## 7.3 Sections 131 and 132 PA 2008

- 7.3.1 Section 131 of PA 2008 applies to the compulsory acquisition of any land forming part of a common, open space or fuel or field garden allotment. Section 132 of PA 2008 applies to the compulsory acquisition of any rights over land forming part of a common, open space or fuel or field garden allotment. They make provision for Special Parliamentary Procedure (**SPP**) to apply where a DCO authorises the compulsory acquisition of or rights over such land. This means that the DCO will be subject to SPP unless the Secretary of State is satisfied that one of the following four circumstances apply:
- Replacement land (being land not less in area than the relevant special category land to be compulsorily acquired under the DCO and which is no less advantageous to the persons entitled to rights over common over it (if any) and to the public) will be given in exchange for the land to be compulsorily acquired or;
  - The land to be acquired does not exceed 200 square metres or is required for the widening or drainage of an existing highway and the giving of land in exchange is unnecessary; or
  - For open space only, replacement land will be given in exchange is not available or is only available at a prohibitive cost, but it is strongly in the public interest for the Scheme to proceed sooner than SSP would allow; or
  - For the open space land only, the land is only being compulsory acquired for a temporary (although possibly long lived) purpose.
- 7.3.2 As regards the compulsory acquisition of rights over special category land, section 132 provides that the DCO will be subject to SPP unless the SoS is satisfied that one of the four following circumstances apply:
- 7.3.3 Replacement land (being land which will be adequate to compensate the owners of the special category land, persons entitled to exercise rights of common over the land (if any) and the public for the disadvantages which result from the compulsory acquisition of the rights over land) will be given in exchange for the special category land which is the subject to the compulsory acquisition of rights;
- 7.3.4 For open space land only, replacement land in exchange is not available or is only available at a prohibitive cost, but it is strongly in the public interest for the Scheme to proceed sooner than SPP would allow;
- 7.3.5 For open space land only, rights over land are only being compulsory acquired for a temporary (although possibly long lived) purpose; or
- 7.3.6 The land over which rights are to be acquired does not exceed 200 square metres or is required in connection with the widening or drainage of an existing highway and the giving of land in exchange is unnecessary.
- 7.3.7 Replacement land will be provided for all open space plots where the freehold is proposed to be compulsorily acquired and for all plots where rights are to be compulsorily acquired where the right will be a burden on the land so as to make the open space less advantageous. The ratio for replacing open space

land acquired as minimum 1:1 in area where replacement land is being proposed. The justification for this approach can be found in Replacement Land Statement [TR010060/APP/7.9]. The Replacement Land Statement reviews each of the 13 areas of open space identified and explains:

- 7.3.8 - why the open space is required;
- 7.3.9 - whether replacement land is proposed;
- 7.3.10 - what replacement land has been identified; and
- 7.3.11 - how the statutory tests are met for each area of open space.
- 7.3.12 In policy terms, paragraph 5.174 of the NNPS deals with the Secretary of State's consideration of the acquisition of open space.
- 7.3.13 Further information is provided in **Annex C** to this Statement. Table C.1 in **Annex C** of this Statement lists the open space land (and replacement land) required for the proposed scheme. For the reasons given in **Annex C** and in the Replacement Land Statement the Applicant believes for each of the open space plots the Secretary of State can determine that the benefits of the proposed scheme (including need) outweigh the potential loss of open space, taking into account the proposals made by the Applicant to provide replacement land.
- 7.3.14 **Identifying Replacement land**
- 7.3.15 Locations for replacement land have been sought that have some similarity with the special category land affected by the proposed scheme and will be contiguous with, or as close as possible to open space land being acquired.
- 7.3.16 Areas of replacement land have been included in the proposed scheme in the locations shown on the Special Category Land Plans [TR010060/2.5].
- 7.3.17 For further detail on the character of the special category land, the areas proposed as replacement land and the works proposed to the replacement land can be found in the Replacement Land Statement [TR010060/APP/7.9].
- 7.3.18 The Applicant's rationale for the selection of the replacement land, and its assessment of the suitability of the replacement land to replace the special category land subject to the proposed scheme, are both set out in the Replacement Land Statement [TR010060/APP/7.9].
- 7.3.19 The Applicant is satisfied that the requirements of section 131 and 132 of the Planning Act 2008 are met such that the Draft DCO does not need to be subject to special parliamentary procedure by reason of the compulsory acquisition of land and rights over land comprising special category land. The Replacement Land Statement [TR010060/APP/7.9] sets out the Applicant's justification as to how some of the exceptions in sections 131 and 132 are met in this case such that the Draft DCO does not need to be subject to special parliamentary procedure, as would otherwise be the case.
- 7.3.20 All the replacement land will be secured by compulsory acquisition under the PA 2008 (if a voluntary agreement is not possible within a reasonable timeframe) and will in due course be vested in the owner of the corresponding owner of the special category land and subject to the same rights, trusts and incidents as the special category land which is to be acquired compulsorily.

- 7.3.21 Table C.1 in Appendix A sets out the special category land plots within the Order Limits and which of the four circumstances that apply. The Application should as a result of the application for the relevant certificates, not be subject to Special Parliamentary Procedure. Each of the areas identified in the table below is further described in the Replacement Land Statement and is given an Area number for ease of reference. These Area references are used in the table below.
- 7.3.22 Where temporary use of open space land is proposed, the nature of the power is a temporary statutory licence and is not an acquisition of land to which sections 131 and/ or 132 apply. Were it considered by the Secretary of State that the powers of temporary use of land does constitute a compulsory acquisition then in each case the provisions of section 131(4B) would apply, in that the relevant land forms part of an open space, is not of any other type of special category land and is being acquired only for a temporary purpose.

### Statutory undertaker land

- 7.3.23 The Draft DCO [TR010060/APP/3.1] if made will authorise the permanent compulsory acquisition of land held by and rights over statutory undertakers land which are identified in Table 7.1 and described in the Book of Reference [TR010060/APP/4.3] and land to be temporarily used which is also identified in Table 7.1 and described in the Book of Reference [TR010060/APP/4.3].

**Table 7.1 Statutory Undertaker Plots**

	Permanent acquisition	Temporarily used
<b>Plots</b>	1/12a, 2/17a, 2/17g, 2/17l, 2/17m, 2/18b, 2/17j, 2/18d, 19/11a, 19/11b, 19/12a, 19/12b, 19/12c, 2/17i, 8/32b, 9/10b, 9/10c, 9/10d, 9/12a, 11/11b, 8/32a, 9/10a, 9/10e, 9/12b, 15/9a, 2/12h, 6/14b and 2/17e	1/12c, 2/17b, 2/17f, 2/17h, 2/17k, 2/17n, 2/18a, 2/18c and 5/16a

- 7.3.24 Plots 1/12c and 1/12a are held by Cadent Gas Limited; Plots 2/17a, 2/17g, 2/17l, 2/17m, 2/18b, 2/17b, 2/17f, 2/17h, 2/17k, 2/17n, 2/18a, 2/18c, 2/17j, 2/18d, 19/11a, 19/11b, 19/12a, 19/12b, 19/12c, 2/17c and 2/17i are held by Network Rail Infrastructure Limited; Plots 8/32b, 9/10b, 9/10c, 9/10d, 9/12a, 11/11b, 5/16a, 8/32a, 9/10a, 9/10e, 9/12b and 15/9a are held by Anglian Water services Limited; Plot 2/12h is held by Verizon UK limited and plot 6/14b is held by EE limited for the purposes of carrying out their statutory undertakings.
- 7.3.25 Section 127(3) of PA 2008 provides that a DCO may only authorise the compulsory acquisition of statutory undertaker land where a representation has been made by the statutory undertaker objecting to the acquisition if the Secretary of State is satisfied that:
- The land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or

- 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.

7.3.26 Section 127(5) of the PA 2008 provides that a DCO may only authorise the compulsory acquisition of rights over statutory undertaker land where a representation has been made by the statutory undertaker objecting to the acquisition if the Secretary of State is satisfied that:

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

7.3.27 The Applicant has, during preparation of the DCO Application, engaged in discussions with Cadent Gas Limited, Anglian Water Distribution Limited, Essex & Suffolk Water, UKPN, National Grid Electricity Transmission Plc, Network Rail Infrastructure Limited, Openreach, Virgin Media and Vodafone regarding the impacts of the proposed scheme on the interests and/ or apparatus of those parties within the Order limits.

7.3.28 The Applicant is also working with Longfield Solar Farm energy Limited to settle a statement of common ground regarding the company's application for development consent for its development north of junction 19 of the A12.

## **7.4 Other consents**

7.4.1 The Applicant is not aware of any matters that should be regarded as 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. The Consents and Licences Statement [TR010060/APP/3.3] sets out the required other consents and the current position as to the status of securing those consents. The Consents Statement will continue to be updated as necessary during the Examination.

7.4.2 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 pursuant to the Draft DCO .

## 8 Conclusions

### 8.1 Overview

- 8.1.1 This Statement sets out why compulsory acquisition and temporary possession powers have been sought in the DCO application and explains why the Applicant considers such powers to be necessary, proportionate, and justified.
- 8.1.2 In determining the extent of the compulsory acquisition and temporary possession powers proposed in the Draft DCO [TR010060/APP/3.1], the Applicant has had regard to the legislative tests set out in the PA 2008 and to the advice in the CA Guidance. The Applicant is content that the scope of the powers sought and the extent of the interests in the Land to be acquired by compulsory acquisition are required for the proposed scheme and are the minimum necessary that will allow the Applicant to construct, operate and maintain the proposed scheme. The purpose for which each part of the Land is required is set out in **Annex A** to 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 proposed scheme. The Applicant has consulted such persons during preparation of the DCO Application and in the design of the proposed 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 landowners for the acquisition of their land interest is set out in **Annex B** to 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 proposed scheme will outweigh the harm to those individuals.
- 8.1.5 Without the grant of compulsory acquisition and temporary possession powers, the Applicant considers that it will not be possible to construct the proposed scheme, or realise the public benefits arising from it.



## 9 Figures and Annexes

Annex A	Details of the purpose for which compulsory acquisition and temporary possession powers are sought
Annex B	Schedule of with persons subject to compulsory acquisition and temporary possession powers
Annex C	Compulsory Acquisition of Open Space and Replacement Land

## **Annex A Details of the purpose for which compulsory acquisition and temporary possession powers are sought**

A.1.1 [Please see '9.45 Updated Annex A - Statement of Reasons' \[Applicant Ref: TR010060/EXAM/9.45\] for Annex A](#)

## **Annex B Schedule of negotiations with persons subject to compulsory acquisition and temporary possession powers**

B.1.1 [Please see '9.8 Status of negotiations Compulsory Acquisition Schedule' \[Applicant Ref: TR010060/EXAM/9.8\] for Annex B](#)

## Annex C Compulsory Acquisition of Open Space and Replacement Land

### C.1 Purpose of this document

- C.1.1 The A12 Chelmsford to A120 Widening DCO includes provision for the compulsory acquisition of land, which is identified as forming part of Open Space land, and therefore falling within the definition of 'special category land' in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Definitions of those types of land are provided at C.1.3 below.
- C.1.2 This Annex considers the special category land located within the Order Limits in respect of the proposed scheme, and the associated option identification and appraisal process pertinent to its replacement, as required by the Planning Act 2008 (PA 2008).
- C.1.3 This Annex is to be read in conjunction with:
- C.1.4 Special Category Land Plans [TR010060/APP/2.5];
- C.1.5 Section 7.2 of this Statement of Reasons; and
- C.1.6 The Replacement Land Statement [TR010060/APP/7.9].
- C.1.7 The proposed scheme involves undertaking works on Open Space Land. This land is detailed further in Section 7 and Appendix A to the Replacement Land Statement [TR010060/APP/7.9] and is shown on the Special Category Land Plans [TR010060/APP/2.5].
- C.1.8 C.1.5 Table C1 below summarises the Open Space land required, details the relevant plot numbers, sets out the nature of the proposed acquisition, and indicates whether replacement land is required.

### C.2 Planning Act 2008

- C.2.1 The PA 2008 enables an applicant to include the compulsory acquisition of land and rights including over any special category land required for the construction, operation and mitigation of a project as part of the application for development consent.
- C.2.2 Any compulsory acquisition of land or rights over special category land may be subject to special parliamentary procedure (**SPP**) unless the tests in sections 131 and 132 of the PA 2008 are met. The tests are different depending on the type of special category land and whether it is the land or rights which are being acquired.

### C.3 Special Category Land

- C.3.1 As described by the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, 'special category' land means land identified

as forming part of a common, open space, National Trust land or fuel or field garden allotment.

C.3.2 Open Space is defined as “any land laid out as a public garden, or used for the purposes of public recreation...”

C.3.3 The areas of special category land required for the proposed scheme can be seen on the Special Category Land Plans and are summarised in Table 1 below, together, where applicable, with the plot numbers for the proposed replacement land.

**Table C.1 Special Category Land required for the proposed scheme**

**Table C.2 Open Space freehold land, for which replacement land will be provided**

Open Space Land	Existing Owner	Land Plan Plot Nos.	Area Required by the scheme		Replacement Land Plot Nos.	Replacement Land Area	
			m <sup>2</sup>	ha		m <sup>2</sup>	ha
Gershwin Boulevard, Witham (1) (Area 2) and Olivers Drive, Witham (Area 4)	Patricia Jane Gooding and Josephine Alberta Ann Witten	7/16d, 7/16f 8/14a	6421	0.64	8/33f	6678	0.67
Gershwin Boulevard, Witham (1) (Area 2)	Essex County Council	7/17d	158	0.02	8/43d, 8/43e, 8/44c, 8/45e	330 <sup>[1]</sup>	0.03
Blackwater Rail Trail, Witham (Area 5)		8/6h, 8/6i	172	0.02			
Gershwin Boulevard, Witham (2) (Area 3)		7/19g, 7/19h,	8295	0.83			
Olivers Drive, Witham (Area 4)		8/11b, 8/11d	7250	0.73			

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Open Space Land	Existing Owner	Land Plan Plot Nos.	Area Required by the scheme		Replacement Land Plot Nos.	Replacement Land Area	
			m <sup>2</sup>	ha		m <sup>2</sup>	ha
Land North of Market Lane, Witham (Area 6)	Braintree District Council	8/11q, 8/11r, 8/11s	291	0.03	8/1d, 8/17b, 8/18b, 8/19b, 8/33g, 8/33i, 8/41b	16,207 <sup>[2]</sup>	1.6
River Brain, Witham (Area 8)		8/11aa, 8/11ac, 8/11af, 8/11ah	371	0.04			
Olivers Drive, Witham (Area 4)	Taylor Wimpey UK Limited	8/12d, 8/13b	91	0.01	8/33m	106	0.01
Whetmead Nature Reserve, Witham (Area 9)	Braintree District Council /Witham Town Council	8/47a, 9/11a	6,639	0.66	9/1a, 9/1h, 9/1o	8,389	0.83
Whetmead Nature Reserve, Witham (Area 10)	Anglian Water Services Limited	9/10d	1048	0.1	9/1q	1063	0.1
Land at Freebournes Road, Witham (Area 11)	Braintree District Council	9/8c, 9/8e, 10/8d	12,792	1.28	10/1b, 10/1k, 10/1l, 10/1n, 10/1o, 10/1s, 10/2c, 10/2f, 10/3b, 10/3d, 10/4b, 10/20g	13,320	1.33
Land at Station Road Marks Tey (Area 12)	National Highways/ Essex County Council (as highway authority)	19/2g, 19/2h, 19/4d, 19/4e, 19/7a, 19/7c	1026	0.1	18/1u, 18/1v, 19/1h, 19/1i	1250	0.13

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Open Space Land	Existing Owner	Land Plan Plot Nos.	Area Required by the scheme		Replacement Land Plot Nos.	Replacement Land Area	
			m <sup>2</sup>	ha		m <sup>2</sup>	ha
Copford Recreation Ground (Area 13)	Copford with Easthorpe Parish Council	19/17b	2340	0.23	19/18d	3571	0.36

**Table C.3 Open Space land subject to acquisition of New Rights, for which no replacement land is to be provided**

(1) Open Space Land	(2) Nature of powers sought	(4) Land Plan Plot Nos.	(5) Area Required by the scheme	
			m <sup>2</sup>	ha
River Chelmer, Boreham (Area 1)	permanent new rights Temporary possession during construction	1/11g, 1/14a	1164	0.12
Gershwin Boulevard, Witham (1) (Area 2)	permanent new rights Temporary possession during construction	7/16e	176	0.02
Olivers Drive, Witham (Area 4)	permanent new rights Temporary possession during construction	8/11f, 8/11g, 8/11al,	5684	0.57
Blackwater Rail Trail, Witham (Area 5)	permanent new rights Temporary possession during construction	8/3a 8/6b, 8/6d, 8/6k	2,525	0.25
Land North of Market Lane, Witham (Area 6)	permanent new rights	8/11o, 8/11u	2,028	0.2

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(1) Open Space Land	(2) Nature of powers sought	(4) Land Plan Plot Nos.	(5) Area Required by the scheme	
			m <sup>2</sup>	ha
	Temporary possession during construction			
River Brain (Area 8)	permanent new rights Temporary possession during construction	8/11z 8/11ab 8/11ad	1,926	0.2
Whetmead Nature Reserve (Area 9)	permanent new rights Temporary possession during construction	8/47b, 9/11b	17,722	1.77
Whetmead Nature Reserve (Area 10)	permanent new rights Temporary possession during construction	9/10e	1,401	0.14
Freebourns Road, Witham (Area 11)	permanent new rights Temporary possession during construction	10/8a	76	0.01

**Table C.4 Open Space land subject to acquisition of New Rights, for which replacement land is to be provided**

(1) Open Space Land	Existing Owner	(4) Land Plan Plot Nos.	(5) Area Required by the scheme		(6) Replacement land plots nos.	(7) Replacement land	
			m <sup>2</sup>	ha		m <sup>2</sup>	ha
Blackwater Rail Trail, Witham (Area 5)	Essex County Council	8/6j, 8/6m,	4,558	0.46	8/43d, 8/43e, 8/44c, 8/45e	4,915	0.49
Land at Maldon Road crossing of	Braintree District Council	8/11h, 8/11i, 8/27a	524	0.05			



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river Brain, Witham (Area 7)					8/1d, 8/17b, 8/18b, 8/19b, 8/33g, 8/33i, 8/41b		
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In addition the following open space land comprises open space, over which powers of temporary possession are sought during construction of the proposed scheme:

**Table C.5 Open Space land subject to powers of temporary possession**

(1) Open Space Land	(4) Land Plan Plot Nos.	(5) Area Required by the scheme	
		m <sup>2</sup>	ha
Gershwin Boulevard, Witham (Area 2)	7/16a 7/16g 7/17a	3,607	0.36
Gershwin Boulevard, Witham (Area 3)	7/19c 7/19d 8/11a 8/11c	13,744	1.37
Olivers Drive, Witham (Area 4)	8/11aj, 8/11am, 8/12a, 8/12b	1,243	0.12
Land North of Market Lane, Witham (Area 6)	8/30a, 8/11v	1,466	0.15
River Brain, Witham (Area 8)	8/11y	1,431	0.14
Freebournes Road, Witham (Area 11)	9/8b, 9/8d, 10/8c, 10/8e	3,546	0.35
Land at Station Road Marks Tey (Area 12)	19/2f, 19/6c	3,634	0.36
Copford Recreation Ground (Area 13)	19/17a	3,711	0.37

<sup>[1]</sup> The remaining of the plot area will replace acquisition of new rights in Area 5, see table A3.

<sup>[2]</sup> The remaining of the plot area will replace acquisition of new rights in Area 7, see table A3.

- C.3.4 In each case the Applicant is satisfied that no alternative to the acquisition of the special category land (or rights over it) exist. This is principally because in many of the above locations the open space is immediately adjacent to the existing A12 that is required to be widened. In all other instances the powers over the relevant land are required for installation of diverted utility apparatus or new drainage required for the proposed scheme.
- C.3.5 The following sections of this Annex briefly summarise the provisions that need to be met and in order to avoid SPP on the various types of special category land.
- C.3.6 Acquisition of Open Space or Interests in Open Space**
- C.3.7 If land is solely Open Space and freehold required permanently, then under section 131 of the PA 2008 any of the following must apply in order to avoid SPP:
- C.3.8 Replacement land must be provided and vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land (s131(4)); or
- C.3.9 Where there is no suitable land available to be given in exchange, or where any suitable land available to be given in exchange is available only at prohibitive cost, it must be strongly in the public interest for the project to be begun sooner than is likely to be possible if the order were to be subject (to any extent) to SPP (s131(4A)); or
- C.3.10 The Open Space land required does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public (s131(5)).
- C.3.11 For all open space plots in the Order land where permanent freehold acquisition is required the Applicant is relying on S131(4) and is proposing replacement land.
- C.3.12 If possession of Open Space land is required temporarily this is not acquisition of the open space land as a power of temporary possession only is taken and title remains with the owner. In any event the land required temporarily meets the test in section 131(4B) of the PA 2008 because the land is, or forms part of, an open space, meets none of the other descriptions in subsection (1), and is being acquired for a temporary (although possibly long-lived) purpose.
- C.3.13 Section 132 of the PA 2008 applies to the permanent acquisition of new rights to be acquired compulsorily over special category land. It uses the same definition of Open Space as section 131.

- C.3.14 The same tests apply in respect of rights to be acquired but with one addition set out in section 132(3) that, “The land, when burdened with the right, will be no less advantageous than it was before to:
- the persons in whom it is vested;
  - other persons, if any, entitled to rights of common or other rights; and
  - the public.”
- C.3.15 When replacement land is proposed to be provided under S132(4), because the nature of the new rights sought over the open space means that S132(3) does not apply, the Secretary of State can allow the Order to be made without recourse to special parliamentary procedure if suitable replacement land is to be provided. S132(12) defines replacement land for open space land to be subject to the acquisition of new rights as land “*which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right—*
- the persons in whom the order land is vested,*
- the persons, if any, entitled to rights of common or other rights over the order land, and*
- the public.”*
- C.3.16 For plots where the Applicant seeks new rights over open space the Applicant is relying on either S132(3) or S132(4). The specific reliance is stated in each case in Table C.1 above.
- C.3.17 Special Category Land Required**
- C.3.18 Table C.1 summarises the type of Open Space land required, details the relevant plot numbers, considers the type of land take proposed, and indicates whether replacement land is required. Each of the areas of Open Space are described in detail in Section 5 of the Replacement Land Statement [TR010060/APP/7.9]. The relevant areas of land can be seen in the Special Category Land Plans [TR010060/APP/2.5].
- C.3.19 Land assembly powers for the proposed scheme includes all land subject to compulsory acquisition and temporary possession powers that is considered to constitute (or may constitute) open space as defined in the Acquisition of Land Act 1981, as well as the areas to replace that open space where replacement land is required by the PA 2008. Land to be used temporarily only does not require replacement open space as the open space land will be used for a short lived purpose before possession is returned to the owner.
- C.3.20 For land over which the proposed scheme seeks permanent new rights, in most of the required areas the new rights are sought to relocate utilities that are already within the open space. In these instances, the proposed scheme

considers that utilities diversion would not result in less advantageous conditions for the landowner or the public. Accordingly, no replacement land is included in the order lands for those areas. Where new rights are sought over open space for a new utility route where there is not currently installed apparatus in the affected open space, replacement land is proposed.

### **C.3.21 Replacement Land**

C.3.22 The requirements for replacement Open Space or Common Land in exchange for that lost are set out sections 131(12) and 132(12) as follows:

C.3.23 Section 131 (in respect of compulsory acquisition of land) states:

C.3.24 “replacement land” means land which is not less in area than the order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public”

C.3.25 Section 132(12) (in respect of compulsory acquisition of rights over land) states:

C.3.26 “replacement land” means land which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right—

- the persons in whom the order land is vested,
- the persons, if any, entitled to rights of common or other rights over the order land, and
- the public.

C.3.27 The Applicant has, in assessing what would be adequate to compensate the owner for the disadvantages of the imposition of the new rights looked to provide an area of replacement land no less that the area that will become burdened by the new rights.

C.3.28 Section 3 of the Replacement Land Statement [TR010060/APP/7.9] sets out the legal and policy requirements for replacement land.

C.3.29 A review of the land required for the proposed scheme and nearby land has been considered by relevant specialists to help consider options for replacement land. Details are set out in section 4 of the Replacement Land Statement. In summary the Applicant considered the following principles:

- proximity of the proposed Replacement Land to the area of Open Space loss or the communities it serves;
- characteristics of the land in relation to the Open Space it intends to replace (grassland, woodland, scrubland);
- accessibility of the identified parcel and ability to facilitate the access for the public including connections to the location by way of the network of PRow and accessibility by the communities it intended to serve;

- the Replacement Land plot could not be proposed to be used for essential mitigation or have parts of the proposed scheme within it.
- C.3.30 The search was informed by work undertaken by the National Highways team, as well as inputs and suggestions from stakeholders through the public consultation and stakeholder engagement process.
- C.3.31 The Applicant carefully considered the requirements for replacement land as defined through sections 131 and 132 of the PA 2008.
- C.3.32 Further consideration of each replacement land option is provided in Chapter 5 of the Replacement Land Statement with reference to the key criteria required by the Planning Act 2008.
- C.3.33 Open Space – Temporary Powers**
- C.3.34 All of the Open Space land to be to be acquired permanently and those plots over which permanent new rights are sought may also be subject to powers of temporary possession under Article 40 of the Draft DCO.
- C.3.35 Additional areas of open space land may be subject only to powers of temporary possession and are listed in Schedule 7 of the Draft DCO.
- C.3.36 The land required temporarily will be handed back to the current landowner(s) following construction activities.
- C.3.37 The land required temporarily is not being acquired by the Applicant. On that basis special parliamentary procedure is not considered relevant but in any event the temporary use of the land meets the test in section 131(4B) of the PA 2008 because the land is, or forms part of, an open space, meets none of the other descriptions in subsection (1), and is being acquired for a temporary (although possibly long-lived) purpose.
- C.3.38 Conclusions regarding Open Space and requests for Certificates from the Secretary of State
- C.3.39 It is considered that the Secretary of State can be satisfied that the provisions of section 131(4), 132(3) and 132(4) of the PA 2008 have been met and that the Draft DCO, should they adopt this approach, and the proposed scheme should not be subject to SPP.
- C.3.40 The proposed scheme has taken an appropriate and precautionary approach to taking open space and providing replacement land. The Applicant considers that the need for the proposed scheme outweighs the potential loss of Open Space, in compliance with paragraph 5.174 of the NNNPS. In accordance with sections 131 and 132 of the PA 2008 provided Replacement Land proposed is no less advantageous to the owners of the open space land and to the public.
- C.3.41 The Applicant therefore submits the Secretary of State may decide that the Draft DCO need not be subject to Special Parliamentary Procedure. Specific

requests for the Secretary to so resolve are to be found in Section 7 and Appendix A to the Replacement Land Statement [TR010060/APP/7.9].