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19 January 2021

Dear Sir,

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A1 BIRTLEY TO COAL HOUSE IMPROVEMENT SCHEME

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the Report dated 21 October 2020 of the Examining Authority (“ExA”), David Cliff, BA Hons, MSc MRTPI (Lead member of the Panel), and Max Wiltshire BSc, MSc, CEng, MICE who conducted an Examination into the application made by Highways England (“the Applicant”) for the A1 Birtley to Coal House Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”); and
- post examination correspondence and the response received to the consultation undertaken by the Secretary of State following the close of the Examination.

2. The application was accepted for Examination on 10 September 2019. The Examination began on 21 January 2020 and was completed on 21 July 2020. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook unaccompanied site inspections.

3. The development would be located on and adjacent to the A1 between a location just south of junction 68 (Lobley Hill) and junction 65 (Birtley), within the metropolitan borough of Gateshead. The stretch of the A1 subject to the proposed works is approximately 6.5 kilometres in length. The DCO as applied for would grant development consent for the widening of the southbound carriageway from three to four lanes and widening of the northbound carriageway from two to three lanes (with an additional lane between junctions) between junction 67 (Coal House) and junction 65 (Birtley) (“the Development”). The Development includes:

- Changes to signage and road markings on the southbound carriageway between just south of junction 68 (Lobley Hill) and junction 67 (Coal House);
- A replacement bridge structure where the A1 crosses over the East Coast Main Line (“ECML”), 40 metres to the immediate south of the existing Allerdene Bridge

structure; which would tie into the existing carriageways at junction 67 (Coal House) and north of junction 66 (Eighton Lodge);

- Replacement of the existing North Dene Footbridge located between junction 66 (Eighton Lodge) and junction 65 (Birtley) to accommodate the widening of the A1; and
- The diversion of utilities.

4. Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the Report"). All "ER" references are to the specified paragraph in the Report and references to "Requirements" are to those in Schedule 2 to the DCO as recommended by the ExA at Appendix D to the Report.

Summary of ExA's Recommendations

5. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the Report under the following broad headings:

- Legal and Policy Context (Chapter 3);
- Planning Issues (Chapter 4);
- Findings and Conclusions in relation to the Planning Issues (Chapter 5);
- Findings and Conclusions in relation to the Habitats Regulations Assessment (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 8); and
- Draft Development Consent Order and Related Matters (Chapter 9).

6. For the reasons set out in the Report, the ExA recommend that the Secretary of State makes the DCO in the form recommended at Appendix D of the Report (ER 10.3.1).

Summary of Secretary of State's Decision

7. The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("2017 Regulations").

Secretary of State's Consideration

8. The Secretary of State's consideration of the Report, post Examination correspondence (see paragraph 84), response to his consultation letter of 10 November 2020 and other material considerations are set out in the following paragraphs. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations set out in the Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

The Planning Issues

Legal and Policy Context

9. The Secretary of State notes that, as set out in ER 2.2.3-9, the application was amended in 3 ways during the course of the Examination. The first change (non-material) introduced further design flexibility for the replacement Allerdene Bridge through the introduction of an additional three span viaduct option within the DCO application (ER 2.2.3). Each of the resulting Allerdene Bridge design options are proposed to be included in the DCO application. At the detailed design stage, the preferred option would be identified and taken forward into construction (ER 2.2.5). The second change (non-material) provided flexibility for the road layout within the Development to enable narrower lanes to be provided for a stretch of approximately 750 metres between the existing narrow lanes north of junction 67 (Coal House) across junction 67 itself (ER 2.2.8). The third change, representing a material change, involved the inclusion of additional land at junction 67 (Coal House) for an extension to the previously proposed main site construction compound to be used for material stockpiling (ER 2.2.9). The Secretary of State notes that the first and third changes were subject to consultation by the Applicant before being accepted into the Examination and those interested were also provided with the opportunity to make representations on all the changes during the Examination (ER 2.2.11).

10. In determining the application, the Secretary of State notes that under section 104(2) of the 2008 Act the Secretary of State must have regard to any relevant National Policy Statement; any Local Impact Report submitted; any matters prescribed in relation to the development of the description to which the application relates; and any other matters that the Secretary of State considers to be both important and relevant to the decision. Accordingly, by section 104(3) of the 2008 Act, this application must be decided in accordance with the National Policy Statement for National Networks (“NNNPS”) (ER 3.2.1).

11. The Secretary of State agrees with the ExA that section 104 of the 2008 Act has effect in this case (ER 3.1.1) and that he must decide the application in accordance with the NNNPS (ER 3.1.2), subject to certain exceptions set out in section 104(4) to (8) which are not relevant in this case. The Secretary of State has also had regard to the legislation and policy documents identified by the ExA, as well as the Local Impact Report from Gateshead Council (“GC”) and the relevant development plan policies noted at ER 3.10. The Secretary of State has also had regard to environmental information, as defined in regulation 3(1) of the 2017 Regulations.

12. The Secretary of State notes that European Law and related UK regulations set out in ER 3.3 remain in place despite the UK having left the EU on 31 January 2020 and despite transition arrangements ending on 31 December 2020. These are therefore still relevant to this application.

The need for the Development

13. The Secretary of State notes that the ExA’s summary of the Applicant’s case for the need for the Development at ER 5.9.13-25. The A1 between Birtley and Coal House forms part of the Newcastle Gateshead Western Bypass and is a critical part of both the national and local road network. Analysis of network performance in the Traffic Assessment Report indicates that the section between Coal House and Birtley experiences significant congestion (ER 5.9.14-16).

14. The Secretary of State notes that the Development would improve traffic flows and reduce driver delays currently experienced on this section of the A1 and would provide additional capacity to support future development at the Team Valley Trading Estate. The replacement of Allerdene Bridge would also improve the reliability of this section of the A1 by avoiding the likely need for emergency maintenance and repair of the aging structure (ER 7.2.2).

15. The ExA concluded that the Development conforms with the Government's vision and strategic objective set out in the NNNPS to deliver national networks that meet the country's long-term needs, supporting a prosperous and competitive economy and improving overall quality of life as part of a wider transport system. The Secretary of State agrees with this and that the Development would meet the need to improve the national networks to address road congestion (ER 7.2.4 and 4.4.1-8).

16. The Secretary of State notes that both GC and Sunderland County Council support the principle of the Development (ER 7.2.3).

17. The Secretary of State notes the ExA's consideration of the Development's conformity with development plans at ER 4.6 and the ExA's recommendation at ER 4.6.6 and ER 10.2.15, that the Secretary of State may wish to request an update on the progress towards adoption of the emerging Making Spaces for Growing Places document that GC intends to form Part 3 of its Local Plan, including any implications that may have a bearing on the application. The Secretary of State issued a consultation letter to GC on this matter on 10 November 2020. GC responded on 13 November 2020, explaining they are in the process of making modifications and it is intended that the plan will be adopted in January 2021. At the date of this decision the plan had not yet been formally adopted. The Secretary of State is content that this does not change his consideration of this application.

18. The Secretary of State notes that paragraphs 4.26 and 4.27 of the NNNPS deal with the assessment of alternatives (ER 4.5.1-2) and the Applicant's approach to this (ER 4.5.3-9). The ExA conclude that in accordance with paragraph 4.26 of the NNNPS, the Applicant has included within the Environmental Statement ("ES") an outline of the main alternatives studied and provided an indication of the main reasons for choice of the preferred route, taking into account the environmental effects (ER 4.5.11). The Secretary of State agrees with this conclusion.

Findings and Conclusions in Relation to the Planning Issues

Air Quality and Emissions

19. The Secretary of State notes the air quality issues and considerations as set out in the NNNPS (ER 5.2.1-8) and the Applicant's approach to its assessment of air quality matters (ER 5.2.9-13).

20. The Secretary of State notes that Public Health England raised no objection regarding air quality effects (ER 5.2.15). A representation was received from Lesley Shotton on behalf of the Shotton Family, who raised a general concern regarding pollution due to their property being one of those closest to the road (ER 5.2.15). The Secretary of State notes that the Applicant provided comments on this representation which the ExA reviewed and, taking account of the assessment provided in the ES and agreed by GC, the ExA considered this

adequately addressed Lesley Shotton's concerns (ER 5.2.16). The Secretary of State notes two representations expressing concern regarding the effects of dust from construction activity, with particular reference to additional land. However, the ExA are satisfied that the controls contained in the outline Construction Environmental Management Plan ("CEMP") would ensure that such effects are appropriately managed and controlled during construction works (ER 5.2.19).

21. The ExA conclude that the relevant tests in the NNNPS are met, the Development will not affect the UK's ability to comply with the Air Quality Directive and that air quality matters do not weigh significantly against the Order being made (ER 5.2.20). The Secretary of State agrees with the ExA's conclusion.

Biodiversity, Ecology and the Natural Environment

22. The Secretary of State notes the policy background and considerations as set out in the NNNPS (ER 5.3.1-5) and the Applicant's approach to its assessment of biodiversity matters (ER 5.3.6-16).

23 The Secretary of State notes, in relation to the bat mitigation licence, Natural England ("NE") issued a letter of no impediment and signed a Statement of Common Ground ("SoCG") confirming that all relevant matters were agreed between NE and the Applicant (ER 5.3.22).

24 Concern was raised regarding the biodiversity impacts of the additional land to be used for temporary stockpiling in relation to breeding birds and wintering birds (ER 5.3.23-4). In addition to the wintering bird assessment survey already submitted, the Applicant undertook an additional breeding birds survey. It concluded the additional land is considered of low conservation value due to the relatively low number of species using the additional land to breed, most of which are common and widespread, with only two having a notable conservation status (ER 5.3.25). The Secretary of State further notes the additional written representation from NE which stated, "that all environmental impacts resulting from the proposal, including the proposed extended working area, can be adequately addressed to ensure no residual impacts arise from the development" (ER 5.3.26). The ExA concluded that the mitigation and enhancement measures set out in the Applicant's ES, including compensatory habitat creation, would be reasonable and proportionate in relation to the Development as a whole including the additional land (ER 5.3.27) and noted that matters concerning biodiversity had been agreed with GC, as confirmed in the signed SoCG (ER 5.5.28).

25. The Secretary of State agrees with the ExA that the relevant tests in the NNNPS are satisfied and with its conclusion that biodiversity, ecology and the natural environment matters do not weigh significantly against the Order being made (ER 5.3.29).

Economic and Social Effects

26. The Secretary of State notes the NNNPS requires any adverse social effects to be mitigated in line with principles set out in the National Planning Policy Framework and the Government's Planning Guidance (ER 5.4.2). The Secretary of State notes the economic benefits that would result from the Development as set out in the Applicant's planning statement (ER 5.4.11). After accounting for impacts associated with delays during construction and maintenance, the Applicant forecasts that the combined monetised value

of those benefits would be £215.1 million including benefits related to journey time improvements and improvements in accident rates (ER 5.4.12). Further social benefits would accrue from the additional capacity, alleviation of congestion and improvement of journey times for commuters and other users. The Applicant considers these to be significant benefits and forecasts their combined monetised benefits to be £241 million (ER 5.4.14).

27. The likely significant effects during construction, as reported in the ES and summarised in ER 5.4.17, include

- Temporary major adverse effects for motorised travellers including from driver stress because of delays occurring due to speed restrictions from traffic management;
- A temporary moderate adverse effect on walkers, cyclists, and horse riders, including from the temporary closure of the Longbank Bridleway underpass and the North Dene footbridge resulting in increased journey times;
- A temporary moderate adverse effect on community severance because of the closure of the North Dene footbridge and the Longbank Bridleway underpass and;
- A temporary moderate adverse effect on human health from increased driver stress, community severance, amenity value and noise from night-time works.

28. The Secretary of State notes GC's concern about the unsuitability of the temporary diversion of a bridleway through Eighton Lodge roundabout for horse riders and that the Applicant continues to explore possible mitigation measures and a commitment has been added to the Construction Traffic Management Plan (Appendix B of the CEMP) so that matters relating to the use of all diversion routes are the subject of discussion for the Transport Working Group (ER 5.4.23). The Secretary of State notes the ExA's view that the period of diversions would be short term and based on the information before the Examination, the number of horse riders requiring to use the diversion is likely to be limited. The ExA are therefore satisfied that only minor adverse effects would be likely to arise in this respect (ER 5.4.24). The Secretary of State notes matters raised by GC early in the Examination regarding the poor nature of facilities for pedestrians and cyclists at the Coal House roundabout (junction 67) (ER 5.4.26) and that GC concluded that a wider review of provision for access through the Coal House roundabout was required but that it would be unrealistic to seek to achieve this as part of the DCO process for the Development (ER 5.4.27) and that a separate scheme will be proposed by the Council (ER 5.4.29). Overall the ExA are satisfied that the Applicant has included appropriate measures that would be beneficial for non-motorised forms of transport (ER 5.4.30).

29. The Secretary of State notes the impact of the scheme on agricultural land and operations (ER 5.4.31-32). The Secretary of State further notes the measures set out in the CEMP to minimise the use of agricultural land as far as possible and that the permanent loss of grade 3a agricultural land would be modest (0.2ha). Consequently, the ExA are satisfied that the development would not have any significant impact on the operation and economic viability of any farm holding (ER 5.4.33). The Secretary of State agrees with the ExA that the measures proposed to minimise the effects on agricultural land use and operations are reasonable (ER 5.4.34).

30. The Secretary of State notes the objection from Northern Gas Networks Limited ("NGN") on the basis that that the Development seeks temporary possession of a portion of land (for a construction compound) which impacts on its own proposals for a Compressed Natural Gas ("CNG") refuelling station (ER 5.4.35). The use of the additional land for the extended construction compound would only be required if the design choice for the replacement Allerdene Bridge is for either the Single Span or Three Span options. The

Applicant has proposed a new Requirement 17 that would prevent it acquiring rights over the additional land (plot 3/13a) until a plan for the extent and layout of the construction compound is approved by the Secretary of State, in consultation with the relevant planning authority. The ExA is satisfied that this would ensure that decisions on the Development and the CNG facility are properly reflected whilst also ensuring that no more of the additional land is taken than necessary (ER 5.4.38). The Secretary of State agrees with this, further consideration of this matter is set out below at paragraphs 87-91.

31. The ExA agreed with the Applicant that there would be significant economic benefits resulting from the Development due to the likely reduction in congestion on the A1 (ER 5.4.43) and during operation there would be a long term beneficial effect for walkers, cyclists and horse riders. No significant long-term adverse effects on health, well-being and quality of life have been found to arise from the operation of the Development (ER 5.4.44). The Secretary of State agrees with the ExA's conclusion that the Development would be in general accordance with the relevant policies within the NNNPS. The adverse effects found to result during construction would not weigh significantly against the Order being made. Overall, the positive economic and social benefits would weigh significantly in favour of the Order being made (ER 5.4.45).

Historic Environment

32. The Secretary of State notes the policy considerations (ER 5.5.2-4) and the Applicant's approach regarding the effects of the Development, including on both designated and non-designated heritage assets (ER 5.5.5-11).

33. The Secretary of State notes that the proposed extension of the north side of the Longbank Bridleway Underpass as part of the scheme would affect the Bowes Railway scheduled monument ("SM"). The SM comprises a partly preserved standard gauge rope haulage railway with associated structures and apparatus, and that the proposed extension would require the demolition of up to a maximum of 17 metres length of the stone retaining walls either side of the former track bed (ER 5.5.15). The Applicant has developed its mitigation measures in conjunction with Historic England ("HE") who agree with the Applicant that the permanent removal of part of the SM would result in a moderate adverse significance of effect which, in NPPF terms, would amount to less than substantial harm to the overall significance of the SM (ER 5.5.16).

34. The only outstanding matter not agreed was the wording of Requirement 9 concerning the Final Written Scheme of Investigation ("FWSI") in relation to archaeological remains. HE's preference is for the words "in accordance with" rather than "substantially in accordance with" to be included in that requirement. HE states that this is not so rigid as to prevent opportunities to accommodate potential implications of design changes should this be appropriate (ER 9.6.26). The Applicant states that "substantially in accordance with" achieves the desired aims of both parties by providing an appropriate amount of certainty and flexibility given the potential for slight variations at detailed design, for example in relation to drainage at Bowes Railway and access to the SM (ER 9.6.27). The ExA note that the FWSI would need to be submitted for the approval of the Secretary of State in consultation with both the relevant planning authority and HE. This approval of the final details will ensure that archaeological interests potentially affected by the Development, including the Bowes Railway SM, would be appropriately protected. The ExA are therefore satisfied with the inclusion in Requirement 9 of "substantially in accordance with", as set out the Revised DCO (ER 9.6.28). The Secretary of State agrees.

35. Regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010 states that “when deciding an application which affects a listed building or its setting, the [Secretary of State] must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses”. The ExA consider that the information provided in the ES is sufficiently comprehensive for it to take account of the significance of heritage assets and to understand the impacts of the Development on that significance (ER 5.5.32). The ExA have found that harm would arise to designated heritage assets, and considers this would be less than substantial in each instance. The ExA has not identified any instances, during construction or operation, where the Development is likely to result in substantial harm to or loss of the significance of any heritage asset (ER 5.5.36). The Secretary of State concurs with the ExA’s findings.

Landscape and Visual Effects

36. The Secretary of State notes the policy background, the Applicant’s assessment of the potential landscape and visual impacts of the Development and the matters considered by the ExA (ER 5.6).

37. The Secretary of State notes several submissions were made by GC and Sir Anthony Gormley regarding the impact of the proposed gantries and the replacement North Deane Footbridge upon the settings and the views of the Angel of the North from the A1 and ECML railway (ER 5.6.27). The ExA state that the Applicant provided a further assessment which concluded that the southbound views from the A1 of the Angel of the North would not be substantially impacted by the gantries but the effect of the proposed gantries and the replacement North Dene footbridge, in combination with woodland planting would result in a worsening of the views by the occupants of vehicles using the A1 northbound, although the impact would not be significant. The ExA also concluded that views from the ECML would not perceptibly change (ER 5.6.28).

38. The Secretary of State notes the position regarding GC’s Southern Green Report “Options Appraisal for Managing and Enhancing the Angel” and also notes that the Applicant and GC agree it does not carry weight as a planning document. GC’s preference is for Option 3 “Revealing the Angel” to be pursued which would involve the removal of existing vegetation surrounding the Angel of the North enabling it to become more visible within its surroundings including for A1 users. The Applicant had made it clear that it considers the baseline for the ES assessment should be the existing situation including the existing landscaping around the Angel of the North. The ExA noted GC’s aspiration to improve the setting and visibility of the Angel of the North and noted that the Applicant will also do what it reasonably can to preserve the views and settings of the Angel of the North. The ExA agreed with the Applicant’s view regarding the baseline for the ES assessment of the impacts of the Development as this is the existing situation including the existing landscaping around the Angel of the North (ER 5.6.29-31). The Secretary of State agrees.

39. The Secretary of State notes that, by the end of the Examination, the Applicant and GC had agreed a revised detailed design Requirement (R3) and a revised landscaping Requirement (R5) in the draft DCO and the main points of relevance to the impact on the Angel of the North are set out in ER 5.6.33. A final representation from Sir Anthony Gormley indicates support for the amendments made to R3 and R5 in respect of the efforts being made to minimise the impacts on the Angel of the North (ER 5.3.37).

40. The Secretary of State notes the Applicant highlighted that a future replacement Design Manual for Roads and Bridges document may have implications for the types and appearance of the gantry signs required for the Development including the possibility of single span rather than the more bulky and intrusive cantilever gantry signs being used with consequently reduced visual impacts (ER 5.6.34). The ExA's position is that whilst during detailed design the impact of the proposed gantries may be reduced from that shown within the application parameters, it remains the case that the assessment of effects needs to be based on the worst-case scenario based on the gantries as currently proposed in the application (ER 5.6.38).

41. The Secretary of State notes the final outline CEMP includes measures which require the area next to the southbound carriageway, adjacent to the Angel of the North, to be subject to woodland clearance with some re-planting of scattered trees and shrubs to allow for the opening up of views of the Angel of the North (ER 5.6.35). The ExA's position is that whilst this would provide some benefits, these areas do not appear to be so extensive as to result in a substantial benefit (ER 5.6.39).

42. The ExA find that the proposed gantries in the north bound approach to junction 66, along with the replacement North Dene Footbridge would, in combination, be likely to result in a moderate adverse effect upon the setting and views of the Angel of the North as experienced by the occupants of vehicles approaching along the north bound A1 carriageway (ER 5.6.40). Overall, the ExA are satisfied that the adverse landscape and visual impacts would not be so damaging as to offset the benefits of the development (ER 5.6.49). The ExA concluded that the Development satisfactorily accords with the relevant aims of the NNNPS with regard to landscape and visual matters and that these matters do not weigh significantly against the Order being made (ER 5.6.50). The Secretary of State agrees with the ExA's conclusion.

Green Belt

43. The Secretary of State notes the ExA's consideration of this matter at ER 5.7 and the overall conclusion at ER 7.3.

44. The Secretary of State notes GC raised several issues of concern regarding the Applicant's Green Belt assessment including whether it constitutes inappropriate development, whether the impacts would be the same for all of the options, and what is the justification for temporary buildings and structures (ER 5.7.15).

45. As set out in ER 5.7.16-18, in response to GC's concerns and further questions from the ExA, the Applicant included a fuller assessment in its Technical Note on the Green Belt of the impacts of aspects of the Development upon Green Belt openness. As part of its response, the Applicant confirmed that the number and location of the proposed gantries has been primarily driven by the need for safe operation of the highway, but within this constraint, it has sought to avoid additional or unnecessary signs and to keep their physical height and scale as small as possible. The final signage strategy, including the final design and location of gantries, would be subject to subsequent approval (ER 5.7.19). Following the provision of further information, the Applicant and GC agree that the Development would amount to inappropriate development but that there are very special circumstances to justify the development in the Green Belt which outweigh the limited harm identified (ER 5.7.20).

46. The Secretary of State notes the ExA's assessment and conclusion as set out in ER 5.7.21-24 of the above ground structures, including the design options for the replacement Allerdene Bridge and the replacement North Dene Footbridge on the Green Belt. Based on the worst-case scenario, the ExA consider that the Development would result in a moderate adverse impact on Green Belt openness (ER 5.7.25). In terms of the purposes of including land within the Green Belt, the Development would conflict to a limited degree in terms of its encroachment into the surrounding countryside, but would not conflict with the other four Green Belt purposes (ER 5.7.26). The ExA conclude the Development would as a whole amount to inappropriate development in the Green Belt. It would result in a moderate adverse impact on openness and would conflict with the purpose of the Green Belt to safeguard the countryside from encroachment (ER 5.7.27). Like the ExA, the Secretary of State attaches substantial weight to the harm that would result to the Green Belt (ER 5.7.28, 7.3.3).

47. The Secretary of State notes the ExA's overall conclusion on this issue at ER 7.3.3-10. Paragraph 5.178 of the NNNPS states the Secretary of State will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (ER 7.3.4). As well as harm to the Green Belt described above, the Secretary of State notes and agrees with the non-Green Belt harm that would result from the proposed development, as stated at ER 7.3.5. The Secretary of State agrees with the ExA that the potential harm to the Green Belt and the other harm would be clearly outweighed by other considerations such as the need and benefits of the Development (ER 7.3.20). The ExA concluded that the Development would therefore accord with the Green Belt Policy set out in paragraph 5.178 of the NNNPS and the NPPF (ER 7.3.10). The Secretary of State agrees with this conclusion.

Noise and Vibration

48. Paragraphs 5.188 to 5.199 of the NNNPS set out guidance and policy for undertaking the assessment of noise impacts (ER 5.8.2-6) and the Secretary of State notes the Applicant's approach and assessment of noise and vibration matters, as set out in ER 5.8.7-18.

49. The Secretary of State notes the representation from Lynn Wilson regarding the cumulative construction traffic impacts of the Development and the resulting noise pollution from the increased vehicular activity and the ExA's conclusion that the cumulative and combined assessment carried out by the Applicant is adequate (ER 5.8.28). The Secretary of State has no reason to disagree with this.

50. The Secretary of State notes Nicola Allan of Trinity Chambers' representation on behalf of the owners and occupiers of five residential properties at North Farm which raised concerns regarding the impact of noise and dust on the occupiers of North Farm from the use of additional land outside the current DCO application for stockpiling (ER 5.8.29). The Applicant explained they had prepared an addendum to the ES on the additional land including an assessment of the impact on affected properties at North Farm. The Secretary of State notes that GC confirmed that it is confident that the measures proposed by the Applicant in the outline CEMP will be sufficient to keep impacts to a minimum and the ExA was also content that the Applicant has provided sufficient mitigation to reasonably minimise noise and vibration impacts (ER 5.8.30).

51. The ExA conclude that whilst there would be some short-term significant noise impacts during construction, they consider that the Applicant is proposing appropriate measures to mitigate and minimise the adverse effects (ER 5.8.31). The ExA further conclude the relevant tests in the NNNPS are met (ER 5.8.32) and overall, taking all matters into consideration, that noise and vibration matters do not weigh significantly against the Order being made (ER 5.8.33). The Secretary of State agrees with these conclusions.

Traffic and Transport

52. The Secretary of State notes the policy background as set out in ER 5.9.2-7 and the Applicant's approach to the assessment as set out in ER 5.9.8-12. The Secretary of State further notes the Applicant's main points regarding the case for and the benefits of the Development as set out in ER 5.9.14-24 and that the ExA agrees with the conclusions of the Applicant's assessment regarding the need and case for the Development, which weighs significantly in favour of the Order being made (ER 5.9.25).

53. The Secretary of State notes that a number of issues were raised during the examination regarding traffic and transport and the ExA's consideration of these matters (ER 5.9.26-5.9.42). The ExA consider that the Applicant has made adequate provision for construction traffic including arrivals and departures to and from construction compounds and that reasonable mitigation and management measures would be secured within the DCO (ER 5.9.34).

54. As set out in ER 5.9.41-42, the Secretary of State notes no representations were received regarding the first and second changes to the DCO, described in paragraph 9, and that the ExA was satisfied that they would not introduce further issues (ER 5.9.41-42).

55. The Secretary of State notes the ExA recommends that he may wish to consider if there are effects and implications of any changes in transport use and related transport modelling arising as a result of the COVID 19 pandemic which are likely to persist against the original baseline modelling (ER 5.9.46) and that the Secretary of State consults on the effect of a potential decrease in road use resulting from the COVID 19 pandemic (ER 5.9.50). The Secretary of State notes the Department for Transport's publication of 20 July 2020 on "Appraisal and Modelling Strategy- A Route Map for updating TAG during uncertain Times". This sets out the need to effectively capture the additional uncertainty associated with potential impacts on COVID 19 for future modelling over the long term. Until such information is captured, the Secretary of State considers it is too early to fully understand the impacts of COVID 19 on future travel demand and is satisfied, based on the information available, there is no change to the long-term need and benefits of the scheme.

56. The Secretary of State notes the ExA's conclusions on traffic and transport as set out in ER 5.9.48-52. He notes the ExA's view that disruption during the construction process can be satisfactorily managed and whilst there will be some temporary disruption for non-motorised users during construction as a result of footpath diversions, such impacts would be temporary and have been minimised as far as reasonably possible (ER 5.9.49). The ExA are satisfied that the relevant tests in the NNNPS are satisfied (ER 5.9.51). The Secretary of State agrees with the ExA's conclusion that traffic and transportation matters weigh significantly in favour of the Order (ER 5.9.52).

Water Environment

57. The Secretary of State notes the policy background in relation to the water environment, including water quality and flooding, set out in ER 5.10.2-6 and the Applicant's approach to the assessment of water environment matters set out in ER 5.10.7-15.

58. The Secretary of State notes that, at the close of the Examination, the Environment Agency ("EA") confirmed that its SoCG with the Applicant had been updated to reflect that all matters had been agreed between the EA and the Applicant (ER 5.10.21). In addition, at the close of the Examination, GC confirmed that they were in agreement with the Applicant in respect of water environment and drainage matters (ER 5.10.23).

59. The Secretary of State notes the ExA's conclusion at ER 5.10.26 and that the relevant tests in the NNNPS are satisfied. Overall the ExA agreed with the Applicant's assessment that no adverse effects on the water environment would result during either the construction or operation of the Development. The Secretary of State has no reason to disagree with this and agrees with the ExA that taking all matters into consideration that water environment matters do not weigh against the Order being made (ER 5.10.26).

Climate Change

60. The Secretary of State notes at ER 5.11.2-5 the policy background concerning the effects of the Development in relation to climate change, including any potential effects in relation to climate change targets and climate change adaptation. The Secretary of State notes the Applicant's approach as set out in ER 5.11.6-8 to assess the effects of the Development on climate and its vulnerability to climate change.

61. The Secretary of State notes the Green Party's representations that the Development would contravene the Government's declaration of a climate emergency and that public funds should instead be invested in railway infrastructure, buses, cycling and walking (ER 5.11.10).

62. In June 2019 the Government announced a new carbon reduction 'net zero target' for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (ER 5.11.11). The ExA noted that a future carbon budget may result in different predictions from those currently made in relation to the operation of the Development. It was recommended that the Secretary of State may wish to consider the impact of the CO₂ equivalent emissions for the operational phase of the Development in relation to any relevant carbon budget, if available, and the cumulative impact of emissions for the NNNPS in the context of the revised net zero target (ER 5.11.13).

63. The Secretary of State notes that the Committee on Climate Change ("CCC") published its Sixth Carbon Budget Report on 9 December 2020, with recommendations for the 2033 to 2037 period. He notes the CCC recommended a net reduction of 78% between 1990 and 2035, therefore bringing forward the previous 80% target by nearly 15 years. However, this target has not been approved by Parliament.

64. The Secretary of State notes that the Applicant said the projected increase in greenhouse gas emissions from the Development would represent a contribution of 0.01% to each of the third, fourth and fifth carbon budgets. The Secretary of State is satisfied that the Applicant has carried out an assessment against the latest available carbon budgets

and agrees with the Applicant's conclusion that it is unlikely that the impact of the development, in isolation, would affect the Government's ability to meet the revised target (ER 5.11.11).

65. The Secretary of State notes the ExA's question to the Applicant with regard to cumulative effects along with other relevant road schemes and the Applicant's explanation that the quantification, in the ES, of emissions from the Development in the assessment of significance of effects inherently assesses the combined and cumulative impacts. He further notes that the Applicant concluded, taking account of other schemes nearby or globally, that the impacts of the Development would not affect compliance with the Government's emission targets (ER 5.11.12).

66. The Secretary of State is content with the assessment undertaken by the Applicant and that it is in accordance with paragraph 5.17 of NNNPS. The Secretary of State agrees with the Applicant's conclusions and is satisfied that the increase in carbon emissions that would result from the Development are not so significant that they would have a material impact on the ability of the Government to meet its carbon reduction targets.

67. The Secretary of State notes the ExA are satisfied that suitable measures are proposed in response to climate change adaption and to avoid increased vulnerability to impacts arising from climate change. He agrees with the ExA that the Development would satisfactorily conform with the relevant provisions of the NNNPS in these respects (ER 5.11.17).

Other Projects and Proposals

68. The Secretary of State notes the NNNPS sets out a general requirement to consider cumulative effects as part of the ES, showing how the Development would combine and interact with the effects of other developments (PR 5.12.1). The Secretary of State further notes the three other major highway schemes within the local area, identified by the Applicant, which have the potential to have a cumulative impact on the Development (ER 5.12.4). The Applicant has added a commitment to the Construction Traffic Management Plan to set up a working group to discuss and manage interaction between each of the three Applicant-promoted schemes and any other major road work or non-road schemes that come forward (ER 5.12. 5).

69. The ExA concluded that the Applicant has considered cumulative effects as required by the NNNPS and, where appropriate, suitable control mechanisms would be secured in the DCO (ER 5.12.8). The Secretary of State agrees with the ExA that this is not a matter which weighs significantly against the Order being made (ER 5.12.9).

Findings and Conclusions in Relation to Habitats Regulations Assessment ("HRA")

70. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State (as the Competent Authority) is required to consider whether the scheme would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site. The Development is not directly connected with or necessary to the management of any European Site (ER 6.3.6). The Secretary of State must therefore undertake an appropriate assessment if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects, cannot be ruled out. In the light of any such

assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a European Site, unless there are no feasible alternatives or imperative reasons for overriding public interest apply.

71. The Secretary of State has considered the ExA's assessment at Chapter 6 of the Report of the likely significant effects of the Development. The ExA recorded that the Applicant considered European sites within 2km of the Development and that this was extended to include coastal European sites which are hydrologically connected to the Development via watercourses crossed by the A1 (ER 6.3.2). The Applicant identified three relevant European sites: Northumbria Coast Special Protection Area, Northumbria Coast Ramsar, and Durham Coast Special Area of Conservation (ER 6.3.3). The Secretary of State notes that the ExA, having considered the relevant evidence, is satisfied there are no likely significant effects of the Development on any European Sites or their qualifying features either alone or in combination with any other plans or projects (ER 6.5.1), a view which is confirmed by Natural England (ER 6.4.3). The Secretary of State agrees with this and with the ExA's conclusion that it is not necessary to carry out an appropriate assessment (ER 6.5.1)

Overall Conclusions

72. The Secretary of State notes the ExA's overall conclusions on the impacts of the Development at ER 7.3 and agrees with the ExA that in spite of the harmful impacts that are likely to result, overall these are likely to be within the scope of the relevant policy provisions in the NNNPS (ER 7.3.22). The ExA concluded that the benefits of the Development, particularly in terms of addressing existing congestion, improving safety and promoting economic benefits for the region, would outweigh the impacts it identified in relation to the construction and operation of the Development. Consequently, the potential harm is substantially outweighed by the benefits of the Development in meeting Government policy as set out in the NNNPS (ER 7.3.23). The Secretary of State agrees with the ExA's conclusion that, overall, there is a convincing case for development consent to be granted (ER 7.4. 24).

Compulsory Acquisition and Related Matters

73. Section 122(2) of the 2008 Act requires that the land to be compulsorily acquired must be required for the development to which development consent relates, is required to facilitate or be incidental to that development, or is replacement land which is to be given in exchange for the order land (ER 8.4.2). Section 122(3) of the 2008 Act requires that there must be a compelling case in the public interest for the land to be acquired compulsorily (ER 8.4.3). Section 123 of the 2008 Act requires that one of three procedural conditions must be met, namely: (i) the application for the order included a request for compulsory acquisition (CA) of the land to be authorised, (ii) all persons with an interest in the land consent to the inclusion of the provision, or (iii) the prescribed procedure has been followed in relation to the land. In addition, a number of general considerations from the former Department of Communities and Local Government ("DCLG") CA guidance need to be addressed (ER 8.4.5).

74. The Secretary of State notes the summary of the Examination process relating to CA and Temporary Possession (TP) in ER 8.5. Ten objections were made to the Development relating to concerns regarding acquisition and/or TP of the land, and the impact on the use

of the land (ER 8.5.2). No withdrawals of objection regarding acquisition and/or TP of the land were submitted to the Examination; however, the Applicant obtained agreement with most parties by the end of the Examination (ER 8.5.6). The Applicant's general case for CA and TP is set out in Chapter 5 of its Statement of Reasons and the Applicant concludes, amongst other things, that the conditions in section 122 of the 2008 Act are met and the tests in the DCLG CA Guidance are satisfied (ER 8.5.7-8). The ExA conclude the overarching conclusion on CA and TP cannot be reached until individual objections and all other relevant and important considerations have been addressed (ER 8.5.10).

75. The Secretary now considers the position with regard to the ten objections set out in ER 8.5.12.

Brett Morland Askew, Christopher Askew and Glenn Clifford Askew

76. The Secretary of State notes the objectors' case including that the land referencing is inaccurate and incomplete and sufficient detail has not been provided in regard to drainage and accommodation works, nor any detail as to the impact on retained land. The ExA conclude that in light of the Applicant's repeated requests for further details and that no response has been received from the objectors or their agent, it has no reason not to agree with the Applicant's contention that there is no evidence of inaccuracy or adverse effects on the objectors. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for TP of the land.

Christopher Wilson and Marie Wilson

77. The Secretary of State notes that the objectors sought a reduced land take and a retaining wall or substantial fencing to mitigate the increased impact of noise to their development plot. The Secretary of State notes details of offers and negotiations between the parties and the ExA's conclusion that the objection is effectively a compensation issue which is not a concern requiring its conclusion by the Secretary of State. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

David Herbert Hankey

78. The Secretary of State notes the objector's case regarding Dunkirk Farm and his request that disruption to his operations is kept to a minimum to ensure access to his fields and that he suffers as little financial and practical disruption as possible. The ExA conclude that the Applicant has proposed reasonable and proportionate measures, which would be secured within the DCO, to safeguard farming operations as far as practicably possible. This objection otherwise relates to a compensation issue between the parties which is not a concern requiring its conclusion by the Secretary of State. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Environment Agency (“EA”)

79. The Secretary of State notes the EA is concerned about the potential impact of the Development on the gauging station and telemetry software facilities. The Applicant has said that additional measures have been included within the outline CEMP to ensure sufficient protection for the gauging station. The ExA conclude that sufficient protective measures for the gauging station have been included in the outline CEMP. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA and TP.

GC

80. The Secretary of State notes the main areas of land affected by the Development are woodland areas within GC’s ownership and land that appears to be highway verge. The Applicant is seeking temporary use over private access routes within GC’s ownership and public footpaths and public bridleway. GC considers it is entitled to compensation for the value of the land taken both permanently and temporarily. The ExA conclude that this is effectively a compensation matter between the parties which is not a concern requiring its conclusion. GC submitted a further representation regarding ecology/biodiversity and the extent of council land/rights to be acquired. In response, the Applicant stated this will be addressed through the environmental mitigation proposed. The ExA conclude that the environmental mitigation proposed is adequate and proportionate. The Secretary of State agrees with the ExA that the land is required for the Development, or is required to facilitate or is incidental to that development, and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Network Rail (“NR”)

81. The Secretary of State notes that NR does not object in principle to the Development but requests that the protective provisions in relation to Allerdene Bridge appended to its written representation be included in the DCO. The Secretary of State notes the consideration of this issue at ER 9.6.29-41.

82. The only outstanding area of disagreement between the Applicant and NR related to the indemnity provision within paragraph 32 of Part 3 of Schedule 11 to the draft DCO. NR requests the deletion of paragraph 32(4), which states –

“In no circumstances is the undertaker liable to [NR] under sub paragraph (1) for any indirect or consequential loss or loss of profits, except that the sums payable by the undertaker under that sub paragraph include a sum equivalent to the relevant costs in circumstances where-

- a) [NR] is liable to make payment of the relevant costs pursuant to the terms of an agreement between [NR] and a train operator; and*
- b) the existence of that agreement and the extent of [NR]’s liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise”*

83. NR argues that the scope of the indemnity included in its protective provisions should not be diluted and that this should include consequential loss, which, in any event would need to be properly justified and meet the relevant common law tests. NR argues that paragraph 32(4)(b) would create an unnecessary administrative burden and that the

agreements mentioned in it are commercially sensitive (ER 9.6.31). Regrading paragraph 32(4)(b), the Applicant states that it should only be liable for losses of which it has knowledge and can control. If NR cannot identify the risks that it considers should be protected, then the risks should not be for the Applicant to bear (ER 9.6.32). The Secretary of State notes further submissions and representations made on this issue, including a further draft of paragraph 32(4) prepared by NR, which it proposes should be included in the Order if the Secretary of State is minded to accept the provision as proposed by the Applicant. NR states the further draft would limit the Applicant's proposed exclusion of liability so that it addresses only the mischief relating to the lack of foreseeability (ER 9.6.36). The Secretary of State also notes the three made Orders referred to by NR which do not include the Applicant's proposed exclusion (ER.9.6.37).

84. On 21 July 2020 the Applicant submitted its Response to Deadline 11 Submissions which sets out the Applicant's and NR's positions regarding paragraph 32(4), reiterating its request that paragraph 32(4) in the draft DCO be included. On 3 December 2020, the Secretary of State received a post Examination correspondence from Addleshaw Goddard on behalf of NR in response to the Applicant's Response of 21 July 2020, reiterating its opposition to the reduction of the scope of the indemnity to be provided to NR.

85. The Secretary of State notes the ExA's conclusion on this matter at ER 9.6.40 and, whilst it is difficult to draw direct comparisons with other cases, given that the detailed circumstances will inevitably vary from case to case, it does not consider there are adequate grounds for the inclusion of paragraph 32(4), representing a deviation from NR's standard indemnity. The Secretary of State agrees with the ExA that paragraph 32(4) of Part 3 of Schedule 11 should be deleted from the draft DCO (ER 9.6.41).

86. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Northern Gas Networks Limited ("NGN")

87. The Secretary of State notes NGN objected to the Development on the basis that it seeks to retain a portion of land proposed for TP (for a construction compound) in order to implement its own proposals for a CNG refuelling station within Plot 3/6c of the order land. The Secretary of State notes that no formal application for the CNG facility has been submitted and there is no guarantee that planning permission would be granted. In the ExA's view, this limits the weight that can be given to the CNG proposal at this stage. The Secretary of State notes that the inclusion of additional land (plot 3/13a) within the application, extending the size of the construction compound, would mean that the parcel of land needed for the CNG facility would no longer be required by the Applicant for TP. The ExA considered, based on the submitted application without the additional land, that the Applicant had satisfactorily demonstrated the need for the TP of the whole of Plot 3/6c for use as a construction compound.

88. Following the Applicant's discussions and the ExA's questions on this matter, the Applicant drafted paragraph (12) to article 32 (temporary use of land for carrying out the authorised development) which states -

"In the event that this Order includes powers of temporary possession and compulsory purchase over all of the land shown delineated with a broken line on the Northern Gas Networks Land Ownership Plan then the undertaker shall be prohibited from exercising that

power of temporary possession over the part of plot 3//6c shown delineated and hatched purple on the Northern Gas Networks Land Ownership Plan”

89. The Applicant’s reason for including this additional paragraph is that if all the requested rights for the construction compound (including the additional land) are granted to it then there would be sufficient space within the area allowed for the construction compound to allow NGN to retain the land on which they propose to build the CNG filling station. Article 32(12) therefore restricts the Applicant’s power in these circumstances so that the Applicant would not be able to exercise the power of TP over the CNG filling station land, thereby enabling NGN to carry out its development (subject to the necessary permission being in place) (ER 9.6.45). NGN were content with this provision. The ExA is satisfied with this this additional paragraph, subject to deletion of the words “ *In the event that this Order includes powers of temporary possession and compulsory purchase over all the land shown delineated with a broken line on the Northern Gas Networks Land Ownership Plan*”. Since the ExA are satisfied that the additional land should be included in the Order they consider these words superfluous (ER 9.6.46). The Secretary of State agrees.

90. As stated in paragraph 30 of this letter, the Applicant has proposed a new Requirement (R17) that would prevent it from acquiring rights over the additional land until a plan showing the extent and layout of the construction compound is approved by the Secretary of State in consultation with the relevant planning authority (ER 5.4.38 and 9.6.48). The ExA agree that R17 is required in principle, in order to ensure that the TP of land for the construction compound at junction 67 is not more than is reasonably necessary. However, the ExA made several recommended amendments to the drafting of this Requirement as set out in Table 2 of the ER to reflect its conclusion that it is acceptable for the additional land (Plot 3/6(c)) to be included within the Development and therefore, there is no need for the TP of the parcel of land needed for NGN’s proposed facility. The ExA have also recommended the deletion of sub-paragraph (2)(b) of R17, on the basis that the land to which it refers is no longer needed for TP, and have made minor revisions to the drafting of R17, as set out in Table 2, for clarity and precision (ER 9.6.49). The Secretary of State agrees with the revised wording for R17 as set out in Table 2.

91. The Secretary of State agrees with the ExA that, subject to the exception provided by article 32(12) of the DCO, the land sought is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

St Mary Magdalene and Holy Jesus Trustee Limited

92. The Secretary of State notes that the Trust has no objection to the Development, and is willing to engage in negotiations. The Trust require undertakings that the restoration of the land to be returned to the farm is done to the highest possible standards and that all necessary accommodation works are carried out. The Applicant has said that a formal offer has been made and that discussions regarding the restoration of the land are on-going. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Thomas Arthur Hamish Ninth Baron Ravensworth (as executor for Lord Arthur Waller Eight Baron)

93. The Secretary of State notes the objector has mineral interests in land which would have to be acquired. Whilst he has no objection to the Development, he is seeking appropriate compensation. The Secretary of State notes a formal offer has been made by the Applicant and there have been subsequent negotiations. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Northumbrian Water Limited

94. The Secretary of State notes that the objector has land interests within the Development and wishes to ensure the assets are protected or diverted (as appropriate). Whilst there does not appear to be any impact on a compensable interest belonging to the objector, the Secretary of State notes discussions took place in relation to the draft Protective Provisions contained in Schedule 11 to the draft DCO and that these are now agreed. The Secretary of State agrees with the ExA that the land is required for the Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Special Land and Rights Provisions

95. Sections 127 and 138 of the 2008 Act apply in relation to the effects of Statutory Undertakers (“SUs”) land, rights and apparatus. Section 127 applies in relation to land acquired by SUs for the purposes of their undertaking and places restrictions on the CA, or CA of a new right, of such land. Where section 127 applies CA of SU’s land can only be authorised if the Secretary of State is satisfied the land can be purchased and not replaced without serious detriment to the SU, or if purchased, can be replaced by other land belonging to or available for purchase by the SU without detriment. Alternatively, it can be authorised if the Secretary of State is satisfied the right can be purchased without serious detriment to the SU or if any detriment to the SU, in consequence of the acquisition of the right, can be made good by the SU by the use of other land belonging to or available for the acquisition by the SU. Section 138 applies where an Order authorises the acquisition of land and there subsists a right over the land in relation to relevant apparatus. Section 138(4) provides that an Order may include provision for the extinguishment of any relevant right or the removal of apparatus if the Secretary of State is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the Order relates (ER 8.6.3-5). The SUs affected by the development are NR, NGN, the EA and Northumbrian Water Ltd.

96. The Secretary of State notes that SoCGs have been agreed with the EA, NGN and Northumbrian Water Ltd which demonstrate that these SUs are content with the Development (ER 8.6.9). In addition, a SoCG was signed by NR and the Applicant on 21 July 2020. The Secretary of State notes that the ExA agree with the Applicant that the acquisition of NGN land and NR land would not result in any serious detriment to the carrying of the respective undertakings. In addition, the ExA agree with the Applicant that although the land to be acquired from the EA includes a gauging station, the works relating to the construction of the Development would be downstream of the gauging station and would not directly interfere with its continued operation (ER 8.6.12).

97. The Secretary of State agrees with the ExA that the tests set out in section 127(3) and / or section 127(6) of the 2008 Act are met and, in accordance with section 138(4), they are satisfied that the extinguishment of relevant SU rights and removal of the SU apparatus is necessary for the purpose of carrying out the development to which the Order relates (ER 8.6.15 and 16).

Human Rights

98. The Secretary of State notes the ExA's consideration of the Human Rights Act 1998 on the Development and the relevant provisions of the European Convention on Human Rights (ECHR) that are normally engaged by CA and TP proposals (ER 8.6.18-19). The Secretary of State notes that Chapter 6 of the Statement of Reasons deals with human rights and compliance with the relevant provisions of the ECHR. He further notes there are no residential properties to be acquired for the Development (PR 8.6.20-21). The Secretary of State agrees with the ExA that the CA and TP sought is compatible with the Human Rights Act and the ECHR (ER 8.6.23).

Creation of New Rights over Schedule 8 Land

99. The Secretary of State notes that, under article 32(9) (temporary use of land for carrying out the authorised development), the undertaker may not compulsorily acquire land referred to in column (1) of Schedule 8 (land of which temporary possession may be taken) with specified exceptions (ER 8.6.24). The Secretary of State notes the ExA's primary concern regarding article 32(9)(a) is that it could result in the creation of new undefined rights over land in circumstances where it is not clear that the affected landowners or occupiers have been consulted by the Applicant so that they would have been aware that something other than TP could occur on their land. The Secretary of State notes the Applicant's position on this matter and the ExA's conclusions (ER 9.6.9-24). The Secretary of State notes that the ExA are not convinced that there is a compelling case in the public interest for the new rights and that it is not sufficiently clear that the affected persons would have fully understood the potential implications of the inclusion of land within column (1) of Schedule 8 (ER 9.6.22). The Secretary of State agrees with the ExA's conclusion in respect of article 32(9)(a) and also with the recommendation that it should be deleted (ER 9.6.23).

Final Conclusion

100. The Secretary of State notes the ExA's conclusion that the relevant tests in sections 122 and 123 of the 2008 Act are met and that the ExA recommends acceptance of the CA and TP powers proposed in the DCO, with the recommended amendment of article 32(9) (ER 8.7.9-10). The Secretary of State agrees with this and with the ExA's conclusion that the CA and TP powers sought by the Applicant are justified, are necessary to enable the Applicant to complete the Development, that there is a compelling case in the public interest for the land and interests to be compulsory acquired, and that the Applicant has a clear idea of how it intends to use the land and that funds are available for implementation of the Development (ER 10.2.7).

Draft Development Consent Order and Related Matters

101. The Secretary of States notes the most significant changes made to the draft DCO during the Examination as introduced in ER 9.4 and set out in Table 1 (main changes made

by the Applicant during the Examination) of the Report. The ExA is satisfied that the majority of these changes are justified by the evidence before them. Where the ExA goes on to suggest further amendments to matters which are the subject of change in Table 1, these are reflected in section 9.6 and Table 2 (DCO provisions recommended to be changed) of the Report (ER 9.4.3).

102. Where not previously stated, the Secretary of State is satisfied with the recommended changes set out in Table 2 of the Report and with the further recommended minor or typographical amendments set out in Table 3 of the Report.

103. The modifications which the Secretary of State has decided to make to the draft DCO at Appendix D to the Report are as follows (references to article numbers, paragraphs and requirements in this paragraph are to the same as numbered in the DCO as made)

- In the preamble, the provisions concerning open space land have been removed together with the reference to sections 131 and 132 in the vires paragraph (it seemed to the Secretary of State that these provisions were not relevant in relation to the matters covered in the Order);
- Article 2(1) (interpretation), the definition of “electronic transmission” has been reworked to include a definition of “electronic communications network”;
- Article 2(1), the definitions of “cantilever gantry”, “single span gantry” and “super span gantry” have been moved to requirement 3 in Schedule 2;
- Article 2(1), the definition of tribunal has been removed as the term is only referred to in the arbitration article;
- Article 30 (acquisition of subsoil and airspace only) a new paragraph (4) has been included which seemed to the Secretary of State to have been omitted;
- The text in Schedule 7 (modification of compensatory and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has been reworked to reflect the Secretary of State’s preferred wording.

104. The Secretary of State is making a number of other minor textual amendments to the draft DCO in the interests of clarity, consistency and precision.

General Considerations

Equality Act 2010

105. The Secretary of State has had regard to the public-sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not (section 149(1) of the Equality Act 2010). In the light of the ExA’s findings and conclusions, the Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics referred to in section 149(7). On that basis there is no breach of the public sector equality duty.

Natural Environment and Rural Communities Act 2006

106. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Community Act 2006 (“the 2006 Act”) must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme on Biological Diversity of 1992, when granting development consent. The

Secretary of State notes that the ExA has had regard to the 2006 Act and the biodiversity duty in the relevant sections of the Report. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

Secretary of State's overall conclusion and Decision

107. For all the reasons set out in this letter, the Secretary of State considers that there is a clear justification for authorising the Development. The Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

Challenge to Decision

108. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at Annex A to this letter.

Publicity for the Decision

109. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Natasha Kopala

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The A1 Birtley to Coal House Improvement Scheme Development Consent Order 2021 (as made) is being published on the Planning Inspectorate website at the following address: <https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a1-birtley-to-coal-house-improvement-scheme/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

A1 Birtley to Coal House Improvement Scheme

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

David Cliff BA Hons MSc MRTPI (Lead member of the Panel)

Max Wiltshire BSc, MSc, CEng, MICE

21 October 2020

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OVERVIEW

Planning Inspectorate Ref: TR010031

The application, dated 14 August 2019, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on the same date.

The Applicant is Highways England.

The application was accepted for examination on 10 September 2019.

The Examination of the application began on 21 January 2020 and was completed on 21 July 2020.

The Proposed Development comprises: The widening of the southbound carriageway from three to four lanes and widening of the northbound carriageway from two to three lanes (with an additional lane between junctions) between junction 67 (Coal House) and junction 65 (Birtley). Changes to signage and road markings on the southbound carriageway between just south of junction 68 (Lobley Hill) and junction 67 (Coal House). The Proposed Development includes a replacement bridge structure where the A1 crosses over the East Coast Main Line, 40 metres (m) to the immediate south of the existing Allerdene Bridge structure; which would tie into the existing carriageways at junction 67 (Coal House) and north of junction 66 (Eighton Lodge). Replacement of the existing North Dene Footbridge located between junction 66 (Eighton Lodge) and junction 65 (Birtley) to accommodate the widening of the A1. Diversion of utilities.

Summary of Recommendation:

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

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**ERRATA SHEET – A1 Birtley to Coal House Improvement Scheme -
Ref TR010031**

**Examining authority's Report of Findings and Conclusions and
Recommendation to the Secretary of State for Transport, dated 21
October 2020**

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

Page No.	Paragraph	Error	Correction
47	5.4.1	"Delete "heath"	Replace with "health"
128	Under status Summary	Delete "compensatable"	Replace with "compensable"
150	9.6.32	Delete "is" in final sentence	Replace with "it"

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

- 1.1.1. The application for the A1 Birtley to Coal House Improvement Scheme (the Proposed Development) under file reference TR010031 was submitted by Highways England (the Applicant) to the Planning Inspectorate on 14 August 2019 under section(s) 31 of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of PA2008 on 10 September 2019 [[PD-001](#)].
- 1.1.2. The Proposed Development comprises:
- The widening of the southbound carriageway from three to four lanes and widening of the northbound carriageway from two to three lanes (with an additional lane between junctions) between junction 67 (Coal House) and junction 65 (Birtley);
 - Changes to signage and road markings on the southbound carriageway between just south of junction 68 (Lobley Hill) and junction 67 (Coal House);
 - A replacement bridge structure where the A1 crosses over the East Coast Main Line (ECML), 40 m to the immediate south of the existing Allerdene Bridge structure; which would tie into the existing carriageways at junction 67 (Coal House) and north of junction 66 (Eighton Lodge);
 - Replacement of the existing North Dene Footbridge located between junction 66 (Eighton Lodge) and junction 65 (Birtley) to accommodate the widening of the A1; and
 - The diversion of utilities.
- 1.1.3. The location of the Proposed Development is shown in the Location Plan [[REP4-004](#)] and Land Plans [[REP4-005](#)], final updated versions of which were received at Deadline (DL) 4. The site lies within the Metropolitan Borough of Gateshead and is located wholly within England.
- 1.1.4. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Ministry of Housing, Communities and Local Government in its decision to accept the application for Examination in accordance with s55 of PA2008 [[PD-001](#)].
- 1.1.5. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [[APP-002](#)] that the Proposed Development is an NSIP for the following reasons. It is an alteration to a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour (mph) or greater. It is wholly within England and Highways England is the strategic highway authority for the highway. The area for development is 85.57 hectares (ha), exceeding the relevant threshold of 25 ha. The Proposed Development meets the definition of an NSIP set out in sections 14(1)(h), 22(1)(b), 22(3)(a), (b) and (c) and 22(4)(b) of PA2008. It therefore requires development

consent in accordance with s31 of PA2008. Nothing has arisen during the Examination to change that view.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 30 October 2019, David Cliff was appointed as the Examining Authority (ExA) for the application under s78 and s79 of PA2008 [[PD-004](#)].
- 1.2.2. On 22 May 2020, a change of appointment was made from a single examiner to a Panel of examiners under s62 of PA2008. Consequently, under s65 of PA2008, David Cliff was appointed as Lead Member of the Panel and Max Wiltshire was appointed as the second member with effect from 22 May 2020 [[PD-020](#)].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

- 1.3.1. The persons involved in the Examination were:
- Persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP.
 - Affected Persons (APs) who were affected by a compulsory acquisition (CA) and/or temporary possession (TP) proposal made as part of the application and objected to it at any stage in the Examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.4.1. The Examination began on 21 January 2020 and concluded on 21 July 2020.
- 1.4.2. The principal components of and events relating to the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

The Preliminary Meeting

- 1.4.3. On 10 December 2019, The ExA wrote to IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and an early Issue Specific Hearing (ISH) into the draft Development Consent Order (dDCO)[[PD-005](#)], outlining:
- the arrangements and agenda for the PM;
 - notification of hearings to be held in the early stage of the Examination;
 - an Initial Assessment of the Principal Issues (IAPI);
 - the draft Examination Timetable;
 - availability of RRs and application documents; and
 - the ExA's preliminary Procedural Decisions.
- 1.4.4. The preliminary Procedural Decisions set out in Annex F of the Rule 6 Letter related to matters that were confined to Examination procedure. They were set out at this early stage so that, subject to discussion at the

PM, it was possible to commence certain Examination procedures (including an early hearing, early submission of Written Representations (WRs), comments on WRs and on RRs) earlier within the Examination than would be the case if such decisions were not communicated until after the PM. No attendee at the PM raised any objection to these decisions and on that basis they were implemented and complied with.

1.4.5. The PM took place on 21 January 2020 at Newcastle Gateshead Marriott Hotel, Gateshead. An audio recording [[EV-001a](#)] and a note of the meeting [[EV-002](#)] were published on the project page of the National Infrastructure Planning website¹.

1.4.6. The ExA's Procedural Decisions and the Examination Timetable took full account of matters raised at the PM and they were provided in the ExA's Rule 8 Letter [[PD-007](#)], dated 28 January 2020.

Key Procedural Decisions

1.4.7. Given the approach taken in the Rule 6 Letter, the Rule 8 Letter for the most part confirmed the preliminary Procedural Decisions. These decisions related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. They were generally complied with by the Applicant and relevant IPs. The Procedural Decisions can be obtained from Annex B of the Rule 8 Letter [[PD-007](#)] and so there is no need to reiterate them here, other than to refer to the ExA's decision not to accept, at that stage, the Applicant's request for amendments to the application [[AS-009](#)] that had been submitted shortly before the PM. The reasons for this are fully set out in Annex B of the Rule 8 Letter.

1.4.8. Several more Procedural Decisions were made by the ExA during the Examination of the application. The key ones are summarised below:

- 6 February 2020: Due to an administrative error, some specific parties did not receive the Rule 6 and Rule 8 Letters. Consequently, the Examination Timetable was varied to provide those specific parties with (1) an opportunity to comment on matters in the agenda for the PM, (2) to make representations about how the Examination should be examined, (3) to make representations in respect of the matters in the agenda for ISH1 on the dDCO, (4) to make submissions in accordance with DL1 in the Examination Timetable and (5) provide any response to the ExA's first written questions (WQs) [[PD-010](#)]. All IPs were informed of this Procedural Decision [[PD-009](#)]. No representations were subsequently received regarding the agenda for the PM or how the Examination should be examined.
- 24 March 2020: Confirmation of the cancellation of hearings and Accompanied Site Inspection (ASI) scheduled to take place from 31

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/North%20East/A1-Birtley-to-Coal-House-Improvement-Scheme/>

March to 3 April 2020 (due to the Covid-19 restrictions), a variation in the Examination Timetable to provide for an additional round of ExA WQs and an opportunity for further WRs to be made in lieu of the cancelled hearings [[PD-012](#)].

- 29 April 2020: Request for further information from the Applicant regarding its material change request [[PD-014](#)].
- 6 May 2020: Notification of decision to accept the Applicant's proposed provision for the CA of additional land as part of the application [[PD-016](#)].
- 6 May 2020: Notification of decision to accept the Applicant's proposed material and non-material changes to the application as part of the Examination [[PD-017](#)].
- 7 May 2020: Notification of revised Examination Timetable to allow for comments to be made on possible future hearing arrangements and for WRs to be made on the Applicant's changes to the application [[PD-018](#)].
- 22 May 2020: Notification of ISH, Open Floor Hearing (OFH) and Compulsory Acquisition Hearings (CAH) [[PD-021](#)]
- 22 June 2020: Notification under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 of further hearings and an opportunity for representations pursuant to the Proposed Provision for the CA of additional land [[PD-028](#)].

Site Inspections

- 1.4.9. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.10. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and/or there are requests made to accompany an inspection, an ASI is held.
- 1.4.11. David Cliff initially carried out USIs on 27 and 28 November 2019 observing relevant locations and their surroundings in the vicinity of the Proposed Development. A note providing a procedural record of these USIs, including details of the locations visited, can be found in the Examination Library [[EV-001](#)].
- 1.4.12. Following consultation with IPs [[PD-029](#)] the ExA (both David Cliff and Max Wiltshire) held a further USI on 16 July 2020. The note of this USI, including details of locations visited is also contained within the Examination Library [[EV-002a](#)]. It was agreed that no ASI was necessary

taking account of the Covid-19 restrictions and the fact that all but one of the locations needing to be visited or observed could be done so from public land.

- 1.4.13. The ExA has had regard to the information and impressions obtained during the Site Inspections in all relevant sections of this Report.

Hearing Processes

- 1.4.14. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard:
 - where persons affected by CA and/or TP proposals (APs) object and request to be heard at a CAH; and / or
 - where IPs request to be heard at an OFH.
- Where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

- 1.4.15. The ExA held several hearings to ensure the thorough examination of the issues raised by the application.

- 1.4.16. ISHs were held on the dDCO as follows:

- ISH1, 21 January 2020 [[EV-004](#) & [EV-005](#)]; and
- ISH5 on 25 June 2020 [[EV-018](#) & [EV-019](#)]

- 1.4.17. ISHs were held on specific matters as follows:

- ISH2, 23 June 2020 [[EV-010](#) & [EV-015](#)] on landscape and visual matters (including matters relating to the Angel of the North);
- ISH3, 23 June 2020 [[EV-011](#) & [EV-016](#)] on water environment and drainage;
- ISH4, 24 June 2020 [[EV-012](#) & [EV-017](#)] on transport and traffic.

- 1.4.18. A further ISH was held on 14 July 2020 pursuant to the Applicant's additional land request. This was to enable any additional APs and/or IPs to make oral representations on matters discussed at the previous ISHs [[EV-025](#) & [EV-027](#)].

- 1.4.19. CAHs were held under s92 of PA2008 as follows:

- CAH1, 26 June 2020 [[EV-013a](#), [EV019a](#) and [EV019b](#)]; and
- Further CAH, 14 July 2020 [[EV-026](#) & [EV-028](#)].

- 1.4.20. All persons affected by CA and/or TP proposals (APs) were provided with an opportunity to be heard. The ExA also used these hearings to examine the Applicant's case for CA and/or TP in the round. The Further CAH referred to above was held following the ExA's decision to accept the Applicant's proposal to amend the application and include Additional Land.

- 1.4.21. An OFH was held under s93 of PA2008 on 22 June 2020 [[EV-009](#) & [EV-014](#)]. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise. A further OFH was scheduled for 13 July 2020 [[EV-024](#)] but was cancelled as no requests to make oral representations at it had been received by the morning of the hearing.
- 1.4.22. ISH1 on 21 January 2020 was held at the Newcastle Gateshead Marriott Hotel Metro Centre. All subsequent hearings were held as virtual events due to the restrictions on travel and public gatherings in place since March 2020.
- 1.4.23. In advance of the virtual events, on 7 May 2020 the ExA provided an opportunity for representations to be made on future hearing arrangements including the staging of virtual events [[PD-018](#)]. This included a Questionnaire which included questions on whether IPs wished to participate in or observe further hearings and an opportunity to provide details of the technology and devices intended to be used. No representations were received stating that the virtual events would be unsuitable for the Examination. A document containing 'Frequently Asked Questions' was published on the project page of the National Infrastructure Planning website in order to provide IPs with further advice and information about the virtual events.
- 1.4.24. The ExA's letter of 22 May 2020 [[PD-021](#)] provided confirmation of details of the dates and times for the OFH, ISH and CAH hearings in June along with reserve dates should these be required. This letter also made clear that parties who did not speak at the hearings were invited to make a written submission on the specific matters included in the hearing agendas or arising at the hearings. Recordings of all the hearings were published shortly following the completion of each hearing.

Written Processes

- 1.4.25. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this Report are enclosed in square brackets [xxxx] and hyperlinked to the original document held online. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.
- 1.4.26. Key written sources are set out further below.

Relevant Representations

- 1.4.27. Twenty-four RRs were received by the Planning Inspectorate [RR-001 to RR-024] in response to the application as originally made. A further seven RRs were received following the ExA's acceptance of the Applicants Additional Land request [RR-025 to RR-031]. All RRs have been fully

considered by the ExA. The issues that they raise are considered in the relevant Chapters of this Report.

Written Representations and Other Examination Documents

- 1.4.28. The Applicant and IPs were provided with opportunities to:
- make WRs;
 - comment on WRs made by the Applicant and other IPs;
 - respond to WQs issued by the ExA and comment on the responses of other IPs;
 - summarise their oral submissions at hearings in writing;
 - make other written submissions requested or accepted by the ExA; and
 - comment on documents issued for consultation by the ExA, including the ExA's proposed schedule of changes to the dDCO.
- 1.4.29. All WRs and other Examination documents have been fully considered by the ExA. The issues that they raise are considered in the relevant Chapters of this Report.

Local Impact Report

- 1.4.30. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area that has been invited and submitted to the ExA under s60 of PA2008.
- 1.4.31. One LIR was received by the ExA from Gateshead Council [[REP2-075](#)]. It has been taken fully into account by the ExA in all relevant Chapters of this Report.

Statements of Common Ground

- 1.4.32. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them.
- 1.4.33. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:
- Gateshead Council [[REP11-030](#)];
 - Sunderland City Council (SCC) [[REP11-014](#)];
 - Environment Agency (EA) [[REP10-006](#)];
 - Historic England (HE) [[REP11-015](#)];
 - Natural England (NE) [[REP4-028](#)];
 - Northern Gas Networks Ltd (NGN) [[REP11-031](#)];
 - Network Rail Infrastructure Ltd (NR) [[REP11-032](#)];
 - Northumbrian Water Ltd [[REP11-033](#)].
- 1.4.34. Although the Applicant states in its Statement of Commonality for SoCG [[APP11-017](#)] that the SoCG with NR [[REP11-032](#)] is in an agreed form, the document remained unsigned by the end of the Examination. The ExA have therefore given only limited weight to this particular SoCG.

- 1.4.35. The SoCGs, other than unsigned or incomplete ones referred to above, have been taken fully into account by the ExA in all relevant Chapters of this Report.

Written Questions

- 1.4.36. The ExA asked four rounds of WQs:
- WQs (ExQ1) issued on 28 January 2020 [[PD-008](#)];
 - WQs (ExQ2) issued on 20 April 2020 [[PD-013](#)];
 - WQs (ExQ3) issued on 26 May 2020 [[PD-023](#)]; and
 - WQs (ExQ4) issued on 6 July 2020 [[PD-030](#)].
- 1.4.37. The following requests for further information under Rule 17 of the EPR were issued on:
- 29 April 2020 to the Applicant regarding its material change request [[PD-014](#)]; and
 - 7 May 2020 to all IPs regarding potential virtual hearing arrangements [[PD-018](#)];
- 1.4.38. All responses to the WQs have been taken fully into account by the ExA in the relevant Chapters of this Report.

Requests to Join and Leave the Examination

- 1.4.39. There were no requests to join the Examination by persons who were not already IPs at or after the PM.
- 1.4.40. No persons wrote to the ExA to formally record the settlement of their issues and the withdrawal of their representations.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

- 1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.5.2. On 8 November 2017, the Applicant submitted a Scoping Report to the SoS under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 the (EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). It follows that the Applicant is deemed to have notified the SoS under Regulation 8(1)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Proposed Development.
- 1.5.3. On 18 December 2017 the Planning Inspectorate provided a Scoping Opinion. In accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES dated August 2019.
- 1.5.4. After the submission of the application, the following ES addendums were submitted and accepted by the ExA as part of the Examination:

- ES Addendum (14 January 2020) (including updates to Figure 2.2 and Figure 8.1) [[AS-016](#)];
- ES Addendum – Additional Land [[REP4-058](#)];
- ES Addendum – Additional Land – Appendix C Updated Preliminary Ecological Appraisal (updated to incorporate Preliminary Bat Roost Assessment) [[REP6-014](#)];
- ES Addendum (Non-Technical Summary) – Additional Land [[REP5-007](#)];
- ES Addendum – Three span viaduct [[REP4-060](#)]; and
- ES Addendum (Non-Technical Summary) – Three span viaduct [[REP4-061](#)].

1.5.5. The Applicant has certified that s56 and s59 of PA2008 and Regulation 16 of the EIA Regulations have been complied with.

1.5.6. Consideration is given to the adequacy of the ES in Chapter 4 of this Report.

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report has been provided [[APP-124](#)].

1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 6 of this Report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. No agreements or undertakings under s106 of the Town and Country Planning Act were put before the Examination.

1.7.2. Some parties have confirmed that, during the Examination, they have reached private agreements with the Applicant regarding protection of their assets and/or interests. These are referred to, where relevant, in subsequent Chapters of this Report.

1.8. OTHER CONSENTS

1.8.1. The Consents and Agreements Position Statement [[APP-015](#)] has identified the following consents that the Proposed Development will or which may be needed in addition to development consent under PA2008:

- a licence under s10 of the Protection of Badgers Act 1992;
- licences under s16 of the Wildlife and Countryside Act 1981 (WACA 1981) for roosting bats, great crested newts and red squirrels;
- a Water Abstraction Licence under s24 and s25 of the Water Resources Act 1991;
- an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016 for flood risk activities;
- Land Drainage Consent under s23 of the Land Drainage Act 1991;

- waste exemptions for operations such as the import of waste and crushing of aerosols under the Environmental Permitting (England and Wales) Regulations 2016; and
- trade effluent consent under the Water Industry Act 1991.

1.8.2. NE provide a letter of no impediment [[REP7—004](#)] in respect of a licence being sought for common pipistrelle bats as reported in Chapter 5.

1.8.3. In relation to the outstanding consents recorded above, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the Proposed Development, should the SoS be minded to grant development consent.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this Report is as follows:

- **Chapter 1** introduces the reader to the application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of any related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.
- **Chapter 4** sets out the planning issues that arose from the application and during the Examination.
- **Chapter 5** provides a commentary and conclusions in relation to the planning issues
- **Chapter 6** sets out the findings and conclusions in relation to the HRA
- **Chapter 7** sets out the balance of planning considerations arising from Chapters 4, 5 and 6 in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 8** sets out the ExA's examination of CA and TP proposals.
- **Chapter 9** considers the content of the Development Consent Order (DCO) including the implications of the relevant matters arising from the preceding chapters.
- **Chapter 10** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Events.
- **Appendix B** – the Examination Library.
- **Appendix C** – List of Abbreviations.
- **Appendix D** –The Recommended DCO

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

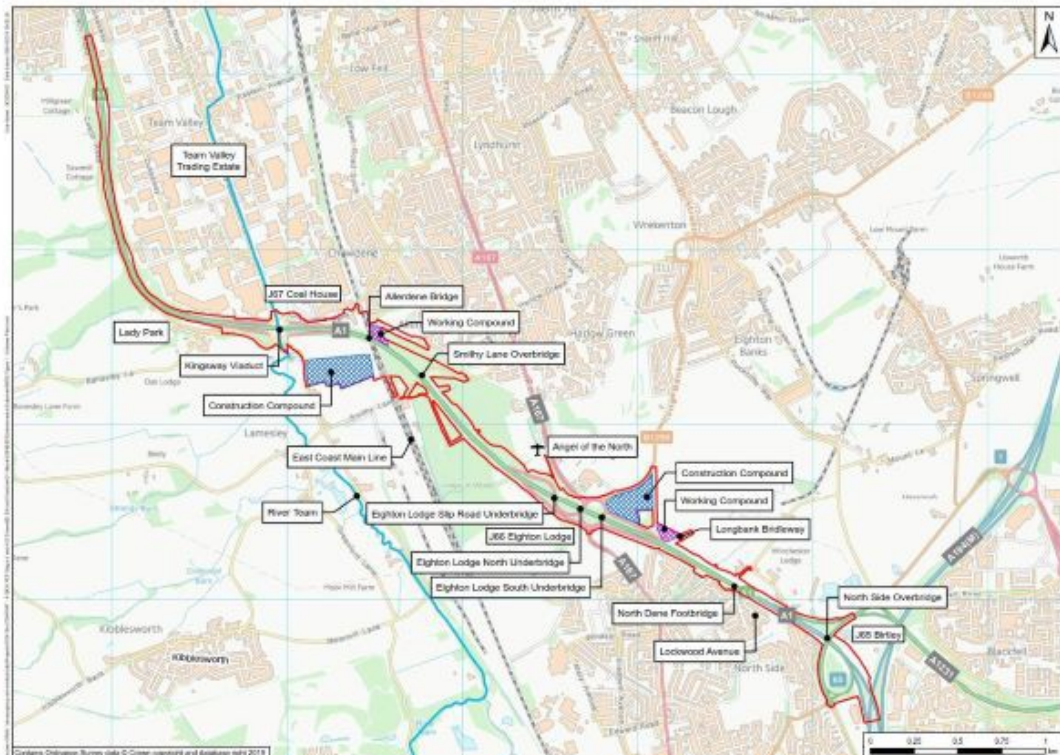
Overview

- 2.1.1. The Applicant submitted an application under s37 of the PA2008 for an order granting development consent for the provision of the proposed A1 Birtley to Coal House Scheme.
- 2.1.2. S2.5 of the ES [[APP-023](#)] provides a full description of the Proposed Development. In summary, it seeks to provide additional road capacity by widening of the southbound carriageway from three to four lanes and widening of the northbound carriageway from two to three lanes (with an additional lane between junctions) between junction 67 (Coal House) and junction 65 (Birtley). It would include changes to signage and road markings on the southbound carriage way between just south of junction 68 (Lobley Hill) and junction 67 (Coal House).
- 2.1.3. The Proposed Development includes a replacement bridge structure where the A1 crosses over the ECML, 40 m to the south of the existing Allerdene Bridge structure, which would tie into the existing carriageways at junction 67 and north of junction 68 (Eighton Lodge). It would also include a replacement North Dene Footbridge located between junction 66 and junction 65 to accommodate the widening of carriageways.

Site location and surrounds

- 2.1.4. The Proposed Development would be located on and adjacent to the A1 between a location just south of junction 68 (Lobley Hill) and junction 65 (Birtley) within the metropolitan borough of Gateshead. The stretch of the A1 subject to the proposed works is approximately 6.5 kilometres (km) in length. The full scheme footprint (the Order Limits) is shown on the Scheme Location Plan [[APP-038](#)]. This includes all the land required to build and operate the Proposed Development, whether required temporarily for construction purposes or on a permanent basis.
- 2.1.5. Figure 1 (below) shows the Applicant's scheme plan, including the location of features such as Allerdene Bridge and the Angel of the North. This is reproduced from page 7 of the ES Non-Technical Summary [[APP-170](#)].

Figure 1 Scheme plan



- 2.1.6. The area around the Order Limits comprises a mixture of land uses including residential, rural, commercial, recreational, open space and urban fringe. Much of the Order Limits and surrounding land is located within the Tyne and Wear Green Belt. The ECML crosses beneath the existing A1 at Allerdene Bridge.
- 2.1.7. The area to the north of junction 67 (Coal House) is characterised by the Team Valley Trading Estate. Ravensworth Conservation Area, containing several listed buildings, is located to the west and north-west of junction 67. This area also includes Lady Park which comprises several residential properties close to the A1. To the east of junction 67 (Coal House) lies the Allerdene Bridge which carries the A1 over the ECML.
- 2.1.8. Longacre Wood Local Wildlife Site (LWS) lies directly to the south of the A1 between junction 67 (Coal House) and junction 68 (Eighton Lodge). Smithy Lane overbridge crosses the A1 just to the north of Longacre Wood. Lamesley Conservation Area (including several listed buildings) is also located to the south of the A1 between junctions 67 and 68 with adjacent areas of agricultural land.
- 2.1.9. The main watercourse within the Order Limits is the River Team running underneath junction 67 (Coal House) and continuing to flow in a northerly direction though the Team Valley Trading Estate.
- 2.1.10. Between junctions 67 (Coal House) and 66 (Eighton Lodge) to the north of the A1 are located the residential areas of Chowdene, Allerdene, Harlow Green and Eighton. Harlow Green Primary School and St Anne's Catholic Primary School are located to the northeast. The Angel of the North sculpture (a non-designated heritage asset) occupies a generally

prominent raised position to the north west of junction 66 (Eighton Lodge). The Angel View Hotel and Eighton Lodge Care Home are located to the north of junction 66.

2.1.11. Bowes Railway, a Scheduled Monument (SM) passes underneath the A1 to the east of junction 66 (Eighton Lodge). The Bowes Railway SM is one of the earliest and area-preserved examples of a rope haulage railway system. The route of the former railway comprises the Longbank Bridleway for most of its length.

2.1.12. The area immediately to the south of the A1 between junction 66 (Eighton Lodge) and junction 65 (Birtley) is generally characterised by suburban residential areas. The nearest residential streets, located adjacent to the A1, include North Dene, Crathie, Lockwood Avenue and Northside. The existing North Dene Footbridge is located adjacent to Crathie, providing foot and cycle access to footpath and lanes to the north. The area to the north of this section of the A1 is more rural in character, though includes a limited number of residential properties, along with the Bowes Incline hotel.

Key elements of the Proposed Development

2.1.13. The key elements of the Proposed Development as originally submitted with the application are set out below.

2.1.14. The Proposed Development primarily consists of widening the existing carriageway between junction 65 (Birtley) and junction 67 (Coal House) to provide additional lanes and capacity. The widening would be mainly online widening, with a short stretch of realignment where the existing A1 crosses the ECML to the east of junction 67.

2.1.15. Through junction 67 (Coal House) and junction 68 (Eighton Lodge) the A1 would be widened from two lanes to three with a lane gain/drop arrangement between the junctions on the northbound carriageway; and from two lanes (and a partial climbing lane) to four on the southbound carriageway.

2.1.16. From junction 66 (Eighton Lodge) the A1 would be widened from two lanes (and a partial climbing lane) to four on the southbound carriageway and from two lanes to three on the northbound carriageway. The proposed slip roads at junction 66 would tie into the existing carriageway so that the current roundabout geometry can be retained.

2.1.17. Between junction 66 (Eighton Lodge) and junction 65 (Birtley) both carriageways would be widened from three lanes to four in total. This widening would maintain the existing southern edge of the highway boundary.

2.1.18. A total of 34 new signs would be installed providing new advanced direction signage along the Proposed Development, comprising 14 gantry mounted and 20 post mounted signs.

- 2.1.19. The existing Allerdene Bridge over the ECML would be demolished and replaced, approximately 40 m to the south of the existing, by a new bridge. To retain flexibility to allow for further analysis to be carried out at the detailed design stage, two design solutions were proposed for the replacement bridge within the DCO application as originally submitted, both of which have been assessed in the ES:
- Allerdene Embankment Option comprising a single span bridge supported by embankments which utilises ground improvements in the form of rigid inclusions; or
 - Allerdene Viaduct Option comprising a multi span viaduct structure (six or seven spans) supported on piled foundations.
- 2.1.20. The Allerdene Embankment Option would require the removal of the existing Allerdene culvert and its replacement with a new culvert structure measuring 116.5 m in length. The Viaduct Option would require the diversion of the existing culvert under one of the bridge spans as an open ditch.
- 2.1.21. The existing Kingsway Viaduct at junction 67 (Coal House) would be widened to accommodate the new highway alignment, extending the sub structure elements and the deck. The overall cross section of the deck would increase from 23.1 m to 30.05 m. The geometry and profile of the new substructure would match that of the existing structure.
- 2.1.22. Three underbridges at junction 66 (Eighton Lodge) would be widened on both sides to accommodate the Proposed Development.
- 2.1.23. The Longbank bridleway underpass (containing the Bowes Railway SM) would be widened at its northern end (the side of the southbound carriageway) to accommodate the highway widening.
- 2.1.24. The existing North Dene Footbridge would be replaced in approximately the same location with a new footbridge structure with improved ramp accessibility.
- 2.1.25. Ten new retaining wall structures would be required to accommodate the widening of the highway. A new noise barrier (approximately 3 m high and 670 m long) would be provided along the highway boundary northwest of Long Bank and in line with the northern end of Lockwood Avenue. The existing noise barrier at Lady Park would be slightly re-positioned at its southern end to avoid conflict with the junction 67 (Coal House) realigned northbound slip road.
- 2.1.26. The application includes the diversion and relocation of existing NGN pipelines near to junction 67 (Coal House). This would include a new above ground installation to the south of the A1 carriageway with a new access road from Lamesley Road.
- 2.1.27. In order to facilitate the construction process, the main construction compound would be located to the south east of junction 67 (Coal House and a second construction compound is proposed to the north of junction 66 (Eighton Lodge). Two further working compounds would also be

required, one to the north east of Allerdene Bridge (to support the demolition of the existing bridge) and the other to the north-west of Longbank bridleway underpass.

- 2.1.28. Table 2-5 of the ES [[APP-023](#)] sets out the proposed timings of the main phases of the construction works which are anticipated to commence in the quarter 1 (Q1) of 2021 and be completed by Q1 2024.

2.2. THE APPLICATION AS EXAMINED

- 2.2.1. Prior to the opening of the Examination, partly in response to s51 advice issued by the Planning Inspectorate following acceptance of the application [[PD-003](#)], the Applicant made several updates to the application documentation. These are detailed in letters from the Applicant [[AS-001](#) & [AS-008](#)] and include the following:

- Land plans [[AS-002](#)];
- Special Category Land Plans [[AS-003](#)];
- Book of Reference (BoR) [[AS-004](#)];
- BoR – Schedule of Changes [[AS-006](#)];
- Works Plan [[AS-011](#)];
- dDCO [[AS-012](#)];
- Statement of Reasons (SoR) [[AS-014](#)];
- ES Addendum [[AS-016](#)] (to reflect new and amended LWS);
- Composite Land and Works Plan [[AS-017](#)].

- 2.2.2. The application was amended during the course of the Examination [[REP4-002](#)] in three ways as outlined below. These changes were accepted as being part of the application and have been examined and reported upon.

Change 1

- 2.2.3. The first change (non-material) introduced further design flexibility for the replacement Allerdene bridge through the introduction of an additional Three Span Viaduct Option within the DCO application. The remaining bridge design options remain as set out in paragraph 2.1.8. above.
- 2.2.4. The Applicant states that the main benefits of this change (in combination with the third change outlined below) would be a reduction in the construction programme by approximately six months and a reduction in construction vehicle movements. This would consequently result in reduced effects on local residents and the local highway network. This further design option would be deliverable within the powers of deviation previously proposed and would not involve any additional land requirements.
- 2.2.5. Each of the resulting Allerdene Bridge design options are proposed to be included in the DCO application to provide flexibility to allow further analysis to be conducted when detailed design is carried out. At the detailed design stage, the preferred option would be identified and taken forward into construction.

- 2.2.6. In response to our ExQ1.0.8 [[PD-008](#)] the Applicant confirmed [[REP2-008](#)] that the final decision on which option to construct is not expected until early 2021, a key consideration being the potential engineering issues with regard to actual construction of the structure. The Applicant states that would follow further ground investigation works which are required to understand the ground conditions and the impact that this would have on the structure and the main contractor's methodology of construction and programme. Flexibility is therefore required to ensure that the option constructed is fully developed, minimises any disruption and provides best value for money with minimal differences in environmental effects identified between the options.
- 2.2.7. The alternative bridge designs, including this additional Three Span Viaduct Option, are contained within Work No.5a of the dDCO [[REP11-028](#)]. Requirement (R) 14 of Part 1, Schedule 2 of the dDCO restricts the undertaker to carrying out either one of the proposed options. R3(10) of the dDCO also includes provision for specific detailed aspects of the bridge design to be submitted for the approval of the SoS in consultation with the planning authority.

Change 2

- 2.2.8. The second change (non-material) provided flexibility for the road layout within the Proposed Development to enable narrower lanes to be provided for a stretch of approximately 750 m between the existing narrow lanes north of junction 67 (Coal House) across junction 67 itself. The Applicant states that the main benefits of this change would be a significant reduction in construction work due to the reduction or removal of realignment works at junction 67 and the potential for improved driver behaviour and compliance with mandatory speed limits.

Change 3

- 2.2.9. The third change, representing a material change, involves the inclusion of additional land at junction 67 (Coal House) for an extension to the previously proposed main site construction compound, to be used for material stockpiling. As the land the subject of this change is located outside the Order Limits as originally submitted, the Applicant has proposed that powers of TP are extended to the land during the construction of the Proposed Development. The Applicant states that the main benefit of this change is that it would reduce the overall construction duration by up to six months (in combination with the first change) for the proposed earth embankment for the replacement Allerdene Bridge. This would result in corresponding benefits arising from the shorter construction period including for residents and the local highway network.
- 2.2.10. The revised and additional documents accompanying the proposed changes are as follows:
- Location Plan [[REP4-004](#)];
 - Land Plans [[REP4-005](#)];
 - Works Plans [[REP4-006](#)];

- Streets, Rights of Way and Access Plans [[REP4-007](#)];
- Engineering Drawings and Sections [[REP4-008](#)];
- General Arrangement Plans [[REP4-009](#)];
- Structures Engineering Drawings and Sections [[REP4-010](#)];
- Special Category Land Plans [[REP4-011](#)];
- dDCO [[REP4-012](#)];
- Explanatory Memorandum (EM) [[REP4-014](#)];
- SoR [[REP4-016](#)];
- BoR [[REP4-017](#)];
- BoR Schedule of Changes [[REP4-019](#)];
- Planning Statement [[REP4-020](#)];
- Addendum to Transport Assessment Report (TAR) [[REP4-056](#)];
- Addendum to ES – Additional Land [[REP4-058](#)];
- Addendum to ES – Additional Land Non-Technical Summary [[REP4-059](#)];
- Addendum to ES – Three span viaduct [[REP4-060](#)];
- Addendum to ES – Three span viaduct Non-Technical Summary [[REP4-061](#)]

2.2.11. The first and third changes as outlined above were subject to consultation by the Applicant before being accepted into the Examination. IPs were also provided with the opportunity to make representations on all the changes during the Examination and make oral representations at hearings as set out in paragraphs 1.4.18 to 1.4.21.

2.2.12. To address matters raised in WQs, WRs and discussions at hearings, the Applicant amended the dDCO and Outline Construction Environmental Management Plan (CEMP) on several occasions. The final version of the dDCO was submitted at DL11 [[REP11-028](#)]. The final version of the outline CEMP was also submitted at DL11 [[REP11-012](#)].

2.3. RELEVANT PLANNING HISTORY INCLUDING OTHER STRATEGIC PROJECTS AND PROPOSALS

2.3.1. A DCO was made by the SoS in September 2018 for the A19/A184 Testo's Junction Alteration. This comprises the replacement of the existing at-grade roundabout junction between the A185 and the A19 (Testo's Junction) with a grade separated junction, located approximately 10 km to the east of the A1 Birtley to Coal House Order Limits. Construction has commenced and is anticipated to be open for traffic by July 2021.

2.3.2. A DCO was made by the SoS in July 2020 for the A19 Downhill Lane Junction Scheme (located just to the south of the A19/A184 Testo's Junction Alteration). This comprises the construction of a new bridge spanning the A19 south of the existing junction bridge. The new bridge and the existing bridge will be used to form a grade separated roundabout junction layout above the A19. This scheme is anticipated to commence construction in December 2020 and be open for traffic by July 2022.

- 2.3.3. Two further schemes are proposed for the A1. The A1 Scotswood to Brunton Improvement Scheme is proposed to upgrade the A1 between junction 74 (Scottswood) and junction 79 (North Brunton). This would be located approximately 6 km to the north of the A1 Birtley to Coal House Order Limits. The A1 Northumberland: Morpeth to Felton Scheme is proposed to upgrade the A1 to a dual carriageway from Morpeth to Felton, including three new junctions with bridges over the A1. It would be located approximately 25 km to the north of the A1 Birtley to Coal House Order Limits. This is included within the application for a DCO (including a further scheme to the north from Alnwick to Ellingham) which was accepted for Examination by the Planning Inspectorate in August 2020.
- 2.3.4. A list of other major developments (either proposed or under construction) in the vicinity of the Proposed Development are set out in Appendix 15.2 of the ES [[APP-168](#)].

3. LEGAL AND POLICY CONTEXT

3.1. THE PLANNING ACT 2008

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

3.1.2. S104(3) of PA2008 requires that the SoS must decide an application for development consent in accordance with any relevant NPS, except to the extent that the SoS is satisfied that, in summary doing so:

- would lead to the United Kingdom (UK) being in breach of its international obligations;
- would lead to the SoS being in breach of any duty imposed on him under any enactment;
- would be unlawful under any enactment;
- the adverse impact of the proposed development would outweigh its benefits; or
- fail to comply with any prescribed condition for deciding the application otherwise than in accordance with the NPS.

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

- Any relevant NPSs;
- Any LIR;
- Certain prescribed matters (which in respect of this application are referred to in s3.4); and
- any other matters the SoS considers are both important and relevant to the decision.

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

3.2. NATIONAL POLICY STATEMENT

Policy Background

3.2.1. The National Networks National Policy Statement (NNNPS) has been designated as the NPS for roads for which the Secretary of State for Transport (SoST) is the highway authority and remains in force. It is relevant to this application because the Proposed Development comprises the construction and alteration of a highway where the speed limit for any class of vehicle is expected to be 50 mph or greater, the area of development exceeds 12.5 ha and Highways England is the highway

authority. The Proposed Development is therefore a NSIP, and the NPS provides the primary basis for decisions by the SoS.

- 3.2.2. The NNNPS sets out the need for and Government's policies to deliver development of NSIPs on the national road network in England. It states that the Government has concluded that at a strategic level there is a compelling need for the development of the national road network. It makes clear that subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for national network NSIPs that fall within the need for infrastructure established in the NNNPS.
- 3.2.3. The NNNPS also provides planning guidance for such projects and the basis for the Examination by the ExA and decisions by the SoS, covering a range of relevant topics. Individual policy requirements and tests arising from the NNNPS are addressed in Chapters 4 and 5 of this Report.

3.3. EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union

- 3.3.1. The UK left the European Union (EU) as a member state on 31 January 2020. The European Union (Withdrawal Agreement) Act of January 2020 gives effect to the transition arrangements until the 31 December 2020. This provides for EU law to be retained as UK law and also to bring into effect obligations which may come in to force during the transition period.
- 3.3.2. This Report has been prepared on the basis of the retained law and references in it to European terms such as Habitats have also been retained for consistency with the examination documents. It will be a matter for the SoS to satisfy itself as to the position on retained law and obligations at the point of decision.

The Habitats Directive

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

The Birds Directive

- 3.3.5. The Birds Directive (2009/147/EC) is a comprehensive scheme of protection for all wild bird species naturally occurring in the EU. It requires classification of areas as Special Protection Areas (SPAs)

comprising all the most suitable territories for these species. All SPAs form part of the Natura 2000 ecological network.

The Habitats Regulations

- 3.3.6. The Conservation of Habitats and Species Regulations 2017 are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Assessment processes taking place pursuant to these regulations are referred to as HRA.
- 3.3.7. These directives and regulations are relevant to this application in view of the presence of Northumbria Coast SPA, Northumbria Coast Ramsar, and Durham Coast SAC adjacent to the Proposed Development [[APP-124](#)]. Chapter 6 of this Report gives further detailed consideration to these matters.

The Water Framework Directive

- 3.3.8. Directive 2000/60/EC established a framework for community action in the field of water policy (the Water Framework Directive or WFD) which includes objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. It provides for the production of River Basin Management Plans to provide for the sustainable management of rivers.
- 3.3.9. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.
- 3.3.10. The WFD is relevant to the application as the Proposed Development crosses the River Team which is classed as a main river by the EA. It also crosses the Allerdene Burn, an ordinary watercourse that discharges to the River Team. The Proposed Development is located within the Tyne Carboniferous Limestone and Coal Measures Groundwater Catchment.

The Air Quality Directive

- 3.3.11. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe entered into force on 11 June 2008. It sets limit values (LV) for compliance and establishes control actions where the LV are exceeded for ambient air quality with respect to sulphur dioxide (SO₂), nitrogen dioxide (NO₂) and mono-nitrogen oxides (NO_x), particulate matter (PM₁₀ and PM_{2.5}), lead, benzene and carbon monoxide. The Air Quality Standards Regulations 2010 give direct statutory effect to the Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.

The UK Air Quality Strategy

- 3.3.12. The UK Air Quality Strategy establishes the UK framework for air quality improvements. The UK Air Quality Strategy establishes a long-term vision for improving air quality in the UK and offers options to reduce the

risk to health and the environment from air pollution. Individual plans prepared beneath its framework provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and more localised Air Quality Management Areas (AQMA) where Air Quality Management Plans are prepared by local authorities.

- 3.3.13. The Proposed Development is not located within an AQMA, nor do any of the routes within the affected road network (ARN) lie within an AQMA. The nearest AQMAs are situated over 3 km to the east of the Study Area.

3.4. OTHER RELEVANT LEGAL PROVISIONS

United Nations Environmental Programme Convention on Biological Diversity 1992

- 3.4.1. Responsibility for the UK contribution to the United Nations Environment Programme (UNEP) Convention on Biological Diversity lies with the Department for Environment Food and Rural Affairs (DEFRA) who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.4.2. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the UNEP Convention on Biological Diversity 1992 has been taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The provisions on EIA and transboundary matters with regard to impacts on biodiversity referred to in this Chapter, satisfies the requirements of Article 14 of the Convention (Impact Assessment and Minimizing Adverse Impacts).
- 3.4.3. This is of relevance to the biodiversity and ecological considerations and landscape and visual impacts which are discussed in Chapter 4 of this Report.

The Wildlife and Countryside Act 1981

- 3.4.4. The WACA 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. It provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). In England, these sites are identified for their flora, fauna, geological or physiographical interest by NE. WACA1981 contains measures for the protection and management of SSSIs.
- 3.4.5. The WACA 1981 is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV containing miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence will be required from NE.

- 3.4.6. The Act is relevant to the application in view of the sites and species identified in the Chapter 8 (Biodiversity) of the ES [[APP-029](#)]. Relevant considerations pursuant to this are discussed in Chapter 5 of this Report.

Natural Environment and Rural Communities Act 2006

- 3.4.7. This Act makes provision for bodies concerned with the natural environment and rural communities, including in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions have regard, so far as it consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with the biodiversity duty, regard must be had to the UNEP Convention on Biological Diversity.
- 3.4.8. The ExA has had regard to this Act and the biodiversity duty in Chapters 5 and 6 of this Report.

Noise Policy Statement for England

- 3.4.9. The Noise Policy Statement for England (NPSE) clarifies the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise.
- 3.4.10. The Explanatory Note within the NPSE provides guidance on defining 'significant adverse effects' and 'adverse effects'. One such concept identifies '*Lowest Observed Adverse Effect Level (LOAEL)*' which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: '*Significant Observed Adverse Effect Level*' (SOAEL), which is the level above which significant adverse effects on health and quality of life occur, and '*No Observed Effect Level*' (NOEL) which is the level below which no effect can be detected.
- 3.4.11. When assessing the effects of development on noise, the aim should firstly be to avoid noise levels above the SOEAL, and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

Climate Change

- 3.4.12. S10(3)(a) of PA2008 requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. This duty has been addressed throughout Chapter 5 of this Report. The Climate Change Act 2008 (CCA2008) also established statutory climate change projections.
- 3.4.13. The CCA2008 (as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (the 2019 Order) establishes a long-term framework to tackle climate change. A key provision is the setting of legally binding targets for greenhouse gas emission reductions in the UK of at least 100% by 2050 and at least 26% by 2020, against a 1990 baseline.

The Public Sector Equality Duty (PSED)

- 3.4.14. The Equalities Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making.

The Historic Environment

- 3.4.15. Regulation 3 of the Infrastructure Planning (Decisions) Regulation 2010 sets out the obligations on the decision maker when deciding applications for development consent affecting listed buildings (or their settings), conservation areas or SMs (or their setting). We have had regard to the following:
- The desirability of preserving an effected listed building or its setting or any features of special architectural or historic interest which it possesses;
 - The desirability of preserving or enhancing the character or appearance of a conservation area; and
 - The desirability of preserving an affected SM or its setting.

Human Rights Act 1998

- 3.4.16. The CA of land can engage various relevant Articles under the Human Rights Act 1998. The implications of this are considered later in Chapter 8 of this Report.

Other Environmental Legislation

- 3.4.17. The following additional legislation contains relevant provisions that must be met and are considered:
- Protection of Badgers Act 1992;
 - Water Resources Act 1991;
 - The Environment Act 1995;
 - The Water Resources (Abstraction and Impounding) Regulations 2006;
 - Environmental Permitting (England and Wales) Regulations 2016;
 - Pollution Prevention and Control Act 1999;
 - Land Drainage Act 1991; and
 - Water Industry Act 1991.

3.5. MADE DEVELOPMENT CONSENT ORDERS

- 3.5.1. The dDCO includes wording derived from other made DCOs as explained in the EM [[REP11-006](#)]. These include:
- the A19/A1058 Coast Road (Junction Improvement) Order 2016;
 - the A19/A184 Testo's Junction Alteration Order 2018;
 - the A14 Cambridge to Huntingdon Improvement Order 2016;

- the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016; and
- the Silvertown Tunnel Order 2018;

3.5.2. The ExA has taken all these Orders and precedent development approvals into account on their considerations.

3.6. TRANSBOUNDARY EFFECTS

3.6.1. The project is of local and regional impact. A transboundary screening under Regulation 32 of the 2017 EIA Regulations was undertaken on behalf of the SoS on 4 April 2018 following the Applicant's request for an EIA Scoping Opinion. Re-screening taking account of any changes since the previous screening was undertaken on 3 October 2019 [[OD-001](#)]. No significant affects were identified which could impact on another European Economic Area (EEA) member state in terms of extent, magnitude, probability, duration, frequency or reversibility.

3.6.2. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. No mechanisms whereby any conceivable transboundary effects could occur emerged.

3.7. OTHER RELEVANT POLICY STATEMENTS

3.7.1. The other policies² that give rise to important and relevant considerations for the SoS include the following:

National policies

- NNNPS 2015;
- National Planning Policy Framework (NPPF) 2019;
- Road Investment Strategy (RIS) 2015 – 2020;
- Highways England Delivery Plan 2015 – 2020; and
- National Infrastructure Delivery Plan (NIDP) 2016 – 2022.

Regional policies

- North East Strategic Economic Plan (2019);
- Tyne and Wear Local Transport Plan (2011 to 2021); and
- North East Combined Authority Regional Transport Plan.

Local policies

- Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2015;
- Gateshead Unitary Development Plan (UDP) (2007) saved policies;
- Draft Making Spaces for Growing Places (MSGP) (Submission Draft Plan) (2018); and
- Sunderland Core Strategy and Development Plan (2015 – 2033).

² List includes policies raised and referred to by the Applicant in 7.1 Planning Statement [APP171]

3.8. THE NATIONAL PLANNING POLICY FRAMEWORK

- 3.8.1. The NPPF (February 2019) and its accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied, for the purposes of making Development Plans and deciding applications for planning permission and related determinations under the Town and Country Planning Act 1990 (as amended) (TCPA1990). Paragraph 5 of the NPPF makes it clear that it does not contain specific policies for NSIP decision-making as these are determined in accordance with the decision-making framework in the PA2008 as well as relevant NPSs and any other matters which are relevant, which may include the NPPF.
- 3.8.2. Paragraphs 1.17 to 1.20 of the NNNPS further describe the relationship between the NPPF and the NNNPS. In summary, these paragraphs provide:
- The NPPF may be an important and relevant consideration in decisions on NSIPs, but only to the extent relevant to a particular project;
 - The NPPF is not intended to contain specific policies for individual NSIPs where particular considerations can apply. The NNNPS performs that function;
 - The NPPF provides a framework within which responses to individual project effects can be considered, but that in relation to particular tests or standards to be met, these are normally derived from the NNNPS.
- 3.8.3. Although the NPPF has been revised twice (July 2018 and February 2019) since the NNNPS was published (December 2014), the ExA has concluded that NNNPS paragraphs 1.17 to 1.20 remain as a complete statement of the relationship between the two documents.
- 3.8.4. NPPF policies have been considered in respect of all planning issues addressed in Chapter 4. They are drawn out there only where they identify different or additional considerations from those arising from the NNNPS.

3.9. LOCAL IMPACT REPORTS

- 3.9.1. LIRs have been received from the following relevant local authorities:
- Gateshead Council [[REP2-075](#)]
- 3.9.2. The issues raised within it are summarised in Chapter 4 and considered in further details in relevant planning issue sections of Chapter 5.

3.10. THE DEVELOPMENT PLAN

- 3.10.1. In its LIR Gateshead Council stated that the current development plan for Gateshead comprises the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010 – 2030 (Adopted 2015) together with saved polices of the Gateshead UDP 2007 [[REP2-075](#)].

- 3.10.2. The Core Strategy and Urban Core Plan form Parts 1 and 2 of the Local Plan and will be supplemented in due course by MSGP which will form Part 3 of the Local Plan.
- 3.10.3. Gateshead Council has a number of supplementary planning documents (SPDs) that provide further guidance on specific matters and are considered capable of being material considerations in planning decisions. Of relevance to the Proposed Development is the Gateshead Placemaking SPD.
- 3.10.4. Gateshead Council listed the Core Strategy and Urban Core Plan, and saved policies relevant to the Proposed Development in Chapter 4 of its LIR as:
- CS5: employment and economic growth opportunities;
 - CS8: leisure, culture and tourism;
 - CS9: existing communities;
 - CS14: wellbeing and health;
 - CS15: place making;
 - CS16: climate change;
 - CS17: flood risk and water management;
 - CS18: green infrastructure and the natural environment;
 - CS19: Green Belt;
 - DC1: constructing new development;
 - DC2: residential amenity;
 - ENV44: and;
 - ENV47: trees and wildlife habitats;
 - ENV51: wildlife corridors;
 - ENV61: noise; and
 - CFR26: natural greenspace.
- 3.10.5. Individual policies are referred to as required in Chapters 4 and 5 of this Report.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

- 4.1.1. The ExA made an IAPI based on the application documents and the RRs. In accordance with s88 of PA2008 and Rule 5 of the EPR. This was done within 21 days of the day after the receipt of the s58 certificate of compliance with s56(a) of the PA2008 provided by the Applicant. The assessment was published with the Rule 6 letter on 10 December 2019 [[PD-005](#)]. The issues are not in any implied order of importance. They are as follows:
- Air quality and emissions;
 - Biodiversity, ecology and the natural environment;
 - CA and TP;
 - dDCO;
 - Economic and social effects;
 - Historic environment;
 - Landscape and visual effects;
 - Noise and vibration;
 - Other projects and proposals;
 - Planning policy (including Green Belt considerations);
 - Traffic and transport; and
 - Water environment.
- 4.1.2. The IAPI was raised at the PM [[EV-001a](#) and [EV-002](#)]. No comments were made by any of the participants on this list of issues.
- 4.1.3. The Rule 6 letter also noted that whilst the effects of the Proposed Development on (i) the achievement of sustainable development including the mitigation of, and adoption to, climate change and (ii) in relation to human rights and equalities duties, are not listed as specific Principal Issues, the ExA will conduct all aspects of the Examination with these objectives in mind.
- 4.1.4. Following the ExA's decision to accept the Applicant's proposal to amend the application and include additional land, and the subsequent receipt and consideration of further RRs [RR-025 to RR-031], the ExA confirmed in the Rule 8(3) letter [[PD-028](#)] that the Principal Issues remained as set out in the Rule 6 letter.
- 4.1.5. The IAPI provided a general structure for the ExA's WQs and informed the selection of topics for oral Hearings. The only exception being that matters of other projects and proposals and planning policy were considered within the other specific issues where appropriate. The structure of this Report has been broadly arranged on this basis. The order of topics has been amended to reflect the relationship between topics.

4.2. ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS

- 4.2.1. The key events in the Examination are summarised in Chapter 1 and set out more fully in Appendix A. In total there were thirty-one RRs, one LIR from Gateshead Council, eight SoCG and a number of other written submissions at the eleven deadlines within the Examination timetable.
- 4.2.2. Broadly speaking, all of the issues raised fell within the IAPI set out above and the ExA go on to consider them further in Chapter 5 of this Report.

4.3. ISSUES ARISING IN LOCAL IMPACT REPORT

- 4.3.1. The principal matters raised in the LIR submitted by Gateshead Council [[REP2-075](#)] relate to:
- In principal support for the Proposed Development.
 - Neutral impact for air quality.
 - Neutral impact for noise and vibration.
 - Negative impact for biodiversity, ecology and natural environment including from overall loss of woodland, unsuitable replacement for lost grassland, lack of compensation for direct/permanent loss of non-priority habitats.
 - For archaeology and cultural heritage significant harm to the significance of the Angel of the North as a non-designated heritage asset, neutral for other impacts.
 - Adverse visual effects for users of the A1 viewing the Angel of the North due to obstruction of views by new overhead structures.
 - Adverse medium-term landscape impacts from the loss of roadside vegetation.
 - Impact upon flood risk and water quality of the proposed drainage scheme would be neutral if the scheme is amended to include more naturalised design of watercourse realignments, inlet and outlet features and the drainage basin. If not, the impact would be slight adverse.
 - Neutral impact for ground conditions.
 - Positive impact for transport and traffic including from improved traffic flow, reduction in congestion, improved road safety and benefits of replacement Allerdene Bridge.
 - The existing A1 represents a barrier to pedestrian and cycle movement and the scheme represents an opportunity to overcome this wherever possible.
 - Concerns regarding climate emergency are acknowledged but they do not outweigh the need for the improvements.
- 4.3.2. The LIR concludes that the delivery of improvement works has been an ambition for a number of years. There has been congestion at this key part of the A1 and the Proposed Development will provide a means to relieve congestion by providing additional traffic capacity and improve the free flow of traffic on the A1. The construction of the highway improvement works inevitably has impacts on the local landscape, key

landmarks, ecology and amenities in terms of noise, air quality and traffic movement.

- 4.3.3. The ExA has had regard to the issues raised in the LIR, along with the other matters raised, throughout the Examination and in the relevant Chapters of this Report.

4.4. CONFORMITY WITH THE NATIONAL POLICY STATEMENT

- 4.4.1. The NNNPS includes the following statements regarding the general need for development of the national networks:

- *"Well-connected and high-performing networks with sufficient capacity are vital to meet the country's long-term needs and support for a prosperous economy."* (paragraph 2.1).
- *"There is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth."* (paragraph 2.2).
- *"Whilst advances in mobile technology are important and will influence travel demand, it is difficult to predict by how much. It is expected that technology, both from better information and data, and in vehicles (e.g. autonomous cars) to have a significant effect on how the network performs. However, we do not expect this to remove the need for development of the networks. In recent years advances in mobile IT, teleconferencing, email, the internet and social media have occurred alongside growth in travel demand on the national networks."* (paragraph 2.5).
- *"There is also a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas."* (paragraph 2.6).
- *"The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The Examining Authority and the Secretary of State should therefore start their assessment of applications for infrastructure covered by this NPS on that basis."* (paragraph 2.10).

- 4.4.2. The NNNPS then goes on to comment on the specific need for development of the national road network. Paragraph 2.13 emphasises that a well-functioning strategic road network is critical in enabling safe and reliable journeys and the movement of goods in support of the national and regional economies. Ways in which traffic congestion constrains the economy and impacts negatively on quality of life include (paragraph 2.16):

- Constraining existing economic activity by increasing costs to businesses damaging their competitiveness;
- A deterioration in the experience of road users, including frustration, stress and inconvenience;

- Constraining job opportunities as workers have more difficulty accessing labour markets; and
 - Causing more environmental problems, with more emissions per vehicle and greater problems of blight and intrusion for people nearby.
- 4.4.3. Paragraph 2.18 states that the pressure on the road network is forecast to increase with economic growth, substantial increases in population and a fall in the cost of car travel from fuel efficiency improvements.
- 4.4.4. Table 1 of the NNNPS sets out options for addressing need, comprising maintenance and asset management, demand management and modal shift. However, it is recognised that maintenance and asset management will not enhance safety, tackle pressure on the network or unlock economic development. Demand management measures can make more efficient use of capacity while modal shift, which aims to encourage sustainable transport modes, may not be suitable given the nature of some journeys on the strategic road network.
- 4.4.5. Paragraph 2.22 notes that without improving the road network it will be difficult to support further economic development and economic growth. Consequently, at a strategic level there is a compelling need for development of the national road network. Paragraph 2.24 goes on to state the Government's policy on development of the strategic road network is not that of predicting traffic growth and then providing for that growth regardless. Individual schemes will be brought forward to tackle specific issues rather than to meet unconstrained traffic growth.
- 4.4.6. S5 of the Applicant's Planning Statement [[REP4-020](#)] includes consideration of the Proposed Development against the NNNPS, concluding (paragraph 5.2.11) that it has been developed to be in conformity with the NNNPS. The Applicant has also provided a NNNPS Accordance Table [[REP11-010](#)] which provides a high level assessment of the Proposed Development's strategic alignment and conformity with the policies within the NNNPS.
- 4.4.7. The vast majority of IP's, including Gateshead Council and SCC expressed their support in principle for the Proposed Development and did not raise any objections in terms of high-level conformity with the NNNPS. The only representations made against the general principle of the Proposed Development were made by Gateshead Green Party [[REP1-010](#) and [REP9-027](#)] which stated, in summary, that pursuing the Proposed Development would be in conflict with the UK's need to address climate change and that the money spent should be re-directed to 'green' initiatives. The ExA has considered these representations further in Chapter 5 of this Report.
- 4.4.8. The ExA is satisfied that the Proposed Development generally conforms with the high-level policy within the NNNPS. The compliance of the Proposed Development has been examined against specific NNNPS policy details and tests applicable to individual planning issues as set out in the Chapter 5 of this Report.

4.5. CONSIDERATION OF ALTERNATIVES

4.5.1. Paragraphs 4.26 and 4.27 of the NNNPS deal with the assessment of alternatives. Paragraph 4.26 states the following:

"The EIA Directive requires projects with significant environmental effects to include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects. ..."

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

Applicant's Approach

4.5.3. Schedule 4 of the EIA Regulations requires an ES to provide *"A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects"*.

4.5.4. The Applicant's consideration of alternatives is set out in the ES in Chapter 3: Alternatives [[APP-024](#)]. This outlines the main alternatives studied and how the environmental effects of options have been taken into account. It includes the process for assessing options and arriving at the preferred scheme.

4.5.5. The Applicant's feasibility study considered nine full length options, ranging from full widening to a technology only scheme, in addition to three shorter congestion relief options. This led to the definition of the scope of work for improvement to the A1 as announced in the Government's RIS in December 2014, which was progressed to the Options Identification Stage.

4.5.6. At the Option Identification Stage three options were identified within the existing A1 corridor between junction 65 (Birtley) and junction 67 (Coal House). The three options each had the same alignment and cross section at junction 66 (Eighton Lodge) and junction 65 (Birtley). The main difference between the options was the approach to replacing Allerdene Bridge, either in the existing footprint or to the south of the existing structure. At the Option Selection Stage two options were shortlisted and taken to non-statutory public consultation in autumn 2016. These were:

- Option 1a (Offline replacement of Allerdene Bridge) – Allerdene Bridge would be reconstructed south of its current location, improving the existing road alignment and improving safety; and
- Option 1b (Online replacement of Allerdene Bridge) - Allerdene Bridge would be replaced in its current location. This would require a temporary bridge to be constructed to carry traffic over the A1 while the new bridge is constructed. This option would be more complex to construct requiring more traffic management and a longer construction period.

4.5.7. Following further engineering, economic and environmental evaluation, the Applicant decided that Option 1a should be pursued. The main reasons being as follows:

- It is the most cost-effective option, providing similar or greater benefits to other options, but at lower cost;
- The non-statutory public consultation identified that 73% of respondents preferred Option 1a;
- It has a shorter construction period resulting in potentially less disruption;
- There would be less risk to the construction programme as the demolition of the existing Allerdene Bridge is not on the critical path;
- It offers less constraints for the construction of Allerdene Bridge resulting in improved buildability;
- Reduced temporary works complexities;
- It offers improved geometrical alignment; and
- The option is generally better in respect of driver stress as the speed/lane restrictions would be significantly less than Option 1b during construction.

4.5.8. In environmental terms, other than the potential construction related benefits, the key difference identified by the Applicant was that Option 1A would result in the likelihood of moderate adverse landscape effects, whilst Option 1B would result in slight adverse environmental effects.

4.5.9. The specific legal requirements have been addressed through the HRA and the WFD Assessment contained in the application documents. The sequential test for flood risk is included in the Flood Risk Assessment (FRA).

Issues Arising During the Examination

4.5.10. No significant issues relating to the Applicant’s consideration of alternatives in arriving at the final details of the Proposed Development as submitted with the application arose during the Examination.

Conclusion

4.5.11. In accordance with paragraph 4.26 of the NNNPS the Applicant has included within the ES an outline of the main alternatives studied and provided an indication of the main reasons for choice of the preferred route, taking into account the environmental effects.

- 4.5.12. In accordance with paragraph 4.27 of the NNNPS, we are satisfied that this project has been subject to a full options appraisal in achieving its status within the RIS, and that proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process.
- 4.5.13. Taking all these matters into account, we are satisfied that matters concerning the consideration of alternatives does not weigh against the Order being made.

4.6. CONFORMITY WITH THE DEVELOPMENT PLANS

Gateshead Council

- 4.6.1. S5.3 of the Applicant's Planning Statement [[REP4-020](#)] sets out its case in terms of the Proposed Development's conformity with the relevant development plans. Gateshead Council's current development plan comprises the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010 to 2030 (Adopted 2015) together with the saved policies of the Gateshead UDP 2007 (UDP).
- 4.6.2. The Applicant concludes that the Proposed Development is in conformity with the Core Strategy and Urban Core Plan in bringing forward one of two key transport infrastructure schemes that are said to be fundamental to the delivery of the Development Plan's spatial strategy. This is considered by the Plan as important not only to improving connectivity on the strategic road network, but in particular to relieving congestions on the A1.
- 4.6.3. The Applicant states that the UDP saved policies do not contain any policies directly relevant to the Proposed Development although there are a number of development management policies that may be relevant, such as in relation to the need to investigate archaeological remains, which are taken into account in the relevant chapters of the ES.
- 4.6.4. S5.4 of the Planning Statement provides an assessment against Green Belt policies and objectives which is considered below in section 5.7 of this Report.
- 4.6.5. Although not currently part of the Development Plan, the Applicant has also assessed the conformity of the Proposed Development against the Submission Draft of the MSGP document that is intended to form Part 3 of Gateshead's Local Plan. It concludes that the Proposed Development is in conformity with the Submission Draft MSGP in that it brings forward one of its key infrastructure proposals, using land identified in MSGP 18.5 as a safeguard site for the "A1 Birley to Coal House" transport improvement. The relevant chapters of the ES also take account of other development management policies within the Submission Draft MSGP.
- 4.6.6. In its LIR [[REP2-075](#)], Gateshead Council suggested that following the submission of the MSGP for examination in 2019, the Council expects a decision on the MSGP in Spring/Summer 2020. However, by the end of the Examination no further update had been provided on its progress

towards potential adoption. We understand that the proposed main modifications to the plan have been recently subject to consultation up until 18 September 2020. We recommend that the SoS considers requesting further details of the latest status of this emerging policy document and any subsequent implications for the consideration of the Proposed Development.

4.6.7. Gateshead Council's LIR (paragraph 5.47) states that the value of the Proposed Development to the transport network is recognised in Policy CS13 of its Core Strategy. Gateshead Council [[AS-007](#)] has also drawn attention to the Proposed Development being particularly important in replacing the existing A1 bridge over the ECML (Allerdene Bridge), the deterioration of which poses a threat to the integrity of this important strategic route.

4.6.8. Where Gateshead Council have identified potential conflict with a Development Plan policy this is discussed in the relevant section of Chapter 5 of this Report.

Sunderland City Council

4.6.9. At junction 65 (Birtley) the Proposed Development is adjacent to the boundary with SCC. The Applicant concludes that the Proposed Development does not have any direct effect on any of SCC's land and therefore there is no conflict with its Core Strategy and Development Plan's (2015-2033) land allocations. It also states that the Proposed Development would help to improve connectivity to and from the A194(M) supporting Sunderland City's Core Strategy Priority 5, Economic Growth and Strategic Policy SP1. Furthermore, the Applicant concludes that the Proposed Development would not be relevant for any of saved policies of the City of Sunderland UDP 1998.

4.7. ENVIRONMENTAL IMPACT ASSESSMENT

Introduction

4.7.1. As recorded in Chapter 1, the application is for EIA development. This section sets out the documents comprised within the ES. It also sets out the environmental management documents which the Applicant proposes would govern the construction and operation of the Proposed Development. These documents, together with the Requirements of the DCO are intended to secure the delivery of management and mitigation measures within the worst-case parameters assessed in the ES.

The Submitted ES

4.7.2. An ES was submitted with the application. The documents within it can be summarised as follows:

- ES Chapters 1 to 16 [[APP-021](#) to [APP-037](#)];
- ES Figures [[APP-038](#) to [APP-102](#)];
- ES Appendices [[APP-103](#) to [APP-169](#)]; and
- ES Non-Technical Summary [[APP-170](#)].

Addendums to the ES

4.7.3. Following the submissions and acceptance of the application, amendments were made to the ES comprising the following documents, which include those relating the Applicant's amendments to the application:

- Addendum to Volume 1 of the ES [[AS-016](#)];
- ES Addendum: Additional Land [[REP4-058](#)];
- ES Addendum: Additional Land - Non-Technical Summary (Rev 1) [[REP5-007](#)];
- ES Addendum: Allerdene Three Span Viaduct Option [[REP4-060](#)];
- ES Addendum: Allerdene Three Span Viaduct Option – Non-Technical Summary [[REP4-061](#)];
- ES Addendum: Additional Land – Appendix C Update Preliminary; Ecological Appraisal: Updated to Incorporate Preliminary Bat Roost Assessment [[REP6-014](#)]; and
- ES Addendum: Appendix 8.9 Breeding Bird Report [[REP9-019](#)].

Environmental Management Documents

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

- Outline CEMP [[REP11-012](#)];
- Environmental Masterplan [[APP-041](#)]; and
- Landscape Mitigation Design [[APP-061](#)].

4.7.5. The outline CEMP was subject to discussion and development during the Examination. The version referred to here is the final version submitted at the end of the Examination. It is also a certified document in Schedule 12 of the Applicant's preferred DCO [[REP11-028](#)].

4.7.6. S3 of the outline CEMP includes a Register of Environmental Actions and Commitments (REAC) which within Table 3-1 identify the commitments in the REAC which impose requirements on the design, construction and operation of the Proposed Development. The appendices of the outline CEMP contain a Construction Traffic Management Plan (CTMP) (Appendix B) and the Outline Written Scheme of Investigation (WSI).

4.7.7. R4 of the Applicant's preferred DCO provides that the authorised development (other than site clearance works which are the subject of a separate Requirement) is not commenced until a CEMP, substantially in accordance with the outline CEMP, for that part has been submitted to and approved in writing by the SoS, following consultation with the relevant planning authority, the EA and HE to the extent that it relates to matters relevant to its function.

4.7.8. This Requirement also provides that the CEMP to be submitted for approval must include the following management plans:

- Communication Plan;
- CTMP;
- Landscape Management Plan;

- Ecological Management Plan including the Invasive Non-Native Species Management Plan and Riparian Protection Management Plan;
- Soil Handling Strategy;
- Minerals Management Plan;
- Site Waste Management Plan;
- Water Management Plan including the Temporary Surface Water Drainage Strategy; and
- Any other specific management plan identified during subsequent stages of the authorised development.

4.7.9. The construction of the authorised development must be carried out in accordance with the approved CEMP (or such amendments to it that have been approved in writing). R4 also provides for a Handover Environmental Management Plan (HEMP) which must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development. The authorised development must be operated and maintained in accordance with the HEMP.

4.7.10. The environmental management documents are discussed further in the relevant Chapters of this Report.

Conclusions on the Environmental Impact Assessment and the Environmental Statement

4.7.11. During the Examination there were no submissions raising concerns about the overall adequacy of the EIA process and the ES. Individual submissions raising subject specific issues bearing on individual planning issues are addressed in Chapter 5 below as necessary.

4.7.12. The ES and associated information submitted by the Applicant during the Examination have provided an adequate assessment of the environmental effects of the Proposed Development. We have taken full account of all environmental information in the assessment of the application and in our recommendation to the SoS.

4.8. HABITATS REGULATIONS ASSESSMENT

4.8.1. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects on European sites and is therefore subject to HRA. Consequently, the application was accompanied by an HRA Report [[APP-124](#)]. This identified an area of search and three relevant European Sites but concluded that there are no likely significant effects on those sites or their qualifying features from the Proposed Development.

4.8.2. The HRA was not a matter that gave rise to any contention or disagreement with the Applicant's position by any IP during the Examination. A detailed record of considerations relevant to HRA has been set out in Chapter 6 of this Report.

4.8.3. The ExA has considered all documentation relevant to HRA as required by paragraphs 4.22 to 4.25 of the NNNPS and have taken it into account in

the conclusions reached here and in the case for development consent. There are no HRA matters which are required to be considered as part of our reasoning in the planning issue sections of this Report below. Furthermore, project design and mitigation proposals included in the ES and secured in the Applicant's preferred DCO have been fully considered for HRA purposes.

5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

5.1. INTRODUCTION

- 5.1.1. This Chapter contains a number of sections, each of which deals with a significant topic that was assessed during the Examination. These reflect our IAPI and other matters which were important and relevant during the course of the Examination.
- 5.1.2. The sections all follow a common structure:
- *Introduction*: detailing what issues will be considered in each section;
 - *Policy Background*: which identifies the main policy against which the issue has been examined, principally from the NNNPS;
 - *Applicant's Approach*: which summarises the main features of the approach that the Applicant has undertaken, as described in the application documents;
 - *Issues Arising During the Examination*: which identifies matters that arose in the course of the Examination and our reasoning in respect of these issues;
 - *Conclusions*: which sets out conclusions on each issue to be carried forward to Chapter 7.
- 5.1.3. The position between the Applicant and each main party was updated through the course of the Examination in the SoCG. The position at the close of the Examination was summarised at DL11 in the Applicant's Statement of Commonality for SoCG [[REP11-017](#)].

5.2. AIR QUALITY AND EMISSIONS

Introduction

- 5.2.1. This section considers the effects of the Proposed Development in relation to air quality and emissions. Matters relating to climate change are separately considered under 'Other Matters' later in this Chapter.

Policy Background

- 5.2.2. NNNPS paragraphs 5.3 to 5.15 detail the basis for the Examination by the ExA and decisions by the SoS relating to air quality issues.
- 5.2.3. Paragraph 5.4 notes that current UK legislation sets out health-based ambient air quality objectives. In addition, the EU has established common, health-based and eco-system based ambient concentration LVs for the main pollutants in the Ambient Air Quality Directive (2008/50/EU) ('the Air Quality Directive'), which Member States are required to meet by various dates.
- 5.2.4. Paragraph 5.6 requires that where the impacts of the project (both on and off-scheme) are likely to have significant air quality effects in relation to meeting EIA requirements and / or affect the UK's ability to

comply with the Air Quality Directive, the Applicant should undertake an assessment of the impacts of the proposed project as part of the ES.

- 5.2.5. NNNPS paragraph 5.10 states: *"The Secretary of State should consider air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the scheme..."*
- 5.2.6. Paragraph 5.9 requires that in addition to information on the likely significant effects of a project in relation to EIA, the SoS must be provided with a judgement on the risk as to whether the project would affect the UK's ability to comply with the Air Quality Directive.
- 5.2.7. NNNPS paragraph 5.11 advises that air quality considerations are likely to be particularly relevant where schemes are proposed within or adjacent to AQMA.
- 5.2.8. Paragraph 5.14 states that the SoS should consider whether mitigation measures put forward by the Applicant are acceptable.

Applicant's Approach

- 5.2.9. The Applicant's assessment of air quality matters is primarily contained within Chapter 5 (Air Quality) of the ES [[APP-026](#)]. This Chapter is supported by the following reports:
- Screening for PM10 and PM2.5 [[APP-107](#)];
 - Construction Traffic Assessment [[APP-108](#)];
 - Traffic Data [[APP-109](#)];
 - Human Receptors [[APP-110](#)];
 - Ecological Receptor Transects [[APP-111](#)];
 - Model Methodology [[APP-112](#)];
 - Model Verification [[APP-113](#)];
 - Highways England Monitoring [[APP-114](#)];
 - Model Results - Human Receptors [[APP-115](#)];
 - Model Results - Ecological Receptors [[APP-116](#)]; and
 - Model Results - PCM Compliance [[APP-117](#)].
- 5.2.10. ES Chapter 5: Air Quality [[APP-026](#)] describes existing air quality, forecasts air quality at the time of opening and assesses the significance of environmental effects in line with the NNNPS requirements, as to whether the effects of the Proposed Development are significant and whether it would affect the UK's ability to comply with the Air Quality Directive.
- 5.2.11. The ES notes that the Proposed Development does not affect air quality within any AQMAs, the nearest AQMAs are situated over 3 km to the east of the Study Area.
- 5.2.12. During operation, the ES states that Interim Advice Note (IAN) 174/13 requires the significance of effects to be assessed at properties where exceedances of the air quality objectives are modelled in any future year of scenario. The ES finds that pollutant concentrations are within the air quality objectives at all selected receptors in the opening year. As such,

it finds that there are no properties that experience a worsening or improvement of air quality already above the objective, or a creation/removal of an exceedance.

5.2.13. The ES document concludes:

- The overall assessment of the effect of the Proposed Development is not significant for air quality.
- The Proposed Development will not affect the UK's compliance with the LVs set out in the Air Quality Directive.
- During construction, the Proposed Development could temporarily affect local air quality as a result of dust arising from construction activities and emissions from construction vehicles. However, well established measures and controls would be included in the CEMP (focusing on site management, site planning, construction traffic and site activities) and with such mitigation in place, no significant effects are anticipated during construction.
- Monitoring would be required by the appointed contractor to determine the effectiveness of the proposed mitigation, or requirement for further mitigation. The construction monitoring regime and reporting requirements would also be set out in the CEMP.
- No significant effects have been identified for the operational phase of the Proposed Development and no additional monitoring is necessary.

Issues Arising During the Examination

5.2.14. Gateshead Council's LIR [[REP2-075](#)] states that it agrees with the methodologies used and the assessments of the air quality impacts for both construction and operation. It raised the issue of dust from construction needing to be controlled and the dust management plan a necessity. Gateshead Council stated that it was content with the measures in the CEMP. Overall, Gateshead Council considers the air quality effects of the Proposed Development to be neutral.

5.2.15. Two RRs were received concerning air quality and emissions following the submission of the application as follows:

- Public Health England [[RR-007](#)] raised no objection regarding air quality effects; and
- Lesley Shotton on behalf of The Shotton Family [[RR-014](#)] raised a general concern regarding pollution due to their property being one of those closest to the road.

5.2.16. The Applicant provided comments on these representations at DL1 [[REP1-002](#)] which the ExA has reviewed and, taking account of the assessment provided in the ES and agreed by Gateshead Council, considers adequately addresses the IP's concerns in the second of these representations.

5.2.17. We asked several WQs of the Applicant with regards to its assessment of air quality impacts [[PD-008](#)]. The Applicant provided satisfactory responses to these [[REP2-060](#)] and no further examination of the issues raised in the questions was considered to be necessary.

- 5.2.18. At DL8 Gateshead Green Party submitted a WR which included a concern that loss of the green environment would impact upon its ability to assist in tackling air pollution [[REP8-031](#)]. The Applicant responded to this concern with details of the conservative assessment of the air quality impacts as a result of the Proposed Development in the area where there is removal of vegetation [[REP9-016](#)]. We agree with the Applicant's assessment regarding this.
- 5.2.19. Regarding the proposed changes relating to the additional land and the Three Span Viaduct Option, the findings of these assessments remain unchanged in relation to air quality and emissions [[REP4-058](#) and [REP4-060](#)]. Further representations were received from the Lady Park and Lamesley Residents Association [[RR-027](#)] and the occupiers of North Farm in Lamesley expressing concern regarding the effect of dust from construction activity, with particular reference to the additional land [[RR-031](#)]. However, we are satisfied that the controls contained in the outline CEMP [[REP11-012](#)] would ensure that such effects are appropriately managed and controlled during construction works.

Conclusion

- 5.2.20. We conclude that the relevant tests in the NNNPS are satisfied as follows:
- In accordance with paragraph 5.10 of the NNNPS the ES has adequately considered air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the Proposed Development, and that the project is unlikely to lead to a breach of the air quality thresholds set out in domestic and European legislation; and
 - In accordance with paragraph 5.9 of the NNNPS the ExA agrees with the Applicant's assessment that the Proposed Development will not affect the UK's ability to comply with the Air Quality Directive.
 - We are satisfied that no significant air quality effects would result during construction and operation. Furthermore, appropriate mitigation and control measures would be contained within the outline CEMP.
 - Taking all these matters into consideration, we conclude that air quality matters do not weigh significantly against the Order being made.

5.3. BIODIVERSITY, ECOLOGY AND THE NATURAL ENVIRONMENT

- 5.3.1. This section considers the effects of the Proposed Development in relation to biodiversity, ecology and the natural environment.

Policy Background

- 5.3.2. NNNPS paragraphs 5.20 to 5.38 detail the basis for the Examination by the ExA and decisions by the SoS relating to biodiversity and ecological conservation.

- 5.3.3. NNNPS paragraph 5.22 states that: *"Where the project is subject to EIA the applicant should ensure that the ES clearly sets out any likely significant effects on internationally, nationally and locally designated sites of ecological or geological conservation importance (including those outside England) on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity and that the statement considers the full range of potential impacts on ecosystems."*
- 5.3.4. Paragraph 5.35 states that: *"Development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. Where significant harm cannot be avoided or mitigated, as last resort, appropriate compensation should be sought."*
- 5.3.5. NNNPS paragraph 5.33 states that: *"development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design. When considering proposals, the SoS should consider whether the applicant has maximised such opportunities in and around developments."*

Applicant's Approach

- 5.3.6. The Applicant's assessment of biodiversity matters is primarily contained within Chapter 8 (Biodiversity) of the ES [[APP-029](#)]. This chapter is supported by the following reports:
- Preliminary Ecological Appraisal [[APP-123](#)];
 - HRA [[APP-124](#)];
 - Bat Activity Survey Report [[APP-125](#)];
 - Preliminary Roost Assessment [[APP-126](#)];
 - Bat Survey Report [[APP-127](#)];
 - Great Crested Newt Survey Report (2017) [[APP-128](#)];
 - Great Crested Newt Survey Report (2018) [[APP-129](#)];
 - Reptile Survey Report [[APP-130](#)];
 - Breeding Bird Report [[APP-131](#)];
 - Wintering Bird Survey Report [[APP-132](#)];
 - Badger Report [[APP-133](#)];
 - Red Squirrel Report [[APP-134](#)];
 - Biodiversity Net Gain Report [[APP-135](#)]; and
 - Draft European Protected Species Licence [[APP-136](#)].
- 5.3.7. Chapter 8: Biodiversity of the ES [[APP-029](#)] assesses potential effects on sites, habitats and species of conservation importance including indirect effects. No international sites of ecological or geological conservation importance are affected by the Proposed Development.
- 5.3.8. Construction of the Proposed Development would result in the loss of habitat such as semi-natural woodland, broadleaved plantation, coniferous plantation and mixed plantation woodland. The biodiversity and landscape design includes the creation of semi-natural woodland which, although a smaller area to that lost, would be of a higher quality by creating a structure comprising varying tree ages, and with a

management regime that creates gaps allowing light to reach the understorey layer in patches. The Applicant concludes that the newly created woodland habitats would take time to establish and, given the permanent loss of some habitats, would result in a short term significant adverse effect.

- 5.3.9. Longacre Wood LWS and Bowes Railway LWS will also be subject to temporary adverse significant effects at a local scale during construction. Mitigation measures are proposed to address these effects.
- 5.3.10. The Proposed Development would result in some direct temporary adverse effects (neutral to slight significance) on bats during construction, which will reduce to neutral significance (not significant) by the operational phase. With mitigation, all other European Protected Species and Species of Principal Importance will not be subject to any significant adverse effects. A European Protected Species licence for Great Crested Newts will be required.
- 5.3.11. Chapter 8 (section 8.9) of the ES [[APP-029](#)] sets out the design, mitigation and enhancement measures proposed by the Applicant and secured within the dDCO. These include, reinstatement of habitat features, habitat creation (including grasslands, scrub and woodland), creation of wildlife corridor and tree lines (including enhancing the wildlife corridor between Longacre Wood LWS and the existing wildlife corridor to the west, creation of linear features using native species and planting of native trees and hedgerows to enhance the Bowes Railway LWS wildlife corridors.
- 5.3.12. Advice has been sought from NE to ensure that impacts on European sites are adequately considered. The HRA (Appendix 8.2 of the ES [[APP-124](#)]) concluded that there would be no impacts to any European Sites as a result of the Proposed Development, during construction and operation.
- 5.3.13. Further enhancement measures include bat and bird boxes installed onto suitable trees and buildings or mounted on poles; and consideration of sustainable urban drainage to give ecological benefits for Allerdene Culvert and the proposed attenuation pond.
- 5.3.14. Additional mitigation measures that would be secured through the dDCO include pollution management, noise and dust controls, limiting the use of artificial lighting and protection of retained habitat areas.
- 5.3.15. Following the implementation of the landscape mitigation design including biodiversity mitigation and enhancement, the Applicant concludes that there would no significant effects on biodiversity during operation.
- 5.3.16. With regard to the material change, involving the inclusion of additional land at junction 67 (Coal House), the Applicant assessed the environmental impacts of the proposed amendment in ES Addendum - Additional Land (Rev 0), details of extended surveys are contained in Chapter 5 [[REP4-058](#)].

Issues Arising During the Examination

- 5.3.17. A number of RRs were received concerning biodiversity, ecology and the natural environment as follows:
- NE [[RR-002](#)];
 - The Green Party [[RR-013](#)]; and
 - Lady Park and Lamesley Residents Association [[RR-015](#)].
- 5.3.18. The Applicant provided comments on these at DL1 [[REP1-002](#)] which the ExA has reviewed and considers adequately addresses the IP's concerns. The ExA went on to ask WQs where it was considered that further questioning was necessary [[PD-008](#)].
- 5.3.19. Gateshead Council's LIR [[REP2-075](#)] raised issues in relation to biodiversity, ecology and the natural environment including:
- loss of combined woodland habitat and need for significant increase in the provision of replacement/compensation woodland creation; and
 - replacement ratio of species rich grassland is also considered to be inadequate.
- 5.3.20. The Applicant's response to the LIR [[REP3-005](#)] draws particular attention to the following:
- Following the implementation of proposed mitigation secured through the outline CEMP, the long terms effects would be neutral;
 - Areas of habitats to be lost have been reduced through the development of the scheme design; and
 - The Applicant's strategy has been to improve habitat quality and provide additional connectivity, and therefore a significant increase in replacement/compensatory habitat is not required.
- 5.3.21. Issues arose during the Examination which the ExA raised in Further Written Questions(FWQs) [[PD-008](#)] include as follows:
- Q.1.2.1: application for a bat mitigation licence; and
 - Q.1.2.2: landscape design relating to biodiversity mitigation.
- 5.3.22. In relation to the bat mitigation licence NE issued a letter of no impediment [[REP7-004](#)]. In addition NE signed a SoCG [[REP4-028](#)] confirming that all relevant matters are agreed between NE and the Applicant.
- 5.3.23. Biodiversity impacts resulting from the additional land in relation to breeding birds and wintering birds were raised by the ExA in further WQs [[PD-030](#)] (Q.4.3.1). Representations on such matters from local residents have also been received [[RR-025](#), [RR-027](#) and [RR-031](#)].
- 5.3.24. Gateshead Council's response noted that the additional land to be used for temporary stockpiling is situated within a designated Wildlife Corridor and less than 500 m from several LWS including the River Team. It states that the site should be subject to an appropriate level of ecological survey and assessment to determine the likely impacts on biodiversity

and ecological connectivity and to allow an appropriate scheme of avoidance, mitigation, compensation and enhancement measures to be developed.

- 5.3.25. The Applicant's response [[REP10-002](#)] noted the submission of an additional breeding birds survey [[REP9-019](#)] which concludes that the breeding bird community within the additional land is considered of low conservation value due to the relatively low number of species using the additional land to breed, most of which are common and widespread, with only two having a notable conservation status. This is in addition to the wintering bird survey assessment submitted earlier in the Examination with the ES Addendum – Additional Land [[REP4-058](#)].
- 5.3.26. In their additional WR [[REP10-009](#)] NE stated "*that all environmental impacts resulting from the proposal, including the proposed extended working area, can be adequately addressed to ensure no residual impacts arise from the development.*"
- 5.3.27. We are satisfied that appropriate surveys have been undertaken and mitigation measures proposed to avoid significant adverse effects from biodiversity in relation to the temporary use of additional land for construction activity. The mitigation and enhancement measures set out in the ES [[APP-029](#)], including compensatory habitat creation, would be reasonable and proportionate in relation to the Proposed Development as a whole including the additional land.
- 5.3.28. Following discussions between the parties and modifications made to the outline CEMP [[REP11-012](#)], matters concerning biodiversity were agreed with Gateshead Council, as confirmed in the signed SoCG [[REP11-030](#)].

Conclusion

- 5.3.29. We conclude that the relevant tests in the NNNPS are satisfied as follows:
- In accordance with NNNPS paragraph 5.22 "*the environmental statement clearly sets out any likely significant effects on ... designated sites of ... conservation importance ... on protected species and on habitats and other species ... of principal importance for the conservation of biodiversity ... considers the full range of potential impacts on ecosystems*";
 - Although short term significant effects would result, the proposed landscape and biodiversity migration and enhancement measures, including habitat creation would ensure that the Proposed Development avoids any long-term significant harm to biodiversity interests.
 - Where biodiversity benefits can be achieved, these have been incorporated as part of enhancement measures, to be delivered in accordance with the policy requirements.
 - Taking all these matters into consideration we conclude that biodiversity, ecology and the natural environment matters do not weigh significantly against the Order being made.

5.4. ECONOMIC AND SOCIAL EFFECTS

Introduction

- 5.4.1. This section considers the effects of the Proposed Development on economic and social matters. This includes considerations relating to economic and employment implications during construction and operation, effects on local residents and communities including their health (drawing on our considerations in other relevant sections or our Report), and effects on land use including agriculture and farming operations. Matters concerning the impact of the Proposed Development upon the Green Belt are considered separately in section 5.7.

Policy Considerations

- 5.4.2. The NNNPS requires any adverse environmental or social effects to be mitigated in line with principles set out in the NPPF and the Government's Planning Guidance (paragraph 3.3). It recognises that severance can be a problem in some locations and that, where appropriate, applicants should seek to deliver improvements that reduce community severance and improve accessibility (paragraph 3.22).
- 5.4.3. Paragraph 3.17 states that there is a direct role for the national road network to play in helping pedestrians and cyclists. It goes on to state that the Government also expects applicant's to identify opportunities to invest in infrastructure in locations where the national road network severs communities and acts as a barrier to cycling and walking, by correcting historic problems, retrofitting the latest solutions and ensuring that it is easy and safe for cyclists to use junctions.
- 5.4.4. Paragraphs 4.3 and 4.4 of the NNNPS explain that the potential benefits of the Proposed Development, including the facilitation of economic development, will be taken into account as part of the overall balance. Environmental, safety, social and economic benefits and adverse impacts, should be considered at national, regional and local levels.
- 5.4.5. The NNNPS recognises that national road networks have the potential to affect the health, well-being and quality of life of the population (paragraph 4.79). New or enhanced infrastructure may have indirect health impacts including if it affects access to key public services, local transport, opportunities for cycling and walking or the use of open space (paragraph 4.80). The cumulative impacts on human health should be considered (paragraph 4.82).
- 5.4.6. Land use implications are addressed in paragraphs 5.162 to 5.185. The applicant should identify existing and proposed land uses near the Proposed Development and any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing (paragraph 5.1.65).
- 5.4.7. Paragraph 5.176 states that the decision maker should take into account the economic and other benefits of the best and most versatile

agricultural land. Little weight should be given to the loss of agricultural land in grades 3b, 4 and 5, except in areas where particular agricultural practices may themselves contribute to the quality and character of the environment or the local economy.

Applicant's Approach

- 5.4.8. Chapter 12 of the ES [[APP-033](#)] reports the outcome of the Applicant's assessment upon population and human health. This includes the effects upon the following:
- Motorised travellers;
 - Walking, cycling and horse riding;
 - Rail travellers;
 - Community severance;
 - Community land;
 - Private land;
 - Local economy and employment;
 - Tourism and recreation; and
 - Human health.
- 5.4.9. The Applicant's assessment of the impact upon agriculture is considered within Chapter 9 of the ES [[APP-030](#)].
- 5.4.10. The ES states that the construction phase would result in the temporary land take of approximately 9.44 ha of Grade 3a and 7.28ha of Grade 3b agricultural land. Following construction, these areas would be reinstated back to agricultural use including in accordance with a soil handling strategy to be secured through the CEMP, requiring subsequent approval under R4 of the dDCO. Approximately 0.20 ha of Grade 3a agricultural land and 1.38 ha of Grade 3b agricultural land would be permanently lost.
- 5.4.11. Within its Planning Statement [[REP4-020](#)] the Applicant sets out the economic benefits that it considers would result from the Proposed Development. It states that the additional capacity on this part of the A1 would contribute to reduced congestion and reduced delays in the vicinity of the Proposed Development, leading to a significant decrease in lost productive time and a subsequent increase in business user and transport service provider benefits. Chapter 4 of the TAR provides further details of this [[APP-173](#)]. The Applicant states that business users and transport service providers would significantly benefit from:
- Reduced travel times;
 - Improved access for suppliers and customers; and
 - Reduced vehicle operating costs, such as fuel, vehicle maintenance and mileage; related depreciation.
- 5.4.12. After accounting for impacts associated with delays during construction and maintenance, the Applicant forecasts that the combined monetised value of these benefits would be £251.1 million including benefits related to journey time improvements and improvements in accident rates.

- 5.4.13. The Applicant also states that the Proposed Development would support economic growth and development objectives for Gateshead and the wider North East region. It forms part of a wider Government initiative for growth in the North East and aims to support economic growth. Furthermore, congestion on the road network is likely to stifle growth and deter new development if the existing congestion issues are not addressed. It also would improve access to the Team Valley Trading Estate which (at the time of submission of the application) comprises approximately 700 businesses and over 20,000 employees. The Applicant states that investment on the trading estate is promoted on the basis of proximity to the A1 and that it depends upon improved capacity to reduce congestion and journey times.
- 5.4.14. Further social benefits would accrue from the additional capacity, alleviation of congestion and improvement of journey times for commuters and other users. The Applicant considers these to be significant benefits and forecasts their combined monetised benefits to be £241 million.
- 5.4.15. The Applicant's TAR [[APP-173](#)] includes, in Appendix B, a Walking, Cycling and Horse-Riding Assessment and Review which considers the scope for improvements to access and facilities for pedestrians and cyclists in connection with the Proposed Development.
- 5.4.16. The Applicant's assessment has not found there be any significant differences between the replacement Allerdene bridge options in terms of social and economic effects.
- 5.4.17. A summary of the Applicant's assessment of likely significant effects as reported in the ES is set out below:
- During construction there would be temporary major adverse effects for motorised travellers including from driver stress because of delays occurring due to speed restrictions from traffic management, exacerbated by potential additional traffic associated with construction vehicles and the slower journey times created by temporary traffic control works.
 - During construction there would be a temporary moderate adverse effect on walkers, cyclists and horse riders, including from the temporary closures of Longbank Bridleway Underpass and North Dene Footbridge leading to an increase in journey length (the works would be programmed so that both these routes are not closed at the same time to ensure there is a route across the A1 at all times).
 - During construction, the closure of the Longbank Bridleway Underpass and North Dene Footbridge would also be likely to have a temporary moderate adverse effect on community severance due to increased non-motorised journey times.
 - During construction there would be likely to be a temporary moderate adverse effect on human health. This would result from short term impacts on local residents' accessibility to services, increased driver stress, community severance, amenity value and noise from night-time works.

- During operation there would be a long term moderate beneficial effect for walkers, cyclists and horse riders due to improved user safety, enhanced access and improved community connectivity to the wider footpath network. The reduction in traffic congestion along the A1 would also improve safety for users of the adjacent footways and cycleways.

Issues arising during the Examination

Local Impact Report

- 5.4.18. Gateshead Council's LIR [[REP2-075](#)] confirms that the delivery of improvement works to this part of the A1 has been an ambition for a number of years. It states that the Proposed Development will provide a means to relieve congestion by providing additional traffic capacity and improve the free flow of traffic. It notes that the value of the Proposed Development to the transport network in Gateshead is recognised by Policy CS13 of the Core Strategy for Gateshead and Newcastle upon Tyne which seek to ensure that the enhancement and delivery of an integrated network to support sustainable development and economic growth will be achieved by improving the operation of the transport network and its wider connections including on the A1 between Coal House and Birtley.
- 5.4.19. The other relevant points raised in its LIR are:
- The Council welcomes the proposals for improving facilities for walkers, cyclists and horse riders but seeks to ensure they are properly implemented;
 - Additional efforts are needed to reduce the severance impact of the A1 on pedestrians and cyclists, particularly at Coal House junction;
 - The need to develop complementary programmes of measures aimed at reducing the risk of scheme benefits being eroded by traffic generation and increased car dependence.

Public Rights of Way and access issues

- 5.4.20. During the Examination we asked several WQs [[PD-008](#)] regarding the temporary footpath diversion arrangements. These resulted in the clarifications of matters relating to the proposed footpath diversion for Longbank Bridleway which was previously shown to cross the proposed construction compound adjacent to junction 66 and a full diversion route south of the A1 during the temporary closure of the North Dene Footbridge. The final updated temporary diversion routes were provided at DL4 [[REP4-007](#)].
- 5.4.21. Representations were made by the Tyne and Wear Joint Local Access Forum [[REP1-022](#)] regarding the temporary access provisions, including at junction 66, and stressing the importance of well managed diversions.
- 5.4.22. By the end of the Examination, the SoCG between the Applicant and Gateshead Council [[REP11-030](#)] confirmed that matters relating to the use of the Bowes Cycleway and North Dene Footbridge are agreed within the outline CEMP [[REP11-012](#)] including provision to ensure that both routes would not be closed at the same time.

- 5.4.23. A public right of way (PRoW) issue remaining of concern for Gateshead Council relates to the temporary diversion of the bridleway through Eighton Lodge roundabout. This was discussed at ISH4 [EV-012] and Gateshead Council reiterated its concerns in its post hearing written summary [REP9-022] with concerns focusing on the length of the diversion and the unsuitability of the diverted route for horse riders. In response [REP9-014], the Applicant recognises that horse riders may be inconvenienced in this location although surveys show that equestrian use of the existing footpaths is very small. It continues to explore possible mitigation measures and a commitment has been added to the CTMP (Appendix B of the CEMP [REP11-012]) so that matters relating to the use of all diversion routes are the subject of discussion for the Transport Working Group.
- 5.4.24. We acknowledge that horse riders are likely to encounter inconvenience in using the diversion across the Eighton Lodge roundabout. However, the period of diversions during construction would be short term and, based on the information before the Examination, the number of horse riders requiring to use the diversion is likely to be limited. We are therefore satisfied that only minor adverse effects would be likely to arise in this respect.
- 5.4.25. We note that the Proposed Development would not lead to any permanent adverse effects on any PRoW. Indeed, measures such as the replacement North Dene Footbridge which would include non-stepped access would facilitate improvements over the existing situation. Enhancements would also result in the Longbank Underpass route including through improved lighting and drainage.
- 5.4.26. Gateshead Council made further WRs early in the Examination [AS-007] regarding the poor nature of facilities for pedestrians and cyclists at the Coal House roundabout (junction 67) with, it says, no substantive improvement being proposed by the Applicant. It also states that Eighton Lodge roundabout (junction 68) is a location where improvements could be made to pedestrian and cycle provision.
- 5.4.27. We questioned the Applicant and Gateshead Council on this matter (ExQ1.9.5) [PD-008] including on the scope and justification of improvements to the existing situation. Gateshead Council's response [REP2-065] concluded that a wider review of provision for access through the Coal House roundabout was needed, taking account of the current and potential future importance of the route including for cyclists and for pedestrians accessing local shopping facilities, but recognised that the scale of this task means that it is unrealistic to seek to achieve this as part of the DCO process for the Proposed Development.
- 5.4.28. The Applicant in response to this matter [REP2-060] confirmed that issues where it would be responsible for maintenance would be carried out (including resolving inconsistent pedestrian signage) though it would not be part of the Proposed Development to implement other measures to resolve pre-existing issues that are part of the local highway network administered by Gateshead Council.

- 5.4.29. We subsequently asked the Applicant (ExQ3.9.1) [[PD-023](#)] for further clarification on how the Proposed Development accords with paragraph 3.17 of the NNNPS (see above). In response, the Applicant [[REP8-024](#)] states that overall the operation of the Proposed Development would provide improved safety for walkers, cyclists and horse riders compared to the existing situation and improved facilities to cross the A1 for work and social purposes. The final SoCG between the Applicant and Gateshead Council [[REP11-030](#)] confirms that the matter is now agreed between the these two parties. It states that the Council will propose a separate scheme which would not coincide with the Proposed Development delivery and would not adversely impact its benefits. The Applicant will work with the Council outside the DCO process to look at possible sources of funding to help support further investigation of this issue.
- 5.4.30. Overall, we are satisfied that the Applicant has included appropriate measures that would be beneficial for non-motorised forms of transport. Whilst further improvements would be desirable specifically to reduce severance, taking account of the representations made by the Applicant and Gateshead Council, we are satisfied that it would not be feasible for these to be included within the Proposed Development, though they are subject to future consideration. Further matters raised by Gateshead Council in relating to the promotion of alternative methods of transport are considered below in section 5.9 of this Report (Traffic and Transport).

Agricultural land use and operations

- 5.4.31. Representations have been submitted [[RR-010](#) and [RR-011](#)] regarding the potential effects upon Dunkirk Farm, Northside. We subsequently requested further details of both the measures that would be secured to safeguard farming operations at Dunkirk Farm and details of the overall effect upon farming operations for all agricultural/horticultural holdings (ExQ1.8.11) [[PD-008](#)].
- 5.4.32. The Applicant's resulting assessment on Dunkirk Farm (and other holdings including the additional land) [[REP4-046](#)] concluded that a slight adverse effect would result upon Dunkirk Farm during construction, noting that whilst a relatively small portion of the land would be required during construction, the remainder of the land would remain unaffected and existing activities would still be able to take place. The only agricultural land holding that would suffer a significant (moderate) adverse effect during construction would be Longacre Farm where there is expected to be a reduction in income despite farming operations being able to continue on the unaffected land. The Applicant does not consider that any significant adverse effects would result upon agricultural land use during operation and no representations have been received in that regard.
- 5.4.33. The outline CEMP includes measures to minimise impacts on agricultural land holdings including matters relating to access and drainage. We are satisfied that the use of agricultural land would also be minimised as far as possible, including the best and most versatile agricultural land. The final CEMP would also include a Soil Handling Strategy to ensure that soil

proposed to be reinstated on agricultural land is retained in the best possible condition for subsequent agricultural use. The permanent loss of grade 3a agricultural land would be modest (0.2 ha) and we are satisfied that it would not have any significant impact on the operation and economic viability of any farm holding.

- 5.4.34. Overall, we are satisfied that the measures proposed to minimise the effects on agricultural land use and agricultural operations are reasonable and agree with the Applicant's assessment in these respects.

Northern Gas Networks land

- 5.4.35. NGN made representations [[RR-004](#) & [REP1-019](#)] objecting to the Proposed Development including on the basis that it seeks to retain a portion of land proposed for TP (for a construction compound) in order to implement its own proposals for a Compressed Natural Gas (CNG) refuelling station within plot 3/6c of the Order land. NGN considers this to be in the wider public interest due to the contribution it could make to improvements in air quality. Consequently, it sought an amendment to the Proposed Development so that its proposed site for the CNG facility is excluded from the Order.
- 5.4.36. We asked WQs regarding this matter (ExQ1.3.12) [[PD-008](#)] including details of the stage it is currently at in the design, planning and consenting process. Further to responses received [[REP2-072](#)] it became apparent that, in terms of seeking planning permission, the CNG facility is still at an early stage. No formal application for permission has yet been submitted and there is no guarantee that planning permission would be granted. We have therefore only given limited weight to this proposal at its current stage.
- 5.4.37. The SoCG between NGN and the Applicant [[REP11-031](#)] sets out the position of the parties at the end of the Examination. It states that under the amended scheme the Order limits will include the additional land in plot 3/13a which will add approximately 5 ha of land to the area comprising the working compound at junction 67. The parties agree that the amended scheme represents the most optimal solution for achieving both the Applicant's objectives and NGN's desired objectives in respect of its land interest in plot 3/6c.
- 5.4.38. The use of additional land for the extended construction compound would only be required if the design choice for the replacement Allerdene Bridge opted for either the Single Span or Three Span Options. In order to address the extent of the construction compound in the event of the Six/Seven Span Option being pursued, the Applicant has proposed a new Requirement (R17) in the dDCO. This would prevent the Applicant from acquiring rights over plot 3/13a (the additional land) until a plan for the extent and layout of the construction compound is approved by the SoS, in consultation with the relevant planning authority. Regard would be required to be had to the construction and engineering requirements for the Allerdene Bridge, the availability of the proposed CNG facility land and the need to minimise land take in terms of the additional land as far as reasonably practical. We are satisfied that this would ensure that

decisions on the Proposed Development and the CNG facility are properly reflected whilst also ensuring that no more of the additional land is taken than necessary.

Health, well-being and quality of life

- 5.4.39. Representations have been made [[RR-031](#)] on behalf of the occupiers of North Farm which is located near to this construction compound. This matter was discussed at the further ISH and a summary of the Applicant's assessment of the effects on the living conditions of the occupiers of North Farm was subsequently submitted [[REP11-019](#)]. We agree with the Applicant that a temporary large adverse visual effect would result from the proposed construction compound activities including the proposed bunds. However, with management measures in place the impacts on noise and air quality are unlikely to be significant. Gateshead Council confirmed that it is confident that the measures included within the CEMP would be sufficient to keep impacts to a minimum [[REP11-024](#)].
- 5.4.40. We are satisfied that, in spite of the temporary adverse visual effects, the Applicant has taken reasonable and proportionate measures to minimise the impact on the health, well-being and quality of life for the residents of North Farm and other properties in the vicinity of the construction compound at junction 67.
- 5.4.41. We have considered the other effects, both adverse and beneficial, that would be likely to result from the construction and operation of the Proposed Development upon the living conditions, health and well-being of residents living near to the Order land. These are considered in detail elsewhere in this Chapter. For developments of this nature, located near to residential areas, there is inevitably some impact upon local residents and communities during construction works. However, we are satisfied that the Applicant has proposed reasonable and proportionate measures to minimise and mitigate such impacts. We also note that Gateshead Council has not raised objections in this respect. Overall, we are satisfied that, even taking account of possible cumulative effects, the Proposed Development would not result in any long term significant adverse effects upon the living conditions, health and well-being of local residents and communities.

Conclusions

- 5.4.42. We are satisfied that the findings of the ES are reasonable and that, where necessary, mitigation measures could be secured through the recommended DCO which are proportionate to the adverse effects that would result.
- 5.4.43. We agree that significant economic benefits would result from the Proposed Development due to the likely reduction in congestion on the A1. Further, albeit temporary, economic benefits would result from the proposed construction phase, both locally and outside the region. Whilst adverse effects would result during the construction process (including for agricultural use, health and quality of life) these would be temporary

and we are satisfied that they have been mitigated as far as is reasonably possible.

- 5.4.44. During operation there would be a long-term beneficial effect for walkers, cyclists and horse riders due to improved user safety, enhanced access and improved community connectivity to the wider footpath network. No significant long-term adverse effects upon health, well-being and quality of life have been found to arise from the operation of the Proposed Development.
- 5.4.45. Overall, we conclude that there would be general accord with the relevant policies within the NNNPS. The adverse effects found to result during construction would not weigh significantly against the Order being made. Overall, the positive economic and social benefits would weigh significantly in favour of the Order being made.

5.5. HISTORIC ENVIRONMENT

Introduction

- 5.5.1. This section considers the effects of the Proposed Development in relation to the historic environment, including both designated and non-designated heritage assets.

Policy Considerations

- 5.5.2. The NNNPS recognises that *"The construction and operation of national networks infrastructure has the potential to result in adverse impacts on the historic environment."* (paragraph 5.120). *"The applicant should describe the significance of any heritage assets affected, including any contribution made by their setting."* (paragraph 5.127). Consideration should also be given to impacts upon other non-designated heritage assets, even though those assets are of lesser value than designated heritage assets (paragraph 5.125). *"Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, the applicant should include an appropriate desk-based assessment and, where necessary, a field evaluation."* (paragraph 5.127).
- 5.5.3. *"In considering the impact of a proposed development on any heritage assets, the Secretary of State should take into account the particular nature of the significance of the heritage asset and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal."* (paragraph 5.130). *"When considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State should give great weight to the asset's conservation. The more important the asset, the greater the weight should be." "...harm or loss affecting any designated heritage asset should require clear and convincing justification."* (paragraph 5.131).

5.5.4. Paragraph 5.134 states that where less than substantial harm would result for the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.

Applicant's Approach

5.5.5. The Applicant's assessment of historic environment matters is primarily contained within Chapter 6 (Cultural Heritage) of the ES [[APP-027](#)]. This is supported by the following reports:

- Historic Environment Desk-based Assessment [[APP-118](#)];
- Geophysical Survey [[APP-119](#)]; and
- A survey of the retaining wall associated with the Bowes Railway SM [[APP-120](#)].

5.5.6. Following the proposed material amendment to the application involving the inclusion of additional land, the Applicant submitted an ES Addendum [[REP4-058](#)] which included an additional assessment of the cultural heritage implications of the proposed inclusion and use of the additional land.

5.5.7. A total of 129 heritage assets are presented within the inner and wider study areas within the ES. Of these 23 are designated heritage assets including three SMs, one Grade II* and 15 Grade II listed buildings and four Conservation Areas. Of the 106 non-designated heritage assets present, 23 are located within the Order limits and two are locally listed assets. The impact upon a number of these assets is assessed as being negligible [[APP-118](#)], including the setting of the Grade II* Ravensworth Castle.

5.5.8. The baseline conditions set out in the ES [[APP-027](#)] include further details of the Bowes Railway SM (paragraphs 6.7.18 to 6.7.22). It states that the development of the railway sought to improve transport between coal pits, recognising the importance of the coal industry to the region. The line opened in 1826 and was subsequently extended to its maximum length of 15 miles by 1855. It remained in operation until 1974 following the closure of the Kibblesworth colliery, which was the last remaining colliery still using it. Several workshops, four wagons, three locomotives and a mile and a half section of railway line were saved by the Tyne and Wear County Council in the late twentieth century and the whole line was subsequently designated as a SM. The section of the line within the Order limits and most affected by the Proposed Development is now in use as a public bridleway and cycle route.

5.5.9. The ES states that the construction of the Longbank Bridleway Underpass would necessitate the removal of a section of masonry retaining wall associated with the SM. This would result in physical impacts including the loss of sections of the retaining wall, the effects of which would be permanent and irreversible. Following pre-application consultation with HE, a mitigation strategy has been prepared to ensure adequate archaeological monitoring of all groundworks within the scheduled area, including a method statement and details of recording. An interpretation

panel would also be placed near to the location of the proposed works, which would be designed to present and interpret the history and importance of the SM. This is intended to enhance the experience of the SM for the local community. A section of surviving wall of the SM of equal length to that being demolished would be repaired in agreement with HE.

5.5.10. The Applicant's assessment does not find there to be any significant differences in terms of effects on the historic environment between the design options of the replacement Allerdene bridge.

5.5.11. The main conclusions of the Applicant's assessment (including the ES Addendum) of likely significant effects on all heritage assets are set out below:

Construction

- A major adverse effect upon the setting of the Bowes Railway SM (including from the blocking of key views and the temporary loss of public access to the SM during construction) and a moderate adverse physical effect upon the SM itself;
- a slight adverse effect upon the settings of the Grade II listed Church of St Andrew in Lamesley and Temple Meads;
- a moderate adverse effect upon the setting of the Lamesley Village Conservation Area; and
- adverse effects upon non-designated heritage assets including moderate adverse effects upon Lamesley Quarry, Lamesley Wagonway, ridge and furrow earthworks and the Chester-le-Street Roman Road.

Operation

- A slight adverse effect upon the setting of the Bowes Railway SM;
- a slight adverse effect upon the setting of the Grade II listed Church of St Andrew and Temple Meads;
- a slight adverse effect upon the setting of the Lamesley Village Conservation Area; and
- a slight adverse effect upon the setting of the Angel of the North

Issues arising during the examination

Local Impact Report

5.5.12. Gateshead Council's LIR [[REP2-075](#)] states that the general approach carried out by the Applicant in its consideration of cultural heritage matters is appropriate. However, it considers that substantial harm would result to a limited section of the Bowes Railway SM resulting in what it considers to be a moderate overall effect.

5.5.13. The Council goes on to state that the archaeological impacts of the Proposed Development would not be substantial and is satisfied that the effects could be mitigated through the CEMP and R9 of the dDCO.

5.5.14. The LIR also states that there would be short term impacts from construction upon the setting of the Angel of the North but that there

would be significant longer term effects on its setting from the number and position of proposed gantries and the design of the proposed replacement North Dene Footbridge. The LIR also draws attention to the results of reports it has recently commissioned regarding the significance of the setting and views of the Angel of the North. It considers that the Proposed Development should be assessed against a cleared landscape background (as aspired to by the Council) rather than the existing tree cover around the Angel of the North.

Bowes Railway Scheduled Monument

- 5.5.15. The Bowes Railway SM comprises a partly preserved standard gauge rope haulage railway with associated structures and apparatus, further details of which are set out above. The proposed extension of the north side of the Longbank Bridleway Underpass (Work No.19 of the dDCO [REP11-028]) would require the demolition of up to a maximum of 17 m length of the stone retaining walls of either side of the former track bed.
- 5.5.16. In its WR, HE [REP1-012] agrees with the Applicant that the permanent removal of part of the SM would result in a moderate adverse significance of effect which, in NPPF terms would amount to *less than substantial* harm to the overall significance of the SM. During the Examination, the Applicant further developed the details of its proposed mitigation in consultation with HE. As noted above this mitigation includes, archaeological recording, repairs to the adjacent retained retaining walls of the SM equal to the length of walls to be removed and a new interpretation board.
- 5.5.17. The final written submission from HE [REP11-025] and its SoCG with the Applicant [REP11-015] confirms that all but one matter regarding the impact upon the Bowes Railway SM are agreed. The only outstanding matter not agreed is HE's preference for the wording "*in accordance with*" rather than "*substantially in accordance with*" in respect of R9 of the dDCO [REP11-028] which would secure the Final Written Scheme of Investigation (FWSI). This matter is considered in detail in Chapter 9 of this Report and our conclusion is set out below.
- 5.5.18. We note that the FWSI would need to be submitted for the approval of the SoS in consultation with both the relevant planning authority and HE. This approval of the final details will ensure that archaeological interests potentially affected by the Proposed Development, including the Bowes Railway SM would be appropriately protected. In the event that there is divergence from the outline WSI to such a degree that would prejudice the significance of any designated or non-designated heritage asset, then it would be open for the SoS to decline to approve the submitted details. We are therefore satisfied that the wording of R9 is appropriate as set out in the dDCO.
- 5.5.19. We agree with the conclusions of the Applicant and HE that moderate adverse physical effects would result upon the significance of the Bowes Railway SM and that a major adverse effect would result upon its setting during construction works, albeit the latter would be short term harm.

We consider that such harm would amount to less than substantial harm (in the context of paragraphs 5.132 to 5.133 of the NNNPS).

Other designated heritage assets

- 5.5.20. Gateshead Council has not raised objection regarding the Applicant's assessment of the effects upon other designated heritage assets. However, other representations have been received [e.g. [RR-027](#) and [RR-031](#)] regarding the impact of the main construction compound at junction 67 (including the use of the additional land for stock piling) upon the Lamesley Conservation Area.
- 5.5.21. We acknowledge that the open land adjacent to the Conservation Area contributes to its open and rural setting. The addendum to the ES for the additional land [[REP4-058](#)] finds that during construction the presence of stockpiles (up to 4.5 m in height) would lead to a temporary adverse impact on the rural nature which creates an important element of the setting of the Lamesley Conservation Area. It states that this would amount to a moderate adverse effect upon the setting of the Conservation Area. In response to ExQ4.2.2 [[PD-030](#)] Gateshead Council confirmed that it agrees with the Applicant's assessment in this respect [[REP10-007](#)]. We agree that a moderate adverse effect would result on a temporary basis leading to less than substantial harm.
- 5.5.22. We are also satisfied and concur with the Applicant's assessment regarding other designated heritage assets including that slight adverse effects would result upon the setting of the Grade II listed Church of St Andrew in Lamesley and Temple Meads, amounting to less than substantial impacts.

Other Archaeology

- 5.5.23. In its WR [[REP1-012](#)], HE expressed concern that R9 of Schedule 2 the dDCO as submitted with the application [[APP-013](#)] lacked clarity and might cause confusion. HE provided amended wording for R9. Following discussions between the Applicant and HE during the Examination, agreement was reached on revised wording for this Requirement. HE's final WR [[REP11-025](#)] confirms that it is satisfied with the revised wording subject to the removal of the word 'substantially' from the Requirement where it refers to the need for the final WSI to be substantially in accordance with the REAC (Register of Environmental Actions and Commitments contained in the CEMP). Our conclusions in this respect remain as for the similar issue concerning the dDCO as set out in paragraph 5.5.17. above.
- 5.5.24. We are satisfied that R9 of our recommended DCO will ensure that there is appropriate protection in place for the identification and treatment of any as yet undiscovered heritage assets with archaeological interest.

Non-designated heritage assets

- 5.5.25. We have set out our detailed assessment of the visual impacts upon the setting and views of the Angel of the North in section 5.6 below (paragraphs 5.6.27 to 5.6.41) including the representations made by

Gateshead Council and Sir Anthony Gormley, concluding that moderate adverse visual effects would result upon views from the northbound carriageway approaching Junction 66. The Applicant and the Council agree that the Angel of the North is a non-designated heritage asset. We recognise its cultural as well as visual importance. The existing views from the A1 carriageway contribute positively to its setting and significance.

- 5.5.26. Taking into account our considerations in section 5.6 including the written and oral representations made on this matter, we conclude that the proposed gantries could potentially result in moderate adverse harm upon the setting and therefore significance of the Angel of the North as a non-designated heritage asset. This contrasts with the conclusions of the Applicant [[APP-027](#)] that the operational phase of the Proposed Development would have permanent positive impacts on the setting of the Angel of the North, improving the experience of the asset and allowing for a greater numbers of visitors.
- 5.5.27. The Applicant argues that reduced planting will give greater potential for fortuitous views of the asset, whilst acknowledging that the view from the A1 carriageway towards the Angel of the North would be slightly more restricted due to the installation of the proposed gantries.
- 5.5.28. As we explain below in paragraphs 5.6.29 to 5.6.30, we have accepted the Applicant's position that the current situation with existing landscaping should represent the baseline position from which to assess the effects, rather than Gateshead Council's position that the baseline should take account of its aspiration for a cleared area around the Angel of the North. However, we consider that the Applicant has underestimated the potential impacts of the proposed gantries upon views from the vehicles travelling along the A1 upon views of the sculpture, in particular, views from vehicles approaching from the south in a northwards direction.
- 5.5.29. Whilst other views of the Angel of the North would be unaffected by the gantries and the outline landscaping proposals offer an opportunity for opening up of some views, the importance of the views of the sculpture from the A1 are of particular significance to its setting. Although we acknowledge that these impacts might be reduced as a result of further detailed design development for the proposed gantries and future detailed landscaping proposals, we consider that the worse-case scenario is that moderate overall harm would result upon its setting and significance.
- 5.5.30. Concern has been raised [[RR-031](#)] that the application has not recognised North Farm on Lamesley Road as a non-designated heritage asset. This former 19th century agricultural property, now subdivided into five residential units, is located close to the proposed main construction compound at junction 67 (including the additional land). In response [[REP10-002](#)], the Applicant confirmed that North Farm has already been noted in the ES [[APP-118](#)] as a non-designated heritage asset of low sensitivity. The Applicant concludes that the changes to the setting of

North Farm arising from the construction compound would result in a slight adverse effect on its historical significance. It also notes that this would be a temporary and reversible impact. Gateshead Council in its response on this matter [[REP10-007](#)] does not consider that there would be any permanent effect on the significance of North Farm. We are satisfied that whilst there would be minor temporary effects on its setting, there would be no long-term impacts on its setting and significance.

- 5.5.31. No other representations have been made regarding the effects upon any other non-designated heritage assets during the Examination. We agree with the Applicant's conclusions with regard to these.

Conclusions

- 5.5.32. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving designated heritage assets, including listed buildings and their settings, the character and/or appearance of Conservation Areas and SMs or their settings. We consider that the information provided in the ES is sufficiently comprehensive for us to take account of the significance of the heritage assets and to understand the impacts of the Proposed Development on that significance.
- 5.5.33. The proposed construction works could result in moderate physical harm to the Bowes Railway SM. Major adverse harm upon its setting would also result from the construction works, albeit on a short-term temporary basis. The construction phase would also result in moderate temporary adverse effects upon the setting of the Lamesley Conservation Area.
- 5.5.34. Moderate adverse effects would result from the proposed gantries upon the setting of the Angel of the North which is a non-designated heritage asset. Moderate adverse harm would also arise from the proposed construction upon several other non-designated heritage assets.
- 5.5.35. Further minor adverse effects would also result upon the significance of other designated and non-designated heritage assets.
- 5.5.36. Where we have found that harm would arise to designated heritage assets, we consider this would be less than substantial in each instance. We have not identified any instances, during construction or operation, where the Proposed Development is likely to result in substantial harm to or loss of the significance of any heritage asset. However, the NNNPS requires that the harm we have identified should be weighed against the public benefit of the development, recognising that the greater the harm the greater the justification that will be needed. We return to that balance in our overall conclusions in Chapter 7 of this Report.

5.6. LANDSCAPE AND VISUAL EFFECTS

Introduction

- 5.6.1. This section considers the landscape and visual effects of the Proposed Development. It also includes consideration of the effects upon the Green Belt.
- 5.6.2. Matters regarding the historic environment are considered separately in section 5.5 above and matters regarding the Green Belt are considered in section 5.7 below.

Policy Background

- 5.6.3. Paragraph 5.149 of the NNNPS states that "*Landscape effects depend on the nature of the existing landscape likely to be affected and the nature of the effect likely to occur.*" "*Having regard to the siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.*"
- 5.6.4. Paragraph 5.156 notes that "*Where a local development document in England has policies based on landscape character assessment, these should be given particular consideration. However, local landscape designations should not be used in themselves as reasons to refuse consent, as this may unduly restrict acceptable development.*" It goes on to state in paragraph 5.1.57 that, in taking decisions, the SoS is required to consider whether the project has been designed carefully in landscape terms to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation.
- 5.6.5. Paragraph 5.158 requires that the SoS will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, outweigh the benefits.
- 5.6.6. Mitigation is covered by paragraphs 5.159 to 5.161 noting that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design and landscaping schemes. Materials and design for infrastructure should always be given careful consideration.

The Applicant's Approach

- 5.6.7. Chapter 7 of the ES [[APP-028](#)] sets out the Applicant's assessment of the potential landscape and visual impacts as at the point of submission of the application. The assessment covers both the construction and operational phases.
- 5.6.8. Following the Applicant's amendments to the application during the Examination [[REP4-002](#)], the Applicant submitted ES Addendums assessing the impacts of the additional land [[REP4-058](#)] and the Three Span Viaduct Option for the replacement Allerdene Bridge [[REP4-060](#)].
- 5.6.9. The ES confirms that there are no National Parks or Areas of Outstanding Natural Beauty within or next to the study area used in the ES. The

entirety of the Proposed Development is located within the Tyne and Wear Lowlands National Character Area (NCA 14). The ES states that the Proposed Development is not anticipated to give rise to a perceptible change in the way in which NCA 14 would be perceived. As such, no further assessment has been carried out of potential impacts and effects on a national scale.

- 5.6.10. The ES notes that the landscape associated with the Proposed Development comprises a distinct contrast between the open countryside to the south and west of the A1, much of which is designated as Green Belt, and the urban fringe to the north and east associated with the urban edge of Gateshead and the wider Newcastle and Gateshead conurbation. It goes on to note that the landscape forms the setting of the iconic Angel of the North sculpture which is highly conspicuous within the wider landscape.
- 5.6.11. The Proposed Development would be either within or adjacent to the following Local Landscape Character Areas (LLCA) [[APP-054](#) & [APP-055](#)]:
- Team Valley;
 - Team Valley Industrial Estates;
 - Chowdene/Wrekenton Suburbs;
 - Springwell Rise; and
 - Birtley.
- 5.6.12. For potential visual effects, representative viewpoints have been agreed prior to submission with Gateshead Council and SCC. The broad visual receptor categories have been identified as residential, rights of way, highways and other receptors (including commercial property) and points of interest. These have been fully identified in the Visual Effects Schedule [[APP-121](#)] including the predicted likely significance of effects for each receptor.
- 5.6.13. The application includes a range of design, mitigation and enhancement measures. The Landscape Mitigation Design [[APP-061](#)] encapsulates several of these measures including the retention of existing vegetation and landscape features along with the areas where new planting would be created. A detailed landscaping scheme would need to be submitted for approval through R5 of the DCO [[REP11-004](#)].
- 5.6.14. The Applicant's replacement lighting strategy would cover the same extents to the existing lighting and be similar in height but of a modern design. It would utilise LED lighting and would be directional using cowls to reduce light spill. The details of lighting, during both construction and operation, would be secured through the outline CEMP [[REP11-012](#)]. The Applicant considers that the impact of the lighting strategy would be to reduce the impact of night- time lighting.

Applicant's conclusions on the assessment of likely significant effects upon landscape character

- 5.6.15. During construction the ES finds there would be moderate adverse effect upon the Team Valley LLCA which is characterised by a rural landscape of

mixed pasture, arable fields and some large areas of woodland at the southern edge of Gateshead. These temporary effects would arise from vegetation removal to facilitate construction, construction activity including plant and site compounds, the formation of permanent embankment slopes and construction of either the replacement Allerdene Bridge (Viaduct or Embankment Option).

- 5.6.16. During operation, the Allerdene Bridge viaduct option and the proposed NGN above ground installation would result in moderate adverse effect upon the Team Valley LLCA. This would be due to the viaduct option and the above ground installation being more conspicuous and extensive in nature resulting in a more noticeable impact than existing, particularly affecting the landscape immediately to the south.

Applicant's conclusions on the assessment of likely significant visual effects

- 5.6.17. The ES predicts that during construction large adverse effects would result upon 44 residential receptors due to a temporary modification of their outlook during the construction works (including from the removal of vegetation and resulting views of construction compounds). A further 191 residential receptors would be subject to moderate adverse effects during construction for the same reason.
- 5.6.18. During construction four PRoW would be subject to large adverse effects and a further 13 would be subject to moderate adverse effects due to views of construction works. Moderate adverse effects would also result upon three of the affected highway corridors. Eight other receptors (eg woodland areas and commercial property) would be subject to moderate adverse effects during construction.
- 5.6.19. During operation, by year 15, ten residential receptors would be subject to a moderate adverse effect from views of the Allerdene Bridge Viaduct Option. One PRoW (in Lamesley) would be subject to a moderate adverse effect due to changes associated with the widening of the Kingsway Viaduct, vegetation loss and direct line of sight of Allerdene Bridge Viaduct Option.
- 5.6.20. The Applicant finds that a moderate adverse effect would also result in the year of opening for visitors to Longacre Wood arising from the removal of roadside vegetation. By year 15 this effect would be neutral following the establishment of the proposed mitigation strategy within the Landscape Mitigation Design.

Issues Arising During the Examination

Local Impact Report

- 5.6.21. Gateshead Council's LIR [[REP2-075](#)] states that the Council is satisfied with the methodology, initial assessment of baseline conditions and agreed selection of viewpoints, receptors and photomontage locations. However, the LIR sets out the following concerns leading to its overall view that there would be a negative impact with regard to both landscape and visual effects:

- Widening of the carriageway within the existing highway corridor in the southern part of the Proposed Development will result in the loss of mature vegetation which cannot be fully reinstated within the site boundary. The widened road and associated infrastructure will be more visible within the semi-rural, recreational and greenbelt landscape. From the Low Eighton roundabout northwards the mitigation planting will ultimately be more effective and may reduce adverse impacts to negligible by year 15 of operation.
- The main adverse landscape impacts would be medium term, resulting from the loss of roadside vegetation and will be mitigated to varying extents by the maturing of landscaping from year 15 onwards.
- The main adverse visual impacts are on users of the A1 viewing the Angel of the North due to the obstruction of views by new overhead structures.
- Short-term adverse impacts during construction from the works and compounds.
- In both landscape and visual terms, the Allerdene Embankment Option with sufficiently shallow side slopes for woodland planting is preferable to the Viaduct Option
- The location of any off-site compensation planting has not been identified and no-off site mitigation planting has been provided.

5.6.22. Discussions have continued between the Applicant and Gateshead Council throughout the Examination. The completed SoCG [[REP11-030](#)] between these two parties confirms that agreement has been reached on all matters relating to landscape and visual effects. Our consideration of the most relevant matters is considered further below.

Landscape character

5.6.23. As set out above, landscape matters between Gateshead Council and the Applicant are agreed as set out in their SoCG [[REP11-030](#)]. Gateshead Council has also confirmed that the Landscape Mitigation Design [[APP-061](#)] is agreed, subject to any further changes that are discussed below with particular regard to the Angel of the North.

5.6.24. Representations have been received, including from the Lamesley and Lady Park Residents Association, regarding the effect upon existing landscaping and the rural landscape near to Lamesley village [[RR-015](#), [RR-027](#) and [RR-031](#)]. These include the effects of the main construction compound adjacent to junction 67 which would extend close to the western side of the village.

5.6.25. We are satisfied that the proposed landscaping measures would minimise as far as possible the impacts of the Proposed Development upon landscape character. The impacts upon landscape character from the construction compound at junction 67, including the additional land, would be significant but would only be on a temporary basis. We agree with the conclusion of the Applicant that the only significant impacts on landscape character would be the moderate adverse effects upon the Team Valley LLCA during both construction and operation. The impacts

during operation being due to the presence of the Allerdene Bridge Viaduct Option with the landscape.

- 5.6.26. We are also satisfied that the landscape effects of the proposed Three Span Viaduct Option (as amended during the course of the Examination) for the replacement Allerdene Bridge would not be significantly different to the impacts reported for the originally submitted Embankment Option. Although the Six/Seven Span Viaduct Option would contribute to a moderate adverse landscape effect (and therefore a greater effect than either the Embankment or the Three Span Viaduct Option) we do not consider this effect to be so significant to warrant this option being removed from the DCO. Gateshead Council, whilst stating a preference for the Embankment Option, have not argued that the other options should not also be pursued.

Matters relating to the Angel of the North

- 5.6.27. Throughout the Examination several submissions were made by Gateshead Council (including within its LIR [[REP2-075](#)]) and Sir Anthony Gormley [[REP1-008](#), [REP3-010](#), [REP4-069](#)], regarding the impact of the proposed gantries and the replacement North Dene Footbridge upon the setting and views of the Angel of the North, including views from the A1 and the ECML railway. These IPs also made continued reference to the need for further assessment material to assess the impacts.
- 5.6.28. Through ExQ1.5.11 [[PD-008](#)], the Applicant was asked to provide further detailed assessment of how the proposals would affect views of the Angel of the North including details of how woodland enhancement measures would provide greater visibility of the sculpture. In response, the Applicant submitted an 'Angel of the North Narrative' [[REP2-019](#)] seeking to demonstrate how the presence of new gantries would modify the way in which views of the Angel of the North would be perceived by road and railway users. This document concluded (paragraphs 1.2.22-1.2.23) that the southbound views from the A1 of the Angel of the North would not be substantially impacted by the gantries but that the effect of the proposed gantries and the replacement North Dene Footbridge, in combination with woodland planting would lead to a worsening of the views by the occupants of vehicles using the A1 northbound, although the impact would not be significant. It also concluded that views from the ECML would not perceptibly change.
- 5.6.29. The potential impacts upon the Angel of the North were also subsequently discussed at ISH2 [[EV-010](#) & [EV-015](#)]. In its post hearing submission, Gateshead Council confirmed its position that whilst it agreed that there are no significant landscape impacts at the Angel of the North, sufficient evidence has not been provided by the Applicant to establish that the adverse visual impacts would not be significant [[REP9-022](#)]. No IP argued with the Applicant's submission that the new gantry signs would be necessary for highway safety reasons taking account of the information before the Examination.
- 5.6.30. Gateshead Council has provided the Southern Green Report 'Options Appraisal for Managing and Enhancing the Angel' [[REP4-086](#)]. The

Applicant and Gateshead Council [[REP9-022](#)] agree that this report does not carry weight as a planning document. However, the Council's preference is for Option 3 'Revealing the Angel' to be pursued which would involve the removal of existing vegetation surrounding the Angel of the North enabling it to become more visible within its surroundings including for A1 users.

- 5.6.31. The Applicant has made clear that it considers that the baseline for the ES assessment should be the existing situation including the existing landscaping around the Angel of the North. We agree that this should be the baseline position in assessing the impacts of the proposal as this is the existing situation and there is no certainty that this would change in the absence of the Proposed Development. We also agree that the lack of formal consultation on the Southern Green Options Report reduces the weight that can be given to this document. However, we do acknowledge the aspiration of Gateshead Council to improve the setting and visibility of the Angel of the North and note that the Applicant will also do what it reasonably can to preserve the views and setting of the Angel of the North.
- 5.6.32. We note from our site inspections the existing tree screening which constrains some views of the Angel of the North from the A1 and that the speed of travel can serve to limit the period of the views by passing motorists. However, overall, we consider that the Angel of the North still remains as a generally prominent and memorable feature in views from several locations along the carriageway.
- 5.6.33. By the end of the Examination and following liaison and discussion between them, the Applicant and Gateshead Council agreed a revised detailed design Requirement (R3) and a revised landscaping Requirement (R5) in the dDCO [[REP11-004](#)]. The main points of relevance to the impact on the Angel of the North are as follows:
- R3 (Detailed design) requires that no gantries shall be erected within the areas identified on the Works plan until a signage strategy (including the design and height of supporting gantries) has been submitted to and approved by the SoS, in consultation with the Local Planning Authority. The signage strategy shall include consideration of any replacement Design Manual for Roads and Bridges (DMRB) document, the use of single span or cantilever gantries rather than super span gantries, the potential impacts on the setting of the Angel of the North and the safety of road users.
 - R5 (Landscaping) requires a landscape scheme to be submitted to and be approved by the SoS in consultation with the relevant Local Planning Authority. The drafting provides for flexibility for such a landscaping scheme to be based on any of the three Options of the Southern Green Options Report (this being subject to ongoing discussions with the Council). However, the drafting requires that any of these Options can only be chosen if the Local Planning Authority has entered into an agreement providing for any cost associated with Option 1 over and above the additional cost over and above the

illustrative environmental management plan and landscape mitigation design to be paid or otherwise secured by the Local Planning Authority.

- Furthermore, the drafting states that nothing shall require the landscaping scheme to be based on Options 2 or 3 unless the Local Planning Authority has made provision for sufficient land for replacement woodland planting to mitigate the effects of these Options.

- 5.6.34. The Applicant drew attention at ISH2 [[REP9-014](#)] to there being a future replacement DMRB document which may have implications for the types and appearance of the gantry signs required for the Proposed Development including updated highway safety considerations. The previous DMRB document having been recently withdrawn. The Applicant explained that the new guidance may result in, for example, the possibility of single span rather than the more bulky and intrusive cantilever gantry signs being used with consequently reduced visual impacts. Whilst, this does not alter the worst case parameters of the application currently before us, we acknowledge that it would offer the opportunity for the optimal scheme to be put forward at the detailed design stage with such matters being reserved, through the DCO, for the final approval of the SoS in consultation with Gateshead Council.
- 5.6.35. The final outline CEMP submitted at DL11 [[REP11-012](#)] included particular measures which also relate to potential views of the Angel of the North. These include measure Ref L8 which requires that the area next to the southbound carriageway adjacent to the Angel of the North will be subject to woodland clearance with some re-planting of scattered trees and shrubs to allow for a greater awareness off the Angel of the North providing a focal point in views from the A1 corridor. This is also indicated in the Landscape Mitigation Design [[APP-061](#)].
- 5.6.36. The SoCG between the Applicant and Gateshead Council [[REP11-030](#)] confirms that the Council's concerns regarding the Angel of the North have been reduced sufficiently to accept the Landscape Mitigation Design as submitted with the application [[APP-061](#)] whilst progressing non-prejudice discussions on the final landscaping proposals. The Requirements referenced above have also been agreed.
- 5.6.37. The final representation from Sir Anthony Gormley [[REP10-008](#)] indicates support for the amendments made to R3 and R5 in respect of the efforts being made to minimise the impacts upon the Angel of the North.
- 5.6.38. We note and welcome the progress made by the parties in seeking to reach a solution regarding the visual effects of the Proposed Development upon the Angel of the North. However, whilst we acknowledge that through detailed design the impact of the proposed gantries may be reduced from that shown within the application parameters, it remains the case that the assessment of effects needs to be based on the worst case scenario based on the gantries as currently proposed in the application.

- 5.6.39. We acknowledge that the design of the gantries can be refined pursuant to R3 requiring the approval of the signage strategy. We also note that the final approval of the design of the replacement North Dene Footbridge is reserved for approval through R12 of the DCO. The Applicant's proposed clearance of some areas of woodland would also provide some benefits in terms of the opening-up of views of the Angel of the North, however these areas do not appear to be so extensive so as to result in a substantial benefit.
- 5.6.40. We have considered these matters based on the information before us including the details of the positioning, size and extent of the proposed gantries, including the additional signage likely to be fixed to them. We find that the proposed gantries in the north bound approach to Junction 66, along with the replacement North Dene Footbridge would, in combination, be likely to result in a moderate adverse effect upon the setting and views of the Angel of the North as experienced by the occupants of vehicles approaching along the north bound A1 carriageway. We acknowledge the safety considerations linked to the need for the gantries and that this moderate impact may be reduced subject to the submission of details pursuant to DCO requirements as discussed above.
- 5.6.41. Taking account of the limited existing views, we are satisfied that no adverse effects would result upon views of the Angel of the North from the ECML.

Other visual impacts

- 5.6.42. We asked several WQs throughout the Examination [e.g. ExQ1.6.8_ [PD-008](#) & ExQ2.0.4 [PD-013](#)] regarding the visual appearance and aesthetics of the structural elements of the Proposed Development, including but not limited to the replacement Allerdene Bridge. Such questions resulted from our concerns regarding the level of detail included within the relevant application drawings. These matters were also discussed at ISH1 [[EV-004](#) & [EV-005](#)] and ISH2 [[EV-015](#)].
- 5.6.43. In response to the issues raised, the Applicant stated that it considers the level of detail provided at preliminary design stage to be sufficient to confirm the structural form and identify the key constraints and parameters that need to be maintained at the detailed design stage, including the fundamental design requirements of the relevant highway structure DMRB standards including visual appearance [[REP4-052](#)]. In its response to ExQ2.0.4 Gateshead Council stated that securing further detail via Requirements is considered to be sufficient [[REP4-063](#)].
- 5.6.44. Further to these responses and discussions, the Applicant has made several key amendments during the Examination to the dDCO (the final version submitted at DL11 [[REP11-028](#)]).
- DCO R3 (Detailed design) - A signage strategy to be submitted for approval of the SoS including design and height of gantries taking account of the potential impacts on the setting of the Angel of the North);

- DCO R3 (Detailed design) - Particular design details of the replacement Allerdene Bridge (Work No.5a) to be submitted for approval of the SoS;
- DCO R5 (Landscaping) -The landscaping scheme to be submitted for approval by the SoS must include details of how it addresses the guidance in paragraph 4.29 of the NNNPS to demonstrate good aesthetics as far as possible; and
- DCO R12 (Design of North Dene Footbridge) – Design details of the replacement footbridge to be approved by the SoS.

5.6.45. The landscape and visual matters in the outline CEMP have also been developed throughout the Examination culminating in the final set of such measures within the outline CEMP submitted at DL11 [[REP11-012](#)] and included within DCO R4 (Construction and HEMP).

5.6.46. With regard to the design options for Allerdene Bridge, the SoCG between Gateshead Council and the Applicant confirms [[REP11-030](#)] that the Three Span Viaduct Option (the subject of the amended application) is the Council's least favourite Option as it cannot be landscaped in the same way as the Embankment Option. It also states that the Embankment Option for such reason offers advantages over the Six/Seven Span Viaduct Option, whilst noting that these Viaduct Options would be more open.

5.6.47. The ES addendum [[REP4-060](#)] reports that visual effects of the Three Span Viaduct Option after construction would result in moderate adverse effects due to the combined impact of the engineered soil embankment and viaduct structure. We agree with this assessment and the Applicant's reasoning in this regard. Furthermore, whilst the overall visual impacts would vary to a certain degree between the different bridge Options, we do not consider that such impacts would vary to such a degree to exclude any of the Options. Gateshead Council or any other IP have also not made representations that any of the bridge design Options should be excluded, taking account of both the likely visual and landscape effects.

Conclusion

5.6.48. Overall, we consider that the Applicant's approach to minimising landscape and visual harm, including the proposed mitigation, is reasonable and proportionate. We have found that moderate adverse impacts from proposed gantries would result upon views of the Angel of the North from the A1. Otherwise we generally agree with the Applicant's assessment where other significant effects are reported.

5.6.49. We recognise that the Applicant and Gateshead Council have agreed a mechanism through the DCO which could provide for an opportunity for these effects to be reduced through the eventual landscaping and gantry designs that would require subsequent approval at the detailed design stage. We consider that the Applicant has made reasonable endeavours to minimise and mitigate the adverse effects resulting. Overall, we are satisfied that the adverse landscape and visual impacts would not be so damaging to offset the benefits of the Proposed Development.

- 5.6.50. We conclude that the Proposed Development would satisfactorily accord with the relevant aims of the NNNPS with regard to landscape and visual matters and does not weigh significantly against the Order being made.

5.7. GREEN BELT

Introduction

- 5.7.1. This section of the Report considers the effects of the Proposed Development in the context of the Tyne and Wear Green Belt.

Policy Background

- 5.7.2. Paragraph 5.164 of the NNNPS makes clear that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land predominantly open. The essential characteristics of Green Belts are their openness and their permanence.
- 5.7.3. It goes on to say in paragraph 5.170 that there is a general presumption against inappropriate development within the Green Belt. Such development should not be approved, except in very special circumstances. Applicants should therefore determine whether their proposal, or any part of it, is within an established Green Belt and, if so, whether their proposal may be considered inappropriate development within the meaning of Green Belt policy.
- 5.7.4. In terms of decision making, paragraph 5.178 states that the SoS will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the SoS will attach substantial weight to the harm to the Green Belt, when considering any application for such development.

Applicant's Approach

- 5.7.5. The Applicant's Green Belt assessment, as submitted with the application, is primarily set out in Chapter 7 (Landscape and Visual) of the ES [[APP-028](#)] and the Planning Statement [[APP-171](#)].
- 5.7.6. The designated Green Belt covers a large amount, though not all, of the Order Limits. For example, the carriageway to the north of junction 67 is located just outside the Green Belt, as is the north bound part of the carriageway to the southeast of the Longbank bridleway (this is most clearly shown within its DL2 submission [[REP2-002](#)]).
- 5.7.7. The Applicant accepts that, as the Proposed Development is part of the strategic road network, it would not fall within the category of "*local transport infrastructure*" which might not be considered as being inappropriate within the Green Belt as set out in paragraph 146 the NPPF.

- 5.7.8. The Applicant notes that the Proposed Development would include above ground structures such as new bridges and gantries that on a precautionary basis it considers to have a detrimental effect on the openness of the Green Belt. It also states that additional effects on openness would result from temporary buildings and structures during construction. The Applicant also concludes that the Proposed Development may conflict with one of the purposes of the Green Belt, namely the purpose of safeguarding the countryside from encroachment, although it notes that this would be limited in extent.
- 5.7.9. In terms of 'other harm', it goes on to state that other landscape and visual harm would result, although it considers this only in the context of "*landscape and visual effects on the Green Belt*" and not all the other harm that it has found would result from the Proposed Development.
- 5.7.10. Overall, the Applicant concluded that the extent of harm to the Green Belt would be limited for the following reasons:
- Impact on openness would be confined to those locations in which significant new or extended structures are proposed;
 - Impacts on openness would take place within the context of existing highway infrastructure so would not be a significant change in terms of character and function of the Green Belt;
 - The degree of encroachment on the undeveloped Green Belt would be small; and
 - Construction effects would be short term, where land required temporarily for construction would be re-installed to its original condition following completion.
- 5.7.11. For the purposes of demonstrating that very special circumstances exist, the Applicant considers the following key issues are relevant (these are considered in further detail within paragraphs 5.4.23 to 5.4.26 of the originally submitted Planning Statement [[APP-171](#)):
- Delivery of Government policy and programmes;
 - Conformity with local development plan policy and allocations for delivery of the transport infrastructure;
 - Environmental benefits;
 - Economic benefits; and
 - Availability of alternatives (all options considered fall within the Green Belt).
- 5.7.12. The Applicant concludes that "*the limited degree of harm identified is considered to be outweighed by the very special circumstances that exist in relation to the impact of the scheme on the Green Belt*".

Issues arising during the Examination

- 5.7.13. Gateshead Council's LIR [[REP2-075](#)] did not include any reference to any impacts from the Proposed Development upon the Green Belt.
- 5.7.14. Through our FWQ [[PD-008](#)] we posed questions to Gateshead Council on whether it agrees with the Applicant's Green Belt assessment, and to the Applicant, including on the following matters:

- A list of all the elements of the scheme that it considers to be inappropriate development (ExQ1.0.4a);
 - Further explanation of why the Applicant considers that the proposed engineering operations, including below and ground level works, would preserve Green Belt openness (ExQ1.0.4b); and
 - A clarification and update of the Applicant's position on 'other harm' including whether the Applicant should extend its list of 'other harm' to also include non-Green Belt harm [ExQ1.0.5].
- 5.7.15. In response, Gateshead Council [[REP2-066](#)] raised several issues of concern regarding the Applicant's Green Belt assessment including whether it would affect Green Belt openness, whether it constitutes inappropriate development, whether the impacts would be the same for all of the Options and what is the justification for temporary buildings and structures. The Council agreed that there are very special circumstances which clearly outweigh any harm, provided that harm is minimised both during construction and by the road as constructed.
- 5.7.16. In response to the FWQ the Applicant has provided a document [[REP2-002](#)] which shows all those proposed structures it considers would not preserve openness and so would be inappropriate within the Green Belt. In response to ExQ1.0.5, the Applicant submitted a "Note on Other Harm" [[REP2-003](#)] setting out details of all the other non-Green Belt harm that it considers would arise. It confirmed that this additional information does not change its overall conclusion in respect of Green Belt policy.
- 5.7.17. We subsequently asked further questions [[PD-013](#)] seeking further clarification on Green Belt matters including on matters relating to:
- How the Applicant has sought to minimise the impacts on openness (ExQ2.0.2a & b);
 - The assessment of temporary buildings and structures (ExQ2.0.2c);
 - A further review of 'other harm' to update missing elements (ExQ2.0.3); and
 - The impact of the proposed gantries on the Green Belt (ExQ2.0.7).
- 5.7.18. The Applicant responded at DL4 [[REP4-052](#)] and also provided a Technical Note on the Green Belt [[REP4-081](#)] which included a fuller assessment of the impacts of aspects of the Proposed Development upon Green Belt openness. It also summarised the relevant updated information and clarification concerning its Green Belt assessment in an updated Planning Statement [[REP4-020](#)]. This includes a more comprehensive list of the 'other harm' resulting from the Proposed Development.
- 5.7.19. As part of its response [[REP4-052](#)], the Applicant confirmed that the number and location of the proposed gantries has been primarily driven by the need for safe operation of the highway, but within this constraint, it has sought to avoid additional or unnecessary signs and keep the physical height and scale of them as small as possible. No IP has sought to argue against the highway safety need of the location and number of the proposed gantries. As set out in section 5.6 above, the final signage

strategy including the final design and location of gantries would be subject to subsequent approval. This would provide the opportunity for the impact of the gantries on the openness of the Green Belt to be minimised as much as possible within the constraints of the relevant highway safety considerations.

- 5.7.20. Following the provision of further information, the Applicant and Gateshead Council reached agreement on Green Belt policy matters as set out in their SoCG [[REP11-030](#)]. The two parties agree that the Proposed Development would amount to inappropriate development “*but that there are very special circumstances to justify the development in the Green Belt which outweigh the limited harm identified*”.

ExA’s Assessment and Conclusion

- 5.7.21. We consider that whilst the Proposed Development can demonstrate a requirement for a Green Belt location, it does not represent ‘local transport infrastructure’ as it would be part of the wider strategic road network. In any case, the Applicant and Gateshead Council agree that it does not preserve Green Belt openness and therefore it does not benefit from the exception to inappropriate development set out in paragraph 146(c) of the NPPF.
- 5.7.22. The Proposed Development includes numerous new and replacement structures along with substantial engineering operations. We are generally satisfied that those below ground and no higher than ground level, including grouting and carriageway widening (where it does not involve significant increases in ground level), would substantially preserve openness. However, the proposed above ground structures including bridges (including the replacement of existing bridges and extensions to existing bridges), gantries, new lighting, signs and other structures would not preserve openness on a permanent basis. Further, temporary adverse impacts on openness, would result from buildings, structures, storage of materials, plant and machinery including within the two main construction compounds.
- 5.7.23. Each of the design options for the replacement Allerdene Bridge Embankment Option would introduce development further from the existing urban area in comparison to the existing location of the bridge. Whilst noting the controls within the Applicant’s lighting strategy, lighting on the replacement bridge would also have an impact upon openness during darkness. The Embankment Option would benefit from increased landscaping which, following establishment, would reduce its impact on the visual aspect of openness in comparison to the Six or Seven Span Viaduct Option that would appear as a more stark feature due to the reduced opportunity for landscaping. The additional Three Span Viaduct Option would include sections of embankment, but these would not be able to be planted due to the steeper slopes required for this Option.
- 5.7.24. In the case of the replacement North Dene Footbridge we note that the effects on openness would be generally similar to those of the existing bridge. We have gone on to take these considerations into account in our subsequent Green Belt conclusions.

- 5.7.25. We have considered the presence of existing landscape features and proposed new landscaping in the assessment of openness. Whilst this would be capable of reducing the effect on openness from a visual perspective, such screening would not be comprehensive and, in any case, it would not overcome the still considerable spatial impact of Proposed Development upon openness. Our considerations on openness, as with the other matters being assessed, are also based upon the worst-case scenario. We have also taken account of the existing highway and related structures along the A1 corridor. Overall, we consider that the Proposed Development would result in a moderate adverse impact on Green Belt openness.
- 5.7.26. In terms of the purposes of including land within the Green Belt, the Proposed Development would conflict to a limited degree in terms of its encroachment into the surrounding countryside, including the proposed replacement Allerdene Bridge, the location of which for all Options would encroach more into the countryside than the existing bridge. We are satisfied that it would not conflict with the other four Green Belt purposes.
- 5.7.27. We conclude that the Proposed Development as a whole would amount to inappropriate development in the Green Belt. It would result in a moderate adverse impact on openness and would conflict with the purpose of the Green Belt to safeguard the countryside from encroachment.
- 5.7.28. Inappropriate development is, by definition, harmful to the Green Belt. We attach substantial weight to the harm that would result to the Green Belt. We go on to consider the question of whether very special circumstances exist to clearly outweigh the harm by reason of inappropriateness, and any other harm, in Chapter 7 of the Report.

5.8. NOISE AND VIBRATION

Introduction

- 5.8.1. This section considers the effects of the Proposed Development in relation to noise and vibration.

Policy Background

- 5.8.2. NNNPS paragraphs 5.188 to 5.199 sets out guidance and policy for undertaking the assessment of noise impacts.
- 5.8.3. Paragraph 5.189 of the NNNPS sets out the matters to be included in a noise assessment including:
- describing the noise sources including likely usage;
 - identification of noise sensitive premises and noise sensitive areas that may be affected;
 - a prediction on how the noise environment will change with the proposed development;

- an assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas; and
- measures to be employed in mitigating the effects of noise.

5.8.4. With regard to decision making, paragraph 5.193 states that due regard must be given to the NPSE, the NPPF and associated planning guidance. Paragraph 5.194 goes on to say that the project should demonstrate good design through optimisation of layout and, where possible, the use of landscaping or noise barriers to reduce noise transmissions.

5.8.5. The proposed development should meet the following aims (paragraph 5.195):

- Avoid significant adverse impacts on health and quality of life;
- Mitigate and minimise other adverse impacts on health and quality of life;
- Contribute to improvements to health and quality of life through the effective management and control of noise where possible.

5.8.6. With regard to mitigation, paragraph 5.197 states that consideration should be given to whether measures are needed over and above those that form part of the application. Mitigation measures may include those relating to engineering to contain noise generated, materials (for example low noise road surfacing); layout (including screening) and administration (specifying acceptable noise limits).

Applicant's Approach

5.8.7. The Applicant's assessment of noise and vibration matters is primarily contained within Chapter 11 (Noise and Vibration) of the ES [[APP-032](#)]. This chapter is supported by the following reports:

- Noise and Vibration Glossary [[APP-145](#)];
- Legislation, Policy and Guidance [[APP-146](#)];
- Address base Data Categorisation [[APP-147](#)];
- Noise and Vibration Level Prediction and Modelling Methods [[APP-148](#)];
- Construction Criteria, Data and Prediction Results [[APP-149](#)];
- Baseline Noise Survey- Details [[APP-150](#)];
- Baseline Noise Survey, Meteorological Data [[APP-151](#)];
- Noise Consultation [[APP-152](#)];
- Sensitive Receptors [[APP-153](#)];
- Noise Important Areas [[APP-154](#)];
- Baseline Noise Survey - Measurement Data [[APP-155](#)];
- Construction Phase Traffic Diversions [[APP-156](#)];
- Construction Traffic Noise [[APP-157](#)];
- Construction Vibration [[APP-158](#)];
- Wider Area 50m Buffers and Property Counts [[APP-159](#)];
- Noise Nuisance [[APP-160](#)]; and
- Vibration Nuisance [[APP-161](#)].

5.8.8. An assessment of both construction and operational road traffic noise has been undertaken within ES Chapter 11 Noise and Vibration [[APP-032](#)] in

accordance with DMRB, which has considered road traffic noise impacts in both the short-term (upon opening) and long-term (to the future design year of 2038).

- 5.8.9. ES Chapter 11 states that prior to the implementation of design, mitigation and enhancement measures which are to be incorporated into the Proposed Development, there is the potential for adverse and beneficial impacts to arise during both construction and operation. Table 16.1 of Appendix 11.16 of the ES [[APP-160](#)] shows that four dwellings would experience, during operation, an increase in noise nuisance of between 20% and 30%.
- 5.8.10. The following mitigation measures have been incorporated into the design of the Proposed Development and would be secured through the DCO Requirements. These are:
- The installation of low noise Thin Surface Course System (TSCS) for all sections of A1 within the Order limits and the slip roads up to the roundabouts; and
 - Installation of a new acoustic barrier next to the A1 north-bound carriageway, to tie into or overlap with the existing bund west of the northbound carriageway at Lockwood Avenue and the provision of a continuous acoustic barrier adjacent to residential properties in the Birtley area, including North Dene and Crathie.
- 5.8.11. The design of the Proposed Development has also sought to ensure that the extensions to the carriageway do not bring it closer to the clusters of residential properties located on the south western side of the carriageway, most notably those properties in the Birtley area.
- 5.8.12. The findings of the noise assessment indicate that, in the short and long-term during operation, adverse changes in road traffic noise level would not be of a sufficient magnitude to be considered significant. Tables 11-24 and 11-25 of the ES [[APP-032](#)] show that there is predicted to be a general shift in the numbers of receptors towards lower effect levels. The numbers of receptors within the NOEL and between LOAEL and SOAEL generally increase, whilst the numbers of receptors within the SOAEL generally decrease. The Applicant states that this demonstrates a clear beneficial effect as a result of the Proposed Development with a net decrease in noise levels. Any noise level increases are predicted to be less than 3dB in all cases, whilst noise level decreases of more than 5dB are predicted to arise for some areas.
- 5.8.13. Table 11-28 of the ES [[APP-032](#)] presents a summary of the operational road traffic noise effects arising as a result of this Proposed Development. It notes that for most residential and other receptor groups there would be no overall significant effects with any increases or decreases in noise levels being negligible. For one receptor area (North Dene and Crathie) significant beneficial effects would result from moderate to major decreases in noise. This is due to the proposed noise barrier that will be installed in this location. This has been achieved through the implementation of mitigation into the design, including the

use of a low noise/thin surfacing system to be laid on new or altered roads and new or enhanced acoustic screening.

- 5.8.14. R4 of the dDCO [[APP-013](#)] provides that a CEMP would be prepared for the approval of the SoS, in consultation with Gateshead Council and others, prior to commencing construction. This would need to be substantially in accordance with the outline CEMP [[APP-174](#)]. This includes a set of best practice working methods for the control of construction noise and vibration. Noise monitoring during construction would be undertaken at key sensitive receptors to ensure that mitigation works effectively.
- 5.8.15. The ES predicts that during construction noise levels above the LOAEL and SOAEL have been predicted to arise, but the proposed noise mitigation measures will be adopted to minimise predicted adverse effects and avoid giving rise to levels above the SOAEL wherever possible. For the majority of the construction period, predicted noise levels would be below SOAEL for daytime working and the overall effect for daytime works is stated as being not significant.
- 5.8.16. Some evening and night-time construction works would also be required. Much of these instances would be occasional with each period associated with a limited area of works for a limited time period. More regular night-time working would be required in the vicinity of Allerdene Bridge, to facilitate the removal of the existing bridge and construction of its replacement. Up to 17 weekends of evening and night-time working may be required in the worst-case scenario for the Embankment Allerdene Bridge Option. Overall, following the implementation of mitigation measures, significant night-time noise effects during construction would occur at Willowbeds Farm, Lamesley Vicarage and Cottage and dwellings on Salcombe Gardens.
- 5.8.17. Taking account of the duration and frequency of relevant works, the Applicant predicts that no significant adverse effects would result from vibration during the construction process.
- 5.8.18. During construction, some full closures of the A1 would be required where necessary. In such instances eight diversion routes will be followed that are currently in place when needed. A total of 45 closures are anticipated to be required in each direction, though the Applicant states that these would constitute a small proportion of the full three-year construction programme. The effects of the proposed traffic diversion is stated as being not significant by the Applicant.

Issues Arising During the Examination

- 5.8.19. Gateshead Council's LIR [[REP2-075](#)] expresses concern regarding the noise during construction on residential properties located in proximity of the Proposed Development. However, it states that it is content with the mitigation measures proposed within the outline CEMP to minimise this noise. Overall, the Council's states that there would be a neutral impact.

- 5.8.20. Several RRs were received concerning noise and vibration including as follows:
- the Shotton family [[RR-014](#)] on disruption during construction and ensuring a reduction in noise impact following completion;
 - Peter Talbot [[RR-023](#)] on construction and operational noise upon residents in North Dene; and
 - the Lady Park and Lamesley Residents Association [[RR-027](#)] on the impact of noise from the construction compound on residents in Lamesley.
- 5.8.21. The Applicant provided comments on these at DL1 [[REP1-002](#)] which the ExA has reviewed and considers adequately addresses the IP's concerns. The ExA went on to ask WQs where it considered that further questioning was necessary.
- 5.8.22. The ExA asked WQs [[PD-008](#); [PD-013](#); and [PD-023](#);) relating to noise and vibration including: operational road traffic noise; use of a thin surface course; noise nuisance at dwellings; mitigation of adverse noise effects; noise and vibration effects arising from use of diversion routes; out of hours working; construction noise assessment; noise barriers; and proposed noise and vibration construction monitoring proposals.
- 5.8.23. With regard to the four dwellings identified in Table 16.1 of Appendix 11.16 of the ES [[APP-160](#)], their occupants would experience an increase in noise nuisance of between 20% and 30%. In response to the ExA FWQ 1.7.3 the Applicant confirmed that the noise level changes predicted which result in the changes to their nuisance bandings are +0.9dB to +1.2dB in the year of opening. In addition the Applicant stated that these equate to a minor adverse magnitude of change at worst, which in practical terms would unlikely to be perceptible to the residents [[REP2-061](#)]. We are satisfied with the Applicant's conclusions regarding this and the other matters we raised.
- 5.8.24. With regard to ensuring that a TSCS is installed to maximise its low noise potential, the Applicant amended the text within Table 3-1 REAC of the outline CEMP [[REP8-008](#)] to confirm the TSCS will need to be level 3, which is the specification required to obtain the desired reduction in noise levels [[REP8-024](#)] Q.3.7.1. The ExA considers that this measure secures installation of a TSCS to maximise its low noise potential.
- 5.8.25. Regarding mitigation of construction noise, the Applicant confirmed the best practice measures included in the outline CEMP, as well as commitments to ongoing consultation with the Local Authority and local residents [[REP4-052](#)] Q.2.7.4. The ExA considers these measures to be acceptable.
- 5.8.26. At the end of the Examination Gateshead Council confirmed again that it was *'satisfied with the proposed noise monitoring measures and the level of detail contained with the draft CEMP'* [[REP8-030](#)].
- 5.8.27. With regard to Gateshead Council's queries about the appearance of the noise barriers and programme for installation [[REP4-063](#)], the Applicant

confirmed the measures included in the outline CEMP [REP8-008]. This was agreed by Gateshead Council in the signed SoCG [REP11-030].

- 5.8.28. A further RR was received from Lynn Wilson regarding the cumulative construction traffic impacts of the proposed development and resulting noise pollution resulting from increased vehicular activity [RR-025]. The ExA asked the Applicant to provide any necessary update to its existing Cumulative and Combined Assessment, and in response the Applicant stated [Q.4.0.1; REP10-002] that no updates to the Cumulative and Combined Assessment of the ES [APP-036] are required. In their response to this question Gateshead Council stated that the proposals referred to in the representation had been subject of robust consideration [REP10-007]. We are satisfied that the Cumulative and Combined Assessment is adequate.
- 5.8.29. Trinity Chambers on behalf of the owners and occupiers of five residential properties at North Farm raised concerns regarding the impact of noise and dust on the occupiers of North Farm from the use of additional land outside the current DCO application for stockpiling [RR-031].
- 5.8.30. During ISH6, the ExA asked how these properties were taken into consideration in the ES. The Applicant responded [REP11-019] that they prepared an addendum to the ES - ES Addendum: Additional Land [REP4-058], including an assessment of the impact on affected properties at North Farm. The Applicant was mindful that it was also necessary to extend mitigation to the additional land due to the inclusion of the area and has prepared a table of measures for the Additional Land in Appendix F. These measures were included in Table 3-1 of the REAC in the outline CEMP [REP11-012]. Gateshead Council confirmed at the Further ISH (regarding the additional land) [REP11-024] that it is confident that the measures proposed by the Applicant in the outline CEMP will be sufficient to keep impacts to a minimum. We are satisfied that the Applicant has provided sufficient mitigation to reasonably minimise noise and vibration impacts.

Conclusions

- 5.8.31. We concur with the Applicant's findings that benefits would arise for a considerable number of residential properties following the implementation of the scheme. Whilst, there would be some short-term significant noise impacts during construction, we consider that the Applicant is proposing appropriate measures to mitigate and minimise the adverse effects.
- 5.8.32. We conclude that the relevant tests in the NNNPS are met including as follows:
- the Proposed Development would satisfactorily avoid any significant adverse impacts on the health and quality of life of local residents from noise;
 - the Proposed Development would satisfactorily mitigate and minimise other adverse impacts on the health and quality of life of local residents from noise; and

- that the dDCO secures the mitigation measures during construction in the CEMP (Schedule 2 Part 1 (4))
- to ensure that the noise levels do not exceed those described in the assessment.

5.8.33. Overall, taking all these matters into consideration, we conclude that noise and vibration matters do not weigh significantly against the Order being made.

5.9. TRAFFIC AND TRANSPORT

Introduction

5.9.1. This section considers the effects of the Proposed Development in relation to traffic and transport, including non-motorised users (NMU) and footpaths.

Policy background

5.9.2. The NNNPS refers extensively to transportation and traffic policy requirements. This includes:

- paragraph 3.17 (Sustainable transport): using reasonable endeavours to address the needs of cyclists and pedestrians in design;
- 4.6 (local transport model): is supported by a local transport model to provide detail of the impacts, including an assessment of the benefits and costs; and
- 5.203 to 5.205 (Impacts on transport networks): having regard to policies in Local Plans, consulting with the highway authority and Local Planning Authority, and supporting other transport modes.

5.9.3. Paragraph 5.211 of the NNNPS states that the SoS should consider impacts on the local transport network and local transport policies, including those in Local Plans. Paragraphs 5.215 to 5.216 advise that, mitigation should focus on promoting sustainable development and that where development would worsen accessibility, such impacts should be mitigated as far as reasonably possible. In particular, there is a strong expectation that impacts on accessibility for NMUs should be mitigated.

5.9.4. Earlier in our Report (section 4.4) we set out in more detail the policy considerations in the NNNPS relating to the need for improvements to the strategic road network. This includes paragraphs 2.12 to 2.14 of the NNNPS highlighting the importance of the strategic road network which provides critical links between areas enabling safe and reliable journeys and the movement of goods in support of national and regional economies.

5.9.5. Policy CS13 (Transport) of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (2010-2030) provides support for measures to deliver an integrated transport network, including improving the operation of the transport network and its wider connections by various measures such as:

“i. Promoting and facilitating improvements to wider networks where it is demonstrated that they have an acceptable impact on the local transport network and environment”; and

“iv. The creation of additional capacity on the strategic road network, including the provision of an additional lane on the A1 in both directions from the A1/A19 interchange at Seaton Burn to the Scotswood slip-roads, and between the southern extent of the Lobley Hill Major Scheme improvements at Coal House and the A1/A194(M) bifurcation at Birtley”.

- 5.9.6. Policy MSGP18.5 of the emerging Making Spaces for Growing Places (Local Plan Part 3) identifies the section of the A1 between Birtley and Coal House as being safeguarded for transport improvements.
- 5.9.7. The Tyne and Wear Local Transport Plan 3 Strategy 2011-21 (2011) comprises a ten-year strategy covering all forms of transport in Tyne and Wear, in a series of three-year delivery plans setting out how the strategy will be put into effect at a local level. Its vision for Transport in Tyne and Wear is to have a fully integrated and sustainable transport network, allowing everyone the opportunity to achieve their full potential and have a high quality of life. It states that the strategic networks will support the efficient movement of people and goods within and beyond Tyne and Wear, and a comprehensive network of pedestrian, cycle and passenger transport links will ensure that everyone has access to employment, training, community services and facilities.

Applicant’s Approach

- 5.9.8. The Applicant’s assessment of traffic and transport matters is primarily contained within part 7.3 TAR of the ES [[APP-173](#)]. The TAR provides information about the transport assessment undertaken as part of the development of the Proposed Development in line with guidance published by the Department for Transport (DfT) (2007)³, and provides an assessment of the likely transport impacts resulting from the Proposed Development. This Chapter is supported by the following reports:
- Construction Traffic Assessment [[APP-108](#)];
 - Traffic Data [[APP-109](#)]; and
 - Construction Phase Traffic Diversions [[APP-156](#)].
- 5.9.9. The TAR provides an assessment of the following:
- current network performance;
 - future network performance;
 - road safety; and
 - walking, cycling and horse riding (Non-motorised users (NMU))
- 5.9.10. The assessment concludes:

³ Guidance on Transport Assessment (Department for Transport and Communities and Local government)

- the road is currently congested, with traffic flow pinch points at junction 65 (Birtley) and junction 67 (Coal House);
- future network performance for the Proposed Development would bring reduced journey times during the peak hours, and reduce congestion. Improving conditions on local roads as well as the strategic road network would occur due to the improved operational capacity;
- the Proposed Development achieves one of its key objectives of improving safety by reducing the numbers of accidents and fatalities; and
- it is likely that NMUs would be directly impacted during the construction of the Proposed Development due to the need to temporarily close footpaths in the vicinity. Preliminary Design stage improvements and benefits to the existing infrastructure for NMUs have been identified to be delivered through the implementation of the Proposed Development.

5.9.11. The Planning Statement also addresses the need for the Proposed Development, how it has developed over time, the benefits that would arise from it and the policy justification for it. An updated version of the Planning Statement was submitted at DL4 [[REP4-020](#)].

5.9.12. A CTMP is appended to the outline CEMP [[REP11-012](#)]. This provides a framework for addressing the transport issues associated with the movement of construction traffic, including site access, routing, signage, heavy goods vehicles and abnormal invisible loads.

The case for and benefits of the Proposed Development

5.9.13. Chapter 2 of the Planning Statement details the need for the Proposed Development [[REP4-020](#)]. We have summarised below the Applicant's main points regarding the case for the Proposed Development.

5.9.14. The A1 between Birtley and Coal House forms part of the Newcastle Gateshead Western Bypass (NGWB) in the North East of England. The A1 NGWB runs from junction 65 (Birtley) to junction 80 (Seaton Burn) where the A19 meets the A1. The A1 NGWB is a route of local and national importance and forms part of Highways England's strategic road network serving the metropolitan area of Tyne and Wear.

5.9.15. The A1 NGWB suffers from congestion and capacity issues. A number of studies, since 2002, have been undertaken to assess the congestion and capacity issues on the A1 NGWB, including between junction 65 (Birtley) and junction 67 (Coal House) to make recommendations on how they should be addressed.

5.9.16. The A1 NGWB is a critical part of both the national and local road network. Traffic flows and journey times have been derived from the Northern Regional Transport Model. Analysis of network performance in the TAR [[APP-173](#)] indicates that the section between junction 67 (Coal House) and junction 65 (Birtley) experiences significant congestion.

- 5.9.17. Some of the underlying factors causing congestion between junction 65 (Birtley) and junction 67 (Coal House) include: increased traffic demand due to developments (e.g. new residential developments in Birtley and the potential for employment and retail developments in Team Valley Trading Estate) locally; and increased traffic demand following the opening of the A1 Coal House (junction 67) to Metro Centre (junction 71) improvement scheme in 2016.
- 5.9.18. Driver stress caused by congestion has been found to be particularly high in morning peak times on the northbound carriageway. The Proposed Development is expected to reduce journey times during all hours from 2023 (opening year).
- 5.9.19. The TAR states that, in the morning peak period (without the Proposed Development), the two-way traffic total between junction 65 (Birtley) and junction 66 (Eighton Lodge) is forecast to grow by 16% and by 26% between junction 66 and junction 67. This is largely due to the planned growth in the Newcastle, Gateshead and wider region, largely due to a number of proposed development sites to be delivered. This additional traffic demand will further exacerbate the congestion and capacity issues experienced on the A1 NGWB, particularly between junction 65 (Birtley) and junction 67 (Coal House).
- 5.9.20. In addition, the existing Allerdene Bridge, where the A1 crosses the ECML requires significant maintenance due to its condition. If this structure were to become unusable it would heavily impact on traffic use of the A1 and cause significant congestion issues in the area due to the lack of alternative routes.
- 5.9.21. It is proposed that the existing Allerdene Bridge be demolished, and the replacement bridge be located approximately 40 m to the south of the current structure [[REP4-061](#)]. Three design options are included within the dDCO to provide flexibility to allow further analysis to be conducted when detailed design is carried out. The three options proposed are:
- Embankment Option – a single span bridge supported by embankments;
 - Viaduct Option – a 6 or 7 span viaduct structure supported on piers; and
 - Three Span Viaduct Option – a 3 span viaduct structure supported on piers in the middle and embankments at either end.
- 5.9.22. The TAR [[APP-173](#)] concludes at paragraph 7.5 that the assessment demonstrates that the Proposed Development:
- meets the requirements of central government’s transport objectives around economy, environment, social and public accounts;
 - aligns with national and local planning policy;
 - addresses future traffic demand and creates improved traffic congestion conditions and journey experience for motorists;
 - improves facilities for NMUs; and
 - creates a safer environment for all road users as a result of a forecast reduction in accidents.

- 5.9.23. Gateshead Council support the Proposed Development. It's LIR [[REP2-075](#)] states that the value of the proposed improvement to the transport network is recognised in Policy 13 of the Core Strategy for Gateshead and Newcastle upon Tyne. It goes on to state that the Proposed Development is particularly important because:
- It will replace the existing A1 bridge over the ECML at Allerdene which has had major maintenance difficulties for a number of years leading to increased diversion of traffic onto local roads and reduced capacity on the A1, diversion of abnormal loads onto local roads and potential disruption to passenger and rail freight traffic;
 - It will improve road safety; and
 - It will improve traffic flow and reduce congestion.
- 5.9.24. SCC confirmed their support of the objectives of the Proposed Development [[RR-005](#)].
- 5.9.25. We agree with the conclusions of the Applicant's assessment regarding the need and case for the Proposed Development which weighs significantly in favour of the Order being made.

Issues Arising During the Examination

- 5.9.26. As set out above, Gateshead Council's LIR [[REP2-075](#)] identifies a range of benefits of the Proposed Development noting the conformity with the relevant development policy (outlined above) regarding the overall need for the Proposed Development. Whilst being supportive of the need for and benefits of the Proposed Development, the Council also set out concerns regarding:
- The A1 representing a barrier to pedestrian and cycle movement and the need to seek measures to reduce its existing severance impact, particularly at the Coal House roundabout; and
 - The need to promote the use of sustainable transport wherever possible.
- 5.9.27. A number of RRs were received concerning traffic and transport as follows:
- Tyne & Wear Joint Local Access Forum [[RR-009](#)] on the need to maintain/improve footpaths and bridleways;
 - David John Bartlett [[RR-021](#)] on the impact upon the A1231 link road from Washington/Sunderland; and
 - George Smith [[RR-022](#)] on the impacts of construction traffic.
- 5.9.28. The Applicant provided comments on these at DL1 [[REP1-002](#)] which the ExA has reviewed and considers adequately addresses the IP's concerns. The ExA went on to ask WQs where it was considered that further questioning was necessary.
- 5.9.29. The ExA asked a series of WQ's relating to construction traffic and arrivals and departures from construction compounds as detailed below.

- 5.9.30. With regard to providing safe vehicular accesses to the two construction compounds and two working compounds Q.3.9.2 [[PD-023](#)], the Applicant confirmed that a new R10(3) had been added to the dDCO [[REP11-028](#)] requiring the details of access to a compound from the public highway to be approved by the SoS, in consultation with the local highway authority, before formation of that compound may be commenced; ref 3.9.2 [[REP8-024](#)].
- 5.9.31. Regarding concerns, including from Gateshead Council, about the use of Woodford for construction traffic movements Q.1.9.8 [[PD-008](#)]; Q.2.9.4 [[PD-013](#)]; Q.3.9.3 [[PD-023](#)], the Applicant responded by the inclusion of additional measures within the CTMP at DL6 [[REP6-008](#)]. These measures included applying the principles contained in the DFT document 'Safety at Street Works and Road Works – A Code of Practice' and operate to the same guidelines as applied to footways. Gateshead Council confirmed their acceptance of this response to ExQ 3.9.3 [[REP8-030](#)].
- 5.9.32. Regarding Gateshead Council's concerns about road closures; arrivals and departures; construction worker trips and specific routes Q.1.9.3 [[PD-008](#)]; Q2.9.2 [[PD-013](#)], Gateshead Council confirmed that these items '*..have now been agreed in principle, with any detail to be managed through development of the detailed CEMP and/or the proposed CTMP working group...*' [[REP8-030](#)].
- 5.9.33. The ExA asked a question regarding the assessment of cumulative construction traffic impacts Q.1.9.7 [[PD-008](#)]. A further RR was received from Lynn Wilson regarding the cumulative construction traffic impacts of the Proposed Development [[RR-025](#)]. The ExA asked the Applicant to provide any necessary update to its existing Cumulative and Combined Assessment, and in response the Applicant stated [Q.4.0.1; [REP10-002](#)] that no updates to the Cumulative and Combined Assessment of the ES [[APP-036](#)] are required. In their response to this question Gateshead Council stated that the proposals referred to in the representation had been subject of robust consideration [[REP10-007](#)]. We are satisfied that the Cumulative and Combined Assessment is adequate.
- 5.9.34. We consider that the Applicant has made adequate provisions for construction traffic including arrivals and departures to and from construction compounds and that reasonable mitigation and management measures would be secured within the DCO.
- 5.9.35. We are also satisfied that the provision of improvements to the off-slip road at junction 65 (Birtley) comprising two lanes as shown on Sheet 7 of the General Arrangement Plans [[REP4-009](#)] will increase capacity and help to alleviate the capacity issue raised [[RR-021](#)] regarding the A1231.
- 5.9.36. The ExA asked a series of WQ's relating to sustainable transport and diversion routes for NMUs in the vicinity of Eighton Lodge and Coal House roundabouts including: 1.9.5; 1.9.9; 1.9.10; 1.9.11; [[PD-008](#)] and 3.9.1 [[PD-023](#)]. The following paragraphs detail how these issues were resolved.

- 5.9.37. In response to Q3.9.1 the Applicant noted "... *that the operational phase of the Scheme would maintain existing routes (delivering minor improvements to these) for walkers, cyclists and horse riders (WCHs) by providing a replacement North Dene Footbridge and improved Longbank Bridleway. Compared to the existing NMU provision, the Scheme would provide improved safety for WCHs and improved facilities to cross the A1 for work and social purposes*" [[REP8-024](#)]. We agree that minor benefits from the Proposed Development would result from the improvement to existing accessibility for NMUs. Further discussion of this issue is contained at paragraphs 5.4.26 to 5.4.30.
- 5.9.38. The final SoCG between the Applicant and Gateshead Council [[REP11-030](#)] confirms that the matter is now agreed between the these two parties. It states that the Council will propose a separate scheme which would not coincide with the Proposed Development delivery and would not adversely impact its benefits. The Applicant will work with the Council outside the DCO process to look at possible sources of funding to help support further investigation of this issue.
- 5.9.39. As reported in section 5.4 (Economic and social effects) above, whilst there would negative impacts on users during the construction process, we are satisfied that the Applicant has made reasonable provision for diversion routes during construction for NMUs, including in the vicinity of Eighton Lodge and Coal House roundabouts.
- 5.9.40. Royal Mail submitted a representation regarding the effects of construction including road closures and diversions upon Royal Mail operations [[REP5-016](#)]. The Applicant responded [Table 3 of [REP6-011](#)] with details referencing paragraph 2.8.1 and 5.3.7 of the CTMP (Appendix B of the CEMP) [[REP6-008](#)] containing provision for communicating with Royal Mail and other stakeholders.
- 5.9.41. The Applicant's change request [[REP4-002](#)] included Change 1 - the inclusion of an Option for a Three Span Viaduct within the application. The ExA accepted this as a non-material change to the application [[PD-017](#)]. In response to an ExA question the Applicant provided a list of measures within the CEMP that would be relevant for managing and limiting the impacts the Three Span Viaduct Option [Q.3.0.2 [REP8-024](#)]. No representations have been received regarding this change and we are satisfied that it does not introduce any further issues.
- 5.9.42. The Applicant's change request also included Change 2 - to allow narrower lanes extending over approximately 750 m of the length of the Proposed Development. The ExA accepted this as a non-material change to the application [[PD-017](#)]. This was covered in the Applicant's revised 'Addendum to Transport Assessment Report' [[REP4-056](#)] which assessed the impact of this change and concluded there would be no impact on traffic flows or safety matters as result of the implementation of narrower lanes. No representations have been received regarding this change and we are satisfied that it does not introduce any further issues.

Post Covid-19 implications

- 5.9.43. The latter part of this Examination took place during the early phase of the Covid-19 pandemic. We have received no evidence about the possible effects and implications of the restrictions on matters such as transport use and related matters including any implications in relation to the transport modelling used to support the Proposed Development but we consider below the sensitivity of the original modelling to the input factors.
- 5.9.44. The transport assessment undertaken as part of the evaluation of the Proposed Development is contained in the TAR [[APP-173](#)]. The overall impact of the Proposed Development and the resulting traffic flows and journey times has been derived from the Northern Regional Transport Model (NRTM).
- 5.9.45. The ExA has reviewed the TAR with a view to determining the sensitivity of the modelling to a decrease in traffic use resulting from the pandemic and lock-down. The following is concluded:
- the transport assessment undertaken is complex; and
 - the sensitivity of the modelling to a potentially significant decrease in road use is not apparent from reading the report.
- 5.9.46. The SoS may therefore wish to consider if there are effects and implications of any changes in transport use and related transport modelling arising as a result of the Covid-19 pandemic which are likely to persist against the original baseline modelling. This could include a request for representations including an assessment of the effects and implications in relation to the following:
- the need for the Proposed Development;
 - air quality;
 - noise and vibration; and
 - climate change, including the relevant carbon budget and cumulative impacts.
- 5.9.47. Notwithstanding the above, we have based our consideration of the principal issues and our subsequent recommendation on the evidence that was before us during the Examination.

Conclusions

- 5.9.48. NNNPS paragraphs 2.12 to 2.14 highlight the importance of the strategic road network in providing critical links between areas enabling safe and reliable journeys and the movement of goods in support of national and regional economies. The Proposed Development would deliver a significant benefit to the strategic road network to which we attach significant weight in terms of the overall need for the Proposed Development.
- 5.9.49. We are satisfied that disruption during the construction process can be satisfactorily managed, including through the CTMP which will form part of the CEMP as secured through the recommended DCO. Whilst there will

be some temporary disruption for NMUs during construction as a result of footpath diversions, such impacts would be temporary and have in our view been minimised as far as reasonably possible. Minor long-term beneficial effects would arise through improvements to existing non-motorised routes including the replacement North Dene Footbridge and Long Bank underpass.

- 5.9.50. We recommend that the SoS consults on the effect of a potential decrease in road use resulting from the COVID19 pandemic.
- 5.9.51. We are satisfied that the relevant tests in the NNNPS are satisfied including:
- the Applicant has used reasonable endeavours to address the needs of cyclists, pedestrians and other NMUs in the design;
 - the application was supported by an appropriate local transport model including an assessment of the benefits and costs of the Proposed Development; and
 - the Proposed Development has been developed and options considered in the light of relevant local policies and Local Plans.
- 5.9.52. Taking all these matters into consideration we conclude that traffic and transportation matters weigh significantly in favour of the Order.

5.10. WATER ENVIRONMENT

Introduction

- 5.10.1. This section considers the effects of the Proposed Development in relation to the water environment, including water quality and flooding.

Policy background

- 5.10.2. Paragraphs 5.90 to 5.115 of the NNNPS set out the policy considerations relevant to flood risk. Paragraph 5.100 states that for construction work which has drainage implications approval of the drainage system will form part of any development consent whilst provision should also be made for the adoption and maintenance of any sustainable drainage systems. Paragraph 5.101 goes on to note that the SoS should expect that reasonable steps have been taken to avoid, limit and reduce the risk of flooding to the proposed infrastructure.
- 5.10.3. NNNPS paragraphs 5.219 to 5.231 relating to water quality and resources detail the basis for the Examination by the ExA and decisions by the SoS.
- 5.10.4. Paragraph 5.222 states that for those projects that are improvements to existing infrastructure, such as road widening, opportunities should be taken, where feasible, to improve upon the quality of existing discharges where these are identified and shown to contribute towards WFD commitments.

- 5.10.5. Paragraph 5.225 identifies the importance of managing impacts that could have an adverse effect on the achievement of WFD objectives. The SoS must be satisfied that all reasonable steps have been taken by the Applicant and the EA to resolve any concerns about water quality and water resources, and that the EA is satisfied with the outcome (paragraph 5.225).
- 5.10.6. Consideration should be given to proposals put forward by the Applicant to mitigate adverse effects on the water environment and whether appropriate requirements should be attached to any development consent (paragraph 5.227).

Applicant's Approach

- 5.10.7. The Applicant's assessment of water environment matters is primarily contained within Chapter 13 (Road Drainage and the Water Environment) of the ES [[APP-034](#)]. This Chapter is supported by the following reports:
- FRA [[APP-163](#)];
 - WFD Assessment [[APP-164](#)]; and
 - Highways Agency Water Risk Assessment Tool (HAWRAT) [[APP-165](#)].
- 5.10.8. Chapter 13 sets out the relevant baseline conditions of the study area, including surface and groundwater features, as well as groundwater quality and resources. The River Team runs underneath junction 67 (Coal House) and continues in a northerly direction through Team Valley Trading Estate. The Proposed Development crosses the River Team floodplain.
- 5.10.9. In consultation with the EA, the Applicant concluded that no significant impacts on the abstraction located in the study area are predicted during construction or operation of the Proposed Development.
- 5.10.10. Measures contained within the outline CEMP [[REP11-012](#)] aim to ensure the quality of the water environment does not deteriorate during construction. It seeks to include best practice for the management of environmental impacts during construction.
- 5.10.11. The FRA [[APP-163](#)] considers the new climate projections in United Kingdom Climate Projections 2018 (UKCP18) concluding that allowances in the FRA are still the best national representation of how climate change is likely to affect flood risk. The FRA states that this position has been agreed with the EA.
- 5.10.12. With the implementation of the mitigation measures outlined in the CEMP the Applicant concludes that there would be no significant effects on the water environment during construction. R4 of the dDCO [[REP11-028](#)] includes the need for a Water Management Plan including a Temporary Surface Water Drainage Strategy to be included within the CEMP for the approval of the SoS. Residual effects are assessed in the ES as being not significant during both the construction and operational phases.

- 5.10.13. During operation, the pollution potential of the Proposed Development has been tested using the HAWRAT. The findings, detailed in the drainage strategy, which is appended to the FRA [[APP-163](#)] have informed the drainage design.
- 5.10.14. The design of the Proposed Development has incorporated several mitigation measures, including flood plain compensation within the Coal House roundabout to offset the loss associated with the additional piers, attenuation storage, oil interceptors, drains at the base of embankments to prevent contaminated runoff, scour protection at the Kingsway Viaduct and water storage measures at outfalls. R8 of the dDCO includes the need for a surface and foul water drainage strategy to be submitted to and approved by the SoS following consultation with the local authority prior to commencement of the Proposed Development.
- 5.10.15. During operation, with the design and mitigation measures in place, the ES concludes that there would be slight beneficial effects as a result of pollution control devices being installed at all outfalls, and there would be no significant adverse effects on the water environment.

Issues arising during the Examination

- 5.10.16. Gateshead Council made representations in its LIR [[REP2-075](#)] seeking more naturalistic design of the proposed watercourse realignments, inlet and outlet features and the drainage basin. The WR from Gateshead Council [[REP1-005](#)] sets out concerns regarding flood risk, drainage and water quality matters.
- 5.10.17. In its WR [[REP1-009](#)] the EA set out concerns regarding the proposed TP of land containing an EA flood risk gauging station, as well as additional concerns regarding flood risk, drainage and water quality matters.
- 5.10.18. The ExA asked a series of WQ's relating to: the modelling basis for the FRA; the EA's flood gauging station; providing a more naturalistic design for the Allerdene Burn; and climate change allowances (this topic is covered at paragraph 5.12.), including: 1.10.1; 1.10.2; [[PD-008](#)] 2.10.1; 2.10.2; 2.10.3; 2.10.4; 2.10.5 [[PD-013](#)] and 3.10.1 [[PD-023](#)].
- 5.10.19. The SoCG with the EA [[REP4-026](#)], a revised version of which was submitted at DL8, has been updated to include the additional aspects that have been agreed with the EA.
- 5.10.20. During the Examination the Applicant liaised with the EA to address their following key areas of concern:
- the potential for impacts to the EA's flow gauge as a result of the temporary works in the River Team to enable Kingsway viaduct to be widened;
 - how the proposed flood compensation scheme will operate;
 - the Addendums covering the additional land and Allerdene Three Span Viaduct Option.

- 5.10.21. By the close of the Examination, the EA confirmed that the SoCG had been updated to reflect that all matters had been agreed between the EA and the Applicant [[REP9-026](#)]. We are satisfied that the Applicant has addressed all the concerns we raised during the course of the Examination.
- 5.10.22. With regard to Gateshead Council's representations seeking a more naturalistic design, and inlet and outlet features the Applicant submitted additional information in the form of two technical notes:
- Allerdene Burn – Channel Design Concept [[REP8-026](#)] on the naturalisation of the Allerdene Burn, and
 - Vortex Separators Assessment [[REP8-027](#)] on the replacement of the proposed oil interceptors with sediment vortexes.
- 5.10.23. At the close of the Examination Gateshead Council confirmed that they were in agreement with the Applicant in respect of Water Environment and Drainage matters [[REP8-030](#)]. This includes consideration of any water environment implications arising from the inclusions of additional land within the application for use as an extended construction compound.
- 5.10.24. The Applicant's change request [[REP4-002](#)] included Change 1 - the inclusion of an option for a Three Span Viaduct within the application. The ExA accepted this as a non-material change to the Application [[PD-017](#)]. In response to an ExA question the Applicant confirmed that the SoCG with the EA had been updated to include additional aspects agreed with the EA with regard to the Three Span Viaduct Option [Q3.10.1_ [REP8-024](#)]. No representations have been received expressing any concerns regarding this change and we are satisfied that it does not introduce any further issues.
- 5.10.25. A further RR was received from Lynn Wilson regarding the cumulative construction traffic impacts of the Proposed Development and resulting flooding that causes disruption to traffic [[RR-025](#)]. The ExA asked the Applicant to provide any necessary update to its existing Cumulative and Combined Assessment, and in response the Applicant stated [Q.4.0.1; [REP10-002](#)] that no updates to the Cumulative and Combined Assessment of the ES [[APP-036](#)] are required. In their response to this question Gateshead Council stated that the proposals referred to in the representation had been subject of robust consideration [[REP10-007](#)]. We are satisfied that the Cumulative and Combined Assessment is adequate.

Conclusions

- 5.10.26. We conclude that the relevant tests in the NNNPS are satisfied as follows:
- In accordance with NNNPS paragraphs 5.221 and 5.222 the Applicant has made early contact with the relevant regulators, including the EA, and Gateshead Council as the Lead Local Flood Authority. SoCG have been agreed with the EA [[REP10-006](#)] and Gateshead Council [[REP11-030](#)] containing no outstanding matters of disagreement.

- The Applicant has taken opportunities where feasible to improve upon the quality of existing discharges where these are identified and shown to contribute towards WFD commitments; and
- The Applicant has put forward satisfactory proposals to mitigate adverse effects on the water environment and these are appropriately secured through Requirements in the dDCO.
- Overall, we agree with the Applicant’s assessment that no adverse effects on the water environment would result during either the construction or operation of the Proposed Development. We also agree that minor beneficial effects would result from the implementation of pollution control devices being installed at all outfalls.
- Taking all these matters into consideration we conclude that water environment matters do not weigh against the Order being made.

5.11. CLIMATE CHANGE

Introduction

- 5.11.1. This section considers the effects of the Proposed Development in relation to climate change, including any potential effects in relation to climate change targets and climate change adaptation.

Policy background

- 5.11.2. Paragraph 3.8 of the NNNPS recognises that transport will play an important part in meeting the Government’s legally binding carbon targets and other environmental targets. It states that the shift to ultra-low emission vehicles among other greener technologies and fuels is seen as having a significant role to play in reducing emissions.
- 5.11.3. Paragraph 3.8 of the NNNPS goes onto state that the impact of road development on aggregate levels of emissions is likely to be very small and needs to be seen in the context of significant projected reductions in carbon emissions and improvements in air quality. It notes that the annual carbon dioxide impacts from the delivery of proposed improvements to the strategic road network would be below 0.1% of average annual carbon emissions allowed in the fourth carbon budget. This, it states, would be outweighed by additional support for the ultra-low emission vehicles also identified as overall policy.
- 5.11.4. Paragraph 5.16 of the NNNPS refers to the Government’s legal requirement to cut greenhouse gas emissions by least 80% by 2050 (the NNNPS predates the latest target discussed below). Paragraph 5.18 makes clear that any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from a proposed scheme are so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets.

- 5.11.5. The NNNPS also refers to climate change adaption and highlights the need to avoid increased vulnerability to the range of impacts from climate change (paragraph 4.38).

Applicant's Approach

- 5.11.6. Chapter 14 (Climate) of the ES [[APP-035](#)] assesses the effects of the Proposed Development on climate and its vulnerability to climate change.
- 5.11.7. During construction the effects on climate would be inherently linked to the consumption of materials, the generation and disposal of waste, and the transport of these to and from the site. Mitigation measures would be implemented to reduce emissions during construction, including minimising waste and maximising the re-use of materials on site. During operation, the Applicant's assessment includes emissions from traffic and those associated with the maintenance, repair and refurbishment over its operational phase (2023 to 2082). The total emissions during each of the UK National Carbon Budgets (Third, Fourth and Fifth) are set out in Table 14-15 of the ES [[APP-035](#)]. The total estimated greenhouse gas emissions arising from the Proposed Development (both construction and operation) are predicted to be less than 0.01% of the overall UK carbon budget. The assessment concludes that the Proposed Development would be likely to have a slight adverse effect (not significant) on greenhouse gas emissions. This is the same for both the Allerdene Bridge embankment and viaduct options.
- 5.11.8. The ES states that the Proposed Development has been designed to be resilient to impacts arising from predicted future severe weather events and climatic conditions and designed in accordance with current planning, design and engineering practice and codes. The Applicant's proposed climate change adaption measures are set out in Table 14-13 of the ES [[APP-035](#)]. These include regular maintenance and landscaping, incorporation of SuDS and using steel with high maximum and minimum design temperatures to limit vulnerability to climate change. Chapter 13 of the ES (Road Drainage and the Water Environment) [[APP-034](#)] considers the potential flooding effects including an allowance for climate change, concluding that no significant impacts would arise. Following the implementation of the proposed adaption measures, the Applicant predicts that no significant effects are predicted to result in relation to climate change adaption and resilience.

Issues arising during the Examination

- 5.11.9. Gateshead Council's LIR [[REP2-075](#)] states that the declaration of a climate emergency inevitably raises questions over any proposal to increase road capacity but that it does not consider that such concerns outweigh the need for the development. It goes on to say that the decarbonisation of the transport network will require investment across a range of measures, but the economic and social needs of the Tyneside area will still require a major traffic route through western Gateshead which the A1 provides. It acknowledges that it is on local roads that there will be most need to reallocate existing road space to other modes.

- 5.11.10. Gateshead Green Party made written [\[REP1-010\]](#) and oral [\[REP9-027\]](#) representations on this matter including that the Proposed Development would contravene the Government's declaration of a climate emergency along with the Council's declaration that it wants to be carbon neutral by 2030, and that public funds should instead be invested in railway infrastructure, buses, cycling and walking.
- 5.11.11. In June 2019 the Government announced a new carbon reduction 'net zero' target for 2050, which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019, as part of its response to the Paris Climate Change Agreement. We questioned the Applicant (ExQ2.0.14) on the implications of this for the assessment of the Proposed Development [\[PD-013\]](#). The Applicant's response [\[REP4-052\]](#) included the key following points:
- The calculations set out in Chapter 14 (Climate) of the ES [\[APP-035\]](#) demonstrate that the projected increase in greenhouse gas emissions from the Proposed Development would represent a contribution of 0.01% to each of the third, fourth and fifth carbon budgets; and
 - It remains very unlikely that the impact of the Proposed Development, in isolation, would affect the Government's ability to meet the revised target.
- 5.11.12. We subsequently asked a further question (ExQ4.0.2) [\[PD-030\]](#) regarding the cumulative effects along with other relevant road schemes. The Applicant's response reiterated the policy requirements within the NNNPS (as set out above). It goes on to explain that the impacts of greenhouse gas emissions, are global and cumulative in nature, in terms of their contribution to impacts on natural and human systems and that the Government is best placed to address this in the round by its consideration of the business case for the Proposed Development as described in paragraph 5.17 of the NNNPS. It states therefore, that the quantification of emissions from the project in the assessment of significance or effects (presented in the Chapter 14 of the ES) inherently assesses the combined and cumulative impacts. The Applicant concludes that it is not considered that, taking account other schemes nearby, or globally, the impacts of the Proposed Development would affect compliance with the Government's emission targets.
- 5.11.13. We note, notwithstanding the Applicant's response above regarding the third, fourth and fifth carbon budgets, a future carbon budget may result in different predictions from those currently made in relation to the operating of the Proposed Development. No details of this were before the Examination. The SoS may therefore wish to consider the impact of the CO₂ equivalent emissions for the operation phase in relation to any relevant carbon budget if available and the cumulative impact of emissions for the NNNPS in the context of the revised net carbon target.
- 5.11.14. The Applicant has proposed appropriate mitigation measures, including in relation to construction and design, to ensure that the carbon footprint is not unnecessarily high. We consider these to be generally satisfactory. These are secured within the outline CEMP [\[REP11-012\]](#). These include maximising the use of renewable material resources, specifying materials

with the least embedded carbon as far as practicable and the re-use of material resources from demolition activities.

- 5.11.15. No issues were raised in the Examination in relation to the Applicant's proposed climate change resilience and adaption measures. We are satisfied that such measures are satisfactory and would be appropriately secured as part of Requirement 4 (Construction and handover environmental management plan) of the Applicant's preferred DCO [[REP11-028](#)].

Conclusion

- 5.11.16. In conclusion, we note that whilst the increase in carbon emissions resulting from the Proposed Development would unlikely to be so significant to have a material impact on the ability of the Government to meet its carbon reduction targets, the SoS may wish to consider:
- The impact of the CO2 equivalent emissions for the operation phase in relation to the relevant carbon budget if available; and
 - The cumulative impact of emissions for the NNNPS in the context of the revised net carbon target.
- 5.11.17. We are satisfied that suitable measures are proposed in response to climate change adaption and to avoid increased vulnerability to impacts arising from climate change. The Proposed Development would satisfactorily conform with the relevant provisions of the NNNPS in these respects.

5.12. OTHER PROJECTS AND PROPOSALS

- 5.12.1. The NNNPS sets out a general requirement to consider cumulative effects as part of the ES, showing how the proposed project would combine and interact with the effects of other developments (including projects for which consent has been sought or granted, as well as those already in existence (paragraph 4.17).
- 5.12.2. The Applicant's cumulative and combined assessment is primarily contained within Chapter 15 (Cumulative and Combined Assessment) of the ES. At paragraph 15.10.1 the Applicant concluded that no likely significant cumulative effects would result during either construction or operation and therefore no additional mitigation or monitoring is required [[APP-036](#)] over and above that proposed for each specific issue raised elsewhere in the ES.
- 5.12.3. The ExA asked a WQ relating to cumulative construction traffic and highway impacts taking account of other schemes, and any additional management measures required to be included in the CTMP in order to alleviate and safeguard against any potential cumulative impacts 1.9.7 [[PD-008](#)].

- 5.12.4. The Applicant has identified the following other major highway schemes within the local area that have the potential to have a cumulative impact on the Scheme [[REP2-060](#)]:
- the A1 Scotswood to North Brunton scheme (approx. 7 miles north on the A1);
 - A19/A184 Testo's Junction Improvement scheme (approx. 8 miles east on the A19); and
 - A19 Downhill Lane Junction Improvement (approx. 8 miles east on the A19).
- 5.12.5. The Applicant has added a commitment to the CTMP at Appendix B of the outline CEMP, [[REP11-012](#)], to setup a working group to discuss and manage interaction between each of the three Applicant promoted schemes and any other major road or non-road schemes that come forward. If through forward planning potential cumulative impacts are identified the working group would seek to minimise impacts through implementing agreed measures such as re-programming the most disruptive works to avoid overlap between schemes or coinciding with other major events [[REP2-060](#)].
- 5.12.6. Lynn Wilson [[RR-025](#)] raises potential impacts in combination with other developments. The ExA asked the Applicant to provide any necessary update to its existing Cumulative and Combined Assessment to take account of the cumulative traffic impacts that may arise from the schemes referred to in the RR. In response the Applicant stated [Q.4.0.1; [REP10-002](#)] that no updates to the Cumulative and Combined Assessment of the ES [[APP-036](#)] are required to take account of the schemes referred to in the RR as set out in the Consultation Statement [[REP9-013](#)]. We are satisfied that the Cumulative and Combined Assessment is adequate.
- 5.12.7. No further issues relating to other projects and proposals arose during the Examination.

Conclusion

- 5.12.8. We conclude that the Applicant has considered cumulative effects as required by the NNNPS. Where appropriate, suitable control mechanisms would be secured in the DCO.
- 5.12.9. This is not a matter which weighs significantly against the Order being made.

5.13. OTHER MATTERS

Introduction

- 5.13.1. This Chapter considers other matters relating, firstly to geology and soils, and secondly material resources, which the NNNPS indicates ought to be considered.

Geology and soils

- 5.13.2. The NNNPS includes relevant policy objectives associated with:
- Pollution control and other environmental protection regimes (paragraphs 4.48 to 4.56);
 - Land instability (paragraphs 5.116 to 5.119); and
 - Agricultural land and soil quality (paragraph 5.168).
- 5.13.3. The Applicant's assessment of geology and soils matters is primarily contained within Chapter 9 (Geology and Soils) of the ES [[APP-030](#)]. The Applicant concludes that the Proposed Development has the potential to impact upon ground stability, agricultural land and to release pollutants into the environment, and will require agricultural land take. The Applicant states that impacts will be limited by the implementation of best practice measures to protect agricultural soil quality, and based on the approach set out in Chapter 9 of the ES does not anticipate that policy objectives would be compromised.
- 5.13.4. Representations concerning agricultural land use and operations are considered in detail in section 5.4 (Economic and social effects) above. We are satisfied that the measures proposed to minimise the effects on agricultural land use and agricultural operations are reasonable.
- 5.13.5. No further issues relating to geology and soils arose during the Examination and we are satisfied that such matters are in general accordance with the relevant provisions of the NNNPS.

Material resources

- 5.13.6. The NNNPS contains relevant policy objectives in relation to waste management (paragraphs 5.39 to 5.45). The policy outlines the decision-making considerations, requiring the SoS to be satisfied that:
- waste will be properly managed on and off-site;
 - waste will be dealt with by available infrastructure and will not have an adverse effect on the capacity of existing waste management facilities; and
 - adequate measures have been taken to minimise the volume of waste arisings.
- 5.13.7. The Applicant's assessment of material resources matters is primarily contained within Chapter 10 (Material Resources) of the ES [[APP-031](#)]. The Applicant concludes that based on the expected approach to managing materials and waste on the Proposed Development, it is not expected that the outcomes would adversely impact achievement of or alignment with the policy objective.
- 5.13.8. R4 of the recommended DCO provides that the CEMP to be submitted for approval must include the Site Waste Management Plan.
- 5.13.9. No further issues relating to material resources arose during the Examination and we are satisfied that such matters are generally in accordance with the relevant provisions of the NPPF.

Conclusion

- 5.13.10. This Chapter has discussed additional matters which the NNNPS indicates ought to be considered, namely geology and soils and material resources.
- 5.13.11. We conclude that the Applicant has taken these matters into account as required by the NNNPS. Where appropriate, control mechanisms would be secured in the DCO.
- 5.13.12. These are not matters which weigh significantly against the Order being made.

6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

6.1. INTRODUCTION

6.1.1. This Chapter of the Report sets out the ExA's analysis, findings and conclusions relevant to HRA. This will assist the SoS as the Competent Authority, in performing his duties under the Habitats Directive, as transposed in the UK through the Habitats Regulations.

6.1.2. Consent for the Proposed Development may only be granted if, having assessed the potential adverse effects the Proposed Development could have on European sites, the Competent Authority considers that it meets the requirements stipulated in the Habitats Regulations. The SoS is the Competent Authority for the purposes of the Habitats Directive and Habitats Regulations for Transport Applications submitted under the PA2008. NE is the statutory nature conservation body.

6.2. PROJECT LOCATION

6.2.1. As described in Chapter 2 of this Report, the Proposed Development would be located on and adjacent to the A1 between a location just south of junction 68 (Lobley Hill) and junction 65 (Birtley) within the metropolitan borough of Gateshead.

6.3. HRA IMPLICATIONS OF THE PROJECT

6.3.1. The Applicant submitted a HRA Report [[APP-124](#)] with the DCO application entitled "Appendix 8.2 Habitat Regulations Assessment".

6.3.2. The methodology in the HRA Report (consistent with that specified in the DMRB) explains that European sites within 2km of the Proposed Development, or 30km if bats are a qualifying species were included within the study area. In this instance, the 2km study area was extended to include coastal European sites which are hydrologically connected to the Proposed Development via watercourses crossed by the A1. The Report confirmed that no European sites were identified due to having bats at qualifying species.

6.3.3. The HRA Report identified an area of search and three relevant European sites:

- Northumbria Coast SPA;
- Northumbria Coast Ramsar; and
- Durham Coast SAC.

6.3.4. The full list of these sites and their qualifying features is presented in the Screening Matrices presented in Appendix 1 of the HRA Report. A plan showing the European sites included within the assessment is provided at Appendix B, Figure 1 of the HRA Report [[APP-124](#)].

- 6.3.5. The Proposed Development Order limits do not overlap with any European site. The nearest European site to the Proposed Development is Durham Coast SAC which is located 12km to the north east.
- 6.3.6. The Proposed Development is not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicants assessment.
- 6.3.7. The Applicant did not identify any potential impacts on European sites in any other EEA State. No comments relating to European sites within other EEA States were received during the examination.
- 6.3.8. The ExA is satisfied that the Applicant has correctly identified all the relevant European sites and relevant qualifying features for consideration within the HRA.

6.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

- 6.4.1. S1.3 of the HRA Report [[APP-124](#)] outlines the Applicants approach to HRA screening, including how the Applicant identified European sites for consideration through the screening assessment.
- 6.4.2. The HRA Report concluded that there are no likely significant effects on the three European sites or their qualifying features from the Proposed Development or in combination with other plans or projects (see Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations)).
- 6.4.3. At DL 2, the Applicant submitted a draft SoCG with NE[[REP2-056](#)] which provided details of communication held between the Applicant and Natural England. An email dated 15/07/2019 confirmed that NE agreed with the conclusions within the HRA Report that the Proposed Development was unlikely to have any likely significant effects on European sites identified in the HRA Report. A final SoCG with NE [[REP4-028](#)] was submitted at DL 4 and the agreement from NE regarding the conclusions of no likely significant effects on European sites remained unchanged from that at DL 2.

6.5. HRA CONCLUSIONS

- 6.5.1. We conclude as follows in relation to the HRA process:
- There are no likely significant effects of the Proposed Development on any European Sites or their qualifying features.
 - No mitigation relevant to HRA has been proposed and none is required.
 - The Proposed Development can proceed without an Appropriate Assessment being undertaken by the SoS.

7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1. INTRODUCTION

7.1.1. This Chapter sets out our overall assessment of the planning merits of the Proposed Development. This is in the light of the legal and policy context set out in Chapter 3 and individual applicable legal and policy requirements identified in Chapters 4 and 5. The designated NNNPS provides the primary basis for the SoS to make decisions on development consent applications for national network NSIPs in England. Conclusions on the case for development consent set out in the application are therefore reached within the context of the policies contained in the NNNPS. However, as indicated in Chapters 3 and 4, in reaching our conclusions, we have taken all other relevant law and policy into account.

7.2. SUMMARY OF THE MAIN PLANNING ISSUES

The need for the Proposed Development

- 7.2.1. The section of A1 the subject of the application forms part of the NGWB. This suffers from congestion and capacity issues. A number of studies since 2002 have been undertaken to assess and make recommendations regarding the congestion and capacity issues of this section of the A1. This application has evolved from these studies.
- 7.2.2. The Proposed Development would improve traffic flows and reduce driver delays currently experienced on this section of the A1, which is a strategically important part of the road network for the regional and national economy. It would reduce delays in the vicinity of the Team Valley Trading Estate which is a strategic employment area that plays a key role in the Government's investment strategy for creating new jobs in the northeast. The Proposed Development would provide additional capacity to support future development of the Team Valley Trading Estate. The replacement of the Allerdene Bridge would improve the reliability of this section of the A1 by avoiding the likely need for emergency maintenance and repair of the aging structure.
- 7.2.3. Gateshead Council and SCC both support the principle of the Proposed Development. It would meet one of the strategic policy objectives of Policy CS13 of the Core Strategy for Gateshead and Newcastle upon Tyne to create additional capacity on this part of the strategic road network.
- 7.2.4. In Chapter 4 we find that the Proposed Development would conform with the Government's vision and strategic objective set out in the NNNPS to delivery national networks that meet the country's long term needs, supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. It would meet the critical need to improve the national networks to address road congestion.

- 7.2.5. Accordingly, we attach substantial weight to the contribution the Proposed Development would make towards the need set out in the NNNPS to deliver national networks that meet the country's long term needs as part of a wider transport system.

Air quality and emissions

- 7.2.6. We have concluded that, in accordance with paragraph 5.10 of the NNNPS, the application has adequately considered air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the Proposed Development. It would be unlikely to lead to a breach of the air quality thresholds set out in domestic and European legislation.

- 7.2.7. Furthermore, in accordance with paragraph 5.9 of the NNNPS we are satisfied that the Proposed Development will not affect the UK's ability to comply with the Air Quality Directive. Taking all matters into consideration, we conclude that air quality matters do not weigh against the Order being made.

Biodiversity, ecology and the natural environment

- 7.2.8. We are satisfied that the Proposed Development would avoid significant harm to biodiversity interests and, where biodiversity benefits can be achieved, these have been incorporated as part of enhancement measures and delivered in accordance with policy requirements. Taking all matters into consideration we conclude that matters relating to biodiversity, ecology and the natural environment do not weigh against the Order being made.

Economic and social effects

- 7.2.9. We are satisfied that the findings of the ES are reasonable and that, where necessary, mitigation measures could be secured through the recommended DCO which are proportionate to the adverse effects that would result.
- 7.2.10. We find that significant economic benefits would result from the Proposed Development due to the likely reduction in congestion on the A1. Temporary economic benefits would also result from the construction phase, both locally and outside the region.
- 7.2.11. Whilst adverse effects would result during the construction process (including for agricultural use, health and quality of life) these would be temporary and we are satisfied that they have been mitigated as far as is reasonably possible.
- 7.2.12. There would be long term beneficial effects for walkers, cyclists and horse riders due to improved user safety, enhanced access and improved community connectivity. No significant long-term adverse effects upon health, well-being and quality of life have been found to result from the operation of the scheme.
- 7.2.13. Overall, we conclude that there would be general accordance with the relevant policies within the NNNPS. The adverse effects would have found

to result during construction would not weigh significantly against the Order being made. Overall, the positive economic and social benefits would weigh significantly in favour of the Order being made.

Historic environment

- 7.2.14. We have had regard to the desirability of preserving designated heritage assets, including listing buildings and their settings, the character and/or appearance of Conservation Areas and SM or their settings. We consider that the information provided in the ES is sufficiently comprehensive for use to take account of the significance of heritage assets and to understand the impacts of the Proposed Development on that significance.
- 7.2.15. The proposed construction works would result in the likelihood of moderate physical effects upon the structure of the Bowes Railway Schedule Monument. Major adverse effects would also result upon its setting from the proposed construction works, albeit on a short-term basis. We have also found that the construction phase would result in moderate temporary adverse effects upon the setting of the Lamesley Conservation Area.
- 7.2.16. Moderate adverse effects would result from the proposed gantries upon the setting of the Angel of the North which is a non-designated heritage asset. Moderate adverse effects would also result from the proposed construction upon several other non-designated heritage assets.
- 7.2.17. Further minor adverse effects would also result upon the significance of several other designated and non-designated heritage assets.
- 7.2.18. Where we have found that harm would arise to designated heritage assets, we consider this would be less than substantial in each instance. We have not identified any instances, during construction or operation where the Proposed Development is likely to result in substantial harm to or loss of significance of any heritage asset. The NNNPS requires that the harm we have identified should be weighed against the public benefit of the development, recognising that the greater the harm the greater the justification that will be needed. We go on to consider this within our Overall Conclusions later in this Chapter.

Landscape and visual effects

- 7.2.19. We consider that the Applicant's approach to minimising landscape and visual harm, including proposed mitigation, is reasonable and proportionate. We have found that moderate adverse effects from proposed gantries would result upon views of the Angel of the North from the A1 carriageway. We have otherwise, generally agreed with the Applicant's assessment where other significant effects are reported.
- 7.2.20. We recognise that the Appellant and Gateshead Council have agreed a mechanism through the DCO which could provide for an opportunity for these effects to be reduced through the eventual landscaping and gantry designs that would require subsequent approval at the detailed design

stage. We are satisfied that the adverse landscape and visual effects would not be so damaging to offset the benefits of the Proposed Development.

- 7.2.21. We conclude that the Proposed Development would satisfactorily accord with the relevant aims of the NNNPS regarding landscape and visual effects and does not weigh significantly against the Order being made.

Green Belt

- 7.2.22. We conclude that the Proposed Development would amount to inappropriate development in the Green Belt. It would result in a moderate adverse impact on openness and would conflict with one of the purposes of the Green Belt, that being to safeguard the countryside from encroachment.

- 7.2.23. Inappropriate development is, by definition, harmful to the Green Belt. We attach substantial weight to the harm that would result to the Green Belt. We go on to consider the question of whether very special circumstances exist to clearly outweigh the harm by reason of inappropriateness below.

Noise and vibration

- 7.2.24. We are satisfied that the Proposed Development has satisfactorily sought to avoid significant adverse impacts on health and quality of life from noise. It would also satisfactorily mitigate and minimise other adverse impacts on health and quality of life from noise.

- 7.2.25. We also conclude that the dDCO secures the mitigation measures put forward by the Applicant to ensure that noise levels do not exceed those described in the assessment.

- 7.2.26. Taking all matters into consideration we conclude that noise and vibration matters do not weigh against the Order being made.

Traffic and transport

- 7.2.27. The Proposed Development would deliver a significant benefit to the strategic road network to which we attach significant weight.

- 7.2.28. We are satisfied that disruption during the construction process can be satisfactorily managed, including through the CTMP which will form part of the CEMP as secured through the recommended DCO. Whilst there will be some temporary disruption for non-motorised users during construction as a result of footpath diversions, such impacts would be temporary and have in our view been minimised as far as reasonably possible. Minor long-term beneficial effects would arise through improvements to existing non-motorised routes including the replacement North Dene Footbridge and Long Bank underpass.

- 7.2.29. Taking all these matters into consideration we conclude that traffic and transportation matters weigh significantly in favour of the Order being made.

Water environment

- 7.2.30. We are satisfied that the Applicant has taken opportunities where feasible to improve upon the quality of existing discharges where these are identified and shown to contribute towards WFD commitments.
- 7.2.31. The Applicant has put forward proposals to mitigate adverse effects on the water environment and these Requirements are attached to the dDCO.
- 7.2.32. Taking all matters into consideration we conclude that water environment matters do not weigh against the Order being made.

Climate change

- 7.2.33. In conclusion, we note that whilst the increase in carbon emissions resulting from the Proposed Development would unlikely to be so significant to have a material impact on the ability of the Government to meet its carbon reduction targets, the SoS may wish to consider:
- The impact of the CO₂ equivalent emissions for the operation phase in relation to the relevant carbon budget if available; and
 - The cumulative impact of emissions for the NNNPS in the context of the revised net carbon target.
- 7.2.34. We are satisfied that suitable measures are proposed in response to climate change adaption and to avoid increased vulnerability to impacts arising from climate change. The Proposed Development would satisfactorily conform with the relevant provisions of the NNNPS in these respects.

Other projects and proposals

- 7.2.35. We conclude that the Applicant has considered cumulative effects as required by the NNNPS. Where appropriate, suitable control mechanisms would be secured in the DCO. This is not a matter which weighs significantly against the Order being made.

Other matters

- 7.2.36. We have also considered the Proposed Development in terms of its effects on geology and soils, and material resources. In each case, we are satisfied that there would be general conformity with the relevant provisions of the NPPS and such matters do not weigh significantly against the Order being made.

Habitats Regulations Assessment

- 7.2.37. We have found that there would be no likely significant effects of the Proposed Development on any European Sites or their qualifying features. No mitigation relevant to HRA has been proposed and none is required. We are satisfied that the Proposed Development can proceed without an Appropriate Assessment being undertaken by the SoS.

7.3. OVERALL CONCLUSIONS

Historic environment conclusion

- 7.3.1. We consider that the need for and the benefits of the Proposed Development outlined above (most notably as set out in paragraphs 7.2.1 to 7.2.5 and 7.2.10 above) would outweigh, in each case, the harm that we have identified in relation to designated heritage assets. We also consider that the harm to the undesignated heritage assets, including the moderate harm we have found would be likely to result upon the setting and significance of the Angel of the North, would be outweighed by the public benefits of the Proposed Development, including the beneficial effect on highway safety that would result from the proposed new gantry signage.
- 7.3.2. Taking account of the public benefits, we are satisfied that there is clear and convincing justification for the harm that would result, both individually and collectively, upon designated heritage assets. Overall, therefore, we consider that matters concerning the historic environment would accord with the relevant policy provisions of the NNNPS.

Green Belt conclusion

- 7.3.3. We set out above that the Proposed Development would be inappropriate within the Green Belt. It would result in a moderate adverse impact on openness and would conflict with one of the purposes of the Green Belt, that being to safeguard the countryside from encroachment. We attach substantial weight to the harm that would result to the Green Belt.
- 7.3.4. To accord with the NNNPS (paragraph 5.178), the SoS will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. We go on to carry out this assessment below.
- 7.3.5. We have recorded where harm is likely to arise in Chapter 5 of our report with the relevant conclusions set out above. In summary, the non-Green Belt harm that we consider would arise is listed below (this list is provided irrespective of whether each issue would conform with the relevant NNNPS policy tests notwithstanding the harm resulting):
- Landscape and visual harm during construction and operation;
 - Harm to designated and non-designated heritage assets during construction and operation;
 - Temporary harm to biodiversity during construction;
 - Temporary harm to agricultural land use during construction;
 - Temporary harm to health and quality of life during construction, including from noise during construction works;
 - Temporary harm to users of public rights of way during construction;
- and

- Temporary disruption to rail travel between Chester-le-Street and Newcastle due to night-time track closures for works around Allerdene Bridge.

7.3.6. We have set out previously in this report the need for and benefits that would be likely to arise from the Proposed Development. These include:

- The delivery of Government policy and programmes;
- Benefits from a decrease in congestion and journey times, enhanced highway safety, and the replacement Allerdene Bridge alleviating the existing maintenance issues.
- The conformity with local Development Plan policy and allocations for delivery of transport infrastructure; and
- Economic benefits (including in relation to the continued prosperity of the Team Valley Trading Estate).

7.3.7. We have given each of the above benefits significant weight in our assessment of merits. We have also taken into consideration the lack of alternatives to achieving the upgrade works to this section of the A1 but all of the options considered would fall within the Green Belt.

7.3.8. We have given limited weight to the benefits that would result for water quality and the improvements made to non-motorised transport accessibility, most specifically the improvements to the Longbank Underpass and the replacement North Dene Footbridge.

7.3.9. We also acknowledge that several of the structures which would impact on Green Belt openness would replace existing structures (for example the replacement Allerdene Bridge, the replacement North Dene Footbridge and the replacement gas transfer station) that already impact to varying degrees upon Green Belt openness.

7.3.10. Overall, we consider that the potential harm to the Green Belt, and the other harm we have found would result, would be clearly outweighed by these other considerations set out above. Consequently, we are satisfied that the very special circumstances exist to justify the approval of inappropriate development in the Green Belt. The Proposed Development would therefore accord with the Green Belt policy set out in paragraph 5.178 of the NNNPS and the NPPF.

Overall conclusion

7.3.11. Paragraph 4.2 of the NNNPS states, subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established within the NNNPS.

7.3.12. In reaching conclusions on the case for the Proposed Development, we have had regard to the NNNPS as the relevant NPS, the NPPF, the LIR and all other matters which we consider are both important and relevant to the SoS's decision. We have also considered whether the determination of this application in accordance with the relevant NPS would lead the UK to be in breach of any of its international obligations

where relevant. We are satisfied, in all respects, this would not be the case.

- 7.3.13. The Proposed Development would make an important contribution to the improvement and enhancement of the existing strategic road network, meeting one of the key objectives of the NNNPS and local planning policy. The need and benefits are summarised previously in this Chapter but include relieving congestion on this part of the A1 and supporting the future investment, regeneration and job creation in the surrounding area, including but not limited to the Team Valley Trading Estate. Accordingly, we attach very significant weight to the benefits of the Proposed Development and compliance with a key policy objective of the NNNPS. We have found that significant economic benefits would result from the Proposed Development, along with other benefits in terms of improvements for non-motorised users and for the water environment.
- 7.3.14. Paragraph 3.4 of the NNNPS recognises that some developments will have some adverse local impacts including on noise, emissions, landscape/visual amenity, biodiversity and cultural heritage. It states that whilst applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain.
- 7.3.15. Whilst harm would arise from the Proposed Development, both during the operation and construction phases, we are satisfied that the Applicant has taken a reasonable and proportionate approach in seeking to minimise such harm. The outline CEMP includes a comprehensive list of mitigation and management measures during the construction process to minimise the harm arising. A schedule of all the Applicant's changes to this document during the Examination was submitted at DL11 [[REP11-013](#)].
- 7.3.16. We have considered the impacts based on the worst case scenario as assessed in the ES. In the case of the effects upon the setting and views of the Angel of the North, we have found there to be moderate adverse impacts. We note that measures are in place within the requirements of our recommended DCO for the final gantry sign details to be approved, taking into account various factors including emerging guidance, which may result in the effects upon both its setting and views of it being reduced from those based upon the worst-case scenario as set out in the application drawings and assessed in the ES.
- 7.3.17. Whilst our assessment of the effects upon the setting and views of the Angel of the North has been based on the worst-case scenario (and notwithstanding any reduction in such effects that may arise through the subsequent approval of details pursuant to the DCO requirements), we acknowledge the measures proposed by the Applicant to seek to minimise these effects as far as is reasonably possible, taking account of the relevant highway safety implications as well as the effects on the views and setting of the Angel of the North. We consider this to be a reasonable approach in the circumstances which is generally supported

by both Gateshead Council and Sir Anthony Gormley, notwithstanding their overall concerns as set out in their representations during the Examination.

- 7.3.18. We have considered the alternative designs proposed for the replacement Allerdene bridge. Overall, the effects arising from each alternative design would generally be similar. However, in all our considerations we have based our conclusions on the worst-case scenario that would arise. We are satisfied that each of the designs should be included within our recommended DCO.
- 7.3.19. We list below the issues where we conclude that any adverse impacts would be minor or where we are satisfied that the impacts would be sufficiently minimised and/or mitigated, such that they would not weigh significantly against the Order being made:
- Biodiversity, ecology and the natural environment;
 - Economic and social effects (limited to temporary effects during construction);
 - Historic environment (including less than substantial harm to designated assets);
 - Landscape and visual effects;
 - Noise and vibration (limited to temporary effects during construction); and
 - Traffic and transport (during construction).
- 7.3.20. In the case of Green Belt considerations, we have concluded that harm would result, to which we have given substantial weight. However, we conclude that the Green Belt, and other harm, would be clearly outweighed by other considerations such as the need and benefits of the Proposed Development.
- 7.3.21. The increase in carbon emissions resulting from the Proposed Development would unlikely to be so significant to have a material impact on the ability of the Government to meet its carbon reduction targets. However, the SoS may wish to consider the impact of the CO₂ equivalent emissions for the operation phase in relation to the relevant carbon budget if available, and the cumulative impact of emissions for the NNNPS in the context of the revised net carbon target.
- 7.3.22. In spite of the harmful impacts that are likely to result, we consider them overall to be within the scope of the relevant policy provisions of the NNNPS. We are satisfied that the Proposed Development would be generally in conformity with the NNNPS.
- 7.3.23. In conclusion, we find that the benefits of the Proposed Development, particularly in terms of addressing existing congestion, improving safety and promoting economic benefits for the region, would outweigh the impacts we have identified in relation to the construction and operation of the Proposed Development. Consequently, the potential harm is substantially outweighed by the benefits of the Proposed Development in meeting Government policy as set out in the NNNPS.

7.3.24. We conclude overall that, on the basis of all these considerations, there is a convincing case for development consent to be granted.

8. COMPULSORY ACQUISITION AND RELATED MATTERS

8.1. INTRODUCTION

8.1.1. The dDCO contains powers of CA of ownership of land, rights and restrictive covenants, and also for TP of land. The Applicant is seeking these powers to:

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

in order to construct, operate and maintain the Proposed Development or to facilitate it, or is incidental to it [[REP11-028](#)].

8.2. THE REQUEST FOR CA AND TP POWERS

8.2.1. The application includes a request for CA and TP powers; the source of those powers is contained in the Applicant's preferred dDCO submitted at the end of the Examination [[REP11-028](#)]. All further references to the dDCO in this Chapter relate to this version.

8.2.2. The application was accompanied by:

- a BoR;
- Land Plans, Works Plans and Streets, Rights of Way and Access Plans;
- A SoR; and
- A Funding Statement (FS).

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

- BoR [[REP11-008](#)];
- Land Plans, Works Plans and Streets, Rights of Way and Access Plans [[REP4-005](#); [REP4-006](#); and [REP4-007](#)];
- SoR [[REP4-016](#)]; and
- FS [[APP-017](#)].

8.2.4. These documents and representations made by all parties taken together form the basis of the analysis in this Chapter. References to the BoR and the Land, Works and Streets, Rights of Way and Access Plans in this

Chapter from this point should be read as references to the latest revisions cited above.

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

Proposed design changes and additional land

- 8.2.6. The PA2008 requires that if changes are sought to the application, the changes, whether material or non-material, must be considered and approved or otherwise by the ExA. If the changes accepted into the Examination involve CA of additional land and the consent to the provision in the DCO authorising such CA of all persons with an interest in that land is not obtained by the Applicant, then the provisions of The Infrastructure Planning (CA) Regulations 2010 (CA Regulations) will apply.
- 8.2.7. Paragraph 2.2 details the material change, involving the inclusion of additional land at junction 67 (Coal House) for an extension to the previously proposed main site construction compound, to be used for material stockpiling. The land, the subject of this change, is located outside the Order Limits as originally submitted and the Applicant is seeking to include for it a power to compulsory acquire. In addition the Applicant had not obtained consent of the landowner to compulsorily acquire this land. Therefore, the CA Regulations will apply for the new plot of land [[REP4-002](#)].
- 8.2.8. Paragraphs 8.5.4 and 8.5.5 detail the Examination process for accepting this change, as well as notification under the CA Regulations of further Hearings and an opportunity for representations for the TP of the additional land subject to this change.
- 8.2.9. Representations relating to planning merits rather than TP were received including:
- Lynn Wilson [[RR-025](#)];
 - Lady Park and Lamesley Residents Association [[RR-027](#)];
 - Northumbrian Water Limited [[RR-029](#)];
 - Trinity Chambers on behalf of Stevie Pattinson + 5 others [[RR-031](#)];

8.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

- 8.3.1. Table 1 of Annex A to the SoR [[REP4-016](#)] provides a description of the land which is subject to powers of outright acquisition in terms of Article 23. 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.
- 8.3.2. The land for which CA and TP is required is:
- to remove existing rights in relation to all plots (Article 27);
 - to permanently acquire 109 plots (Table 1 of Annex A);
 - to take TP in 78 plots (Table 2 of Annex A);

- to permanently acquire rights in 15 plots (Table 3 of Annex A)
- to acquire land except for highway/railway uses beneath soffit level of bridge in 9 plots (Table 4 of Annex A);
- to acquire land above ground level and TP and use of land at ground level in 4 plots (Table 5 of Annex A); and
- to permanently acquire rights over subsoil including TP and use of land in 41 plots (Table 6 of Annex A)

8.3.3. None of the Land is Crown land for the purposes of s135 of PA 2008 [[REP4-016](#)].

8.3.4. S127 of PA 2008 applies in relation to Statutory Undertakers (SUs) land. SU's land and apparatus is involved. SoR Annex B (Schedule of objections) identifies 9 SUs [[REP4-016](#)]. The ExA asked WQs relating to SUs apparatus [[REP2-014](#) & [REP8-020](#)]. The following SUs are affected:

- Environment Agency;
- Network Rail Limited;
- Northern Gas Networks Limited; and
- Northumbrian Water Limited.

The other five SUs were contacted by the Applicant as part of the statutory consultation. The contacts made indicated that these SUs would not be affected by the Proposed Development.

8.3.5. The dDCO seeks to incorporate the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981.

8.3.6. The power to take TP of land would be subject to the time limits set out in Articles 32 and 33 of the dDCO. This limit is effectively no more than a year after completing that part of the Proposed Development specified. We consider that the time period proposed by the Applicant for TP is appropriate.

8.3.7. The Applicant has not drafted into the dDCO any equivalent provisions to those appearing in the Neighbourhood Planning Act 2017 (NPA2017).

8.4. LEGISLATIVE REQUIREMENTS

8.4.1. CA powers can only be granted if the conditions set out in s122 and s123 of PA2008 are met, and the relevant guidance in "Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013 (the Former Department for Communities and Local Government (DCLG) CA Guidance) has been considered.

8.4.2. S122(2) of PA2008 requires that the land subject to CA must be required for the development to which the development consent relates, is required to facilitate or be incidental to the development, or is replacement land which is to be given in exchange for the order land. In

respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate⁴.

- 8.4.3. S122(3) of PA2008 requires that there must be a compelling case in the public interest to acquire the land compulsorily, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.
- 8.4.4. S123 of PA2008 requires that one of three procedural conditions in subsections (2) to (4) must be met, namely:
- The condition is that the application for the order included a request for CA of the land to be authorised.
 - The condition is that all persons with an interest in the land consent to the inclusion of the provision.
 - The condition is that the prescribed procedure has been followed in relation to the land.
- 8.4.5. A number of general considerations from the DCLG CA Guidance also have to be addressed:
- all reasonable alternatives to CA should have been explored;
 - the Applicant must have a clear idea of how it intends to use the land subject to CA powers;
 - the Applicant must be able to demonstrate that there is a reasonable prospect that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
 - the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 8.4.6. Paragraph 25 of the DCLG CA Guidance states that Applicants should seek to achieve land by negotiation wherever practicable.
- 8.4.7. S127 of PA2008 applies to land acquired by a SU for the purposes of their undertaking where a representation is made about the application for the DCO and not withdrawn. S127(5) states that an order granting development consent may include provision authorising the creation of a new right over SU's land providing that it can be done without serious detriment to the carrying out of the undertaking or any detriment can be made good by undertakers.
- 8.4.8. S138 of PA2008 provides for an order to include provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus of SUs only if the SoS is satisfied that such actions are necessary for the purposes of carrying out the development to which it relates.
- 8.4.9. Further to s120 and Part 1 of Schedule 5 to PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the

⁴ DCLG CA Guidance

associated DCLG Guidance do not contain the same level of specification and tests as for CA to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or permanently interfere with a person's interests in land. The need for the powers and their implications for human rights and equalities matters are considered below.

8.5. EXAMINATION OF THE CA AND TP CASE

The Examination Process

- 8.5.1. Particular measures relating to Examination of the CA and TP case included the following.
- 8.5.2. Ten objections have been made to the Proposed Development relating to concerns regarding acquisition and/or TP of the land, and the impact on use of the land, these are summarised in Objections Schedule [REP11-020]. Where RRs and WRs have been received, they are referred to below under 'Consideration of Individual Objections and Issues'. The Applicant has been in dialogue with all the landowners and is at an advanced stage of agreement with four of the objectors.
- 8.5.3. The ExA undertook the following site inspections to land subject to CA and TP proposals:
 - USIs on 27 and 28 November 2019 [EV-001]; and
 - USI on 16 July 2020 [EV-002a].
- 8.5.4. One CAH was held on 26 June 2020 where individuals subject to CA and TP proposals could be heard [EV-019a and EV-019b]. A further CAH was held on 14 July [EV-028] following the change request for an extension to the Order Land for a temporary materials stockpile; the CA Regulations apply for the new plot of land [REP4-002].
- 8.5.5. Paragraph 1.4.8 of our Report details the key Procedural Decisions made by the ExA following the request for a change for an extension to the Order Land including:
 - the decision to accept the Proposed Provision for the CA of additional land as part of the application [PD-016];
 - notification under the CA Regulations of further Hearings and an opportunity for representations on the CA of additional land [PD-028].
- 8.5.6. No withdrawals of objections regarding acquisition and/or TP of the land have been submitted to the Examination. Objections Schedule [REP11-020] confirms the status of each objection at the end of the Examination and any agreement gained with each party. Although no formal withdrawal of objections has been received, the Applicant has obtained agreement with most parties by the end of the Examination. An exception to this is NR where disagreement remained over one part of the Protective Provisions within the Applicant's preferred DCO. In relation to NGN, whilst a general agreement was reached with the Applicant by

the end of the Examination, there remain some relevant outstanding issues which we go on to consider below.

General Consideration

8.5.7. The Applicant's general case for CA and TP is set out in Chapter 5 of the SoR [[REP4-016](#)] under the following headings:

- The statutory conditions and CA Guidance;
- Need for the Land and the purposes for which the CA powers are sought;
- Compelling Case in the Public Interest;
- Consideration of alternatives;
- Reasonable prospect of funding; and
- Acquisition by Agreement

8.5.8. The Applicant concludes that:

- the conditions in s122 of PA2008 are met and that the tests in the DCLG CA Guidance are satisfied;
- all of the land subject to CA and TP powers is necessary to construct, operate, maintain and mitigate the Proposed Development and is necessary to achieve the objectives of the Proposed Development;
- the extent of the land sought is reasonable and proportionate; and
- there is a compelling case in the public interest to include the CA powers sought by the Applicant in the dDCO. The exercise of the CA powers that are sought is necessary and proportionate to the extent that interference with private land and rights is required. In the absence of compulsory powers, the Applicant considers that it would not be possible to proceed with the Proposed Development, and the public benefits of the Proposed Development would not be realised.

8.5.9. The ExA asked WQs regarding justification of the need for the acquisition/possession of specific plots of land, including the extent of land within each plot [[PD-008](#)]; and [[PD-030](#)].

8.5.10. We agree with the Applicant's conclusions on the generality of the case, except in respect to amendment of Article 32(9), but the overarching conclusion on CA and TP cannot be reached until individual objections and all other relevant and important considerations have been addressed.

Consideration of Individual Objections and Issues

8.5.11. The Objections Schedule sets out the status of any objections in relation to land owners [[REP11-020](#)].

8.5.12. Consideration of individual objections are set out below:

Name(s):	Brett Morland Askew, Christopher Askew and Glenn Clifford Askew	[RR-017; REP1-023]
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Location(s): Land within and around junction 67 (Coal House) Roundabout. Land around junction 66 (Eighton Lodge).

Interests TP of Plots 4/3i, 4/4a, 4/4b, 4/4c, 4/4d, 4/4e, 4/4f

Rights and TP in respect of Plot 4/4b

Status summary: The Applicant has received a breakdown of the valuation proposed by the Askew's agent and, having considered the position, a revised offer has been issued to the Askews/their agent on 10 July 2020 [[REP11-020](#)].

- Objector's case: The objector has the following concerns in relation to acquisition of land [[REP1-023](#)]:
 - the Land Referencing carried out by the Acquiring Authority is inaccurate and incomplete;
 - there has not been sufficient justification of the need, or extent of the need in respect of the proposed acquisition areas; and
 - sufficient detail has not been provided in regard to drainage and accommodation works, nor any detail as to the impact on retained land.
- Applicant's response: Objections Schedule [[REP11-020](#)] details the Applicant's disagreement with the objector's concerns, as well as discussions and correspondence between Applicant and land owner.

ExA conclusion. The ExA concludes that in light of the Applicant's repeated requests for further details of the consultee's grievances with regard to accommodation works, drainage works and the Applicant's land referencing process; and that no response has been received from the consultee or their agent we can see no reason not to agree with the Applicant's contention that there is no evidence of inaccuracy or adverse effects on the Objector. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for TP of the land.

Name(s): Christopher Wilson and Marie Wilson

Location(s): Land around Northside Farm and North Dene Footbridge.

Interests CA of Plots 4/13a, 4/13c

TP of Plots 4/13e, 4/13f

Rights and TP 4/13b, 4/13d

Status summary: At June 2020, negotiations were progressing well with the claimant's agent and the Applicant considered that agreement would be reached shortly. The Applicant will continue to pursue these negotiations. [[REP11-020](#)].

- Objector's case: The objectors would like land-take reduced and a retaining wall built to support the highway structure instead. Should that not be possible then they request substantial fencing beyond the standard post and rail fence proposed to mitigate the increased impact of noise etc. to their development plot. An offer of compensation based on current plans was issued to the objector on the 21 February 2020 [[REP11-020](#)].
- Applicant's response: Objections Schedule [[REP11-020](#)] details offers and negotiations between Applicant and land owner.

ExA conclusion. The ExA concludes that this objection is effectively a compensation issue between the parties which is not a concern requiring our conclusion. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Name(s): David Herbert Hankey [[RR-011](#)]

Location(s): Land around junction 66 (Eighton Lodge) and Longbank Bridleway Underpass.

Interests: CA of plot 4/6c
TP of Plots 4/3n, 4/3p, 4/6a
Rights and TP in respect of Plot 4/6b

Status summary: The District Valuer has sought written confirmation of Mr Hankey's stance. No objections have been raised to date with the CA and TP of his interests. The most recent attempt to contact Mr Hankey was via his land agent by email on 11 June 2019, no response has yet been received [[REP4-016](#)].

- Objector's case: The size of Dunkirk Farm requires a very precise and intensive form of management to make it economically viable. Whilst the objector has no objection in principle to the Proposed Development it is very important that the disruption to his operations is kept to a minimum and that access to his fields in the south part of the farm is available at all times. The representation is to ensure that Mr Hankey suffers as little financial and practical disruption as possible [[RR-011](#)].
- Applicant's response: Objections Schedule [[REP11-020](#)] details offers and negotiations between Applicant and land owner.

ExA conclusion. We are satisfied that the Applicant has proposed reasonable and proportionate measures, which would be secured within the DCO, to safeguard farming operations as far as practicably possible. This objection otherwise relates to a compensation issue between the parties which is not a concern requiring our conclusion. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Name(s): Environment Agency [[RR-001](#); [REP1-009](#); [REP2-064](#); [REP2-054](#); [REP4-026](#); [REP4-049](#); [REP4-050](#); [REP4-051](#); [REP4-065](#); [REP5-011](#)]

Location(s): Land within and around junction 67 (Coal House) Roundabout.

Interests: CA of plots 3/2b, 3/3m, 3/3o, 3/3t, 3/3u
TP of Plots 3/3c, 3/3k, 3/3n, 3/3p, 3/3q,
3/3r, 3/3w, 3/3x, 3/3y

Status summary: June 2020: The EA has stated that they would resist any works that would affect their gauging station. The EA have confirmed that they will seek compensation for any disturbance costs incurred as a result of the Proposed Development works. The Applicant has included provisions for the protection of the gauging station in the outline CEMP [[REP11-012](#)].

The District Valuer contacted the EA on 9 July 2019 to discuss their land plots near to the River Team and land take requirements for the Proposed Development [[REP4-016](#)].

- Objector's case: The objector is concerned about the potential impact of the Proposed Development on the gauging station and telemetry software facilities [[REP11-020](#)].
- Applicant's response: Objections Schedule [[REP11-020](#)] details discussions and correspondence between Applicant and the EA. The Applicant issued an offer of compensation on 21 February 2020. Discussions with the EA have covered protective measures for the gauging station which are included in the dDCO. Additional measures have been included within the outline CEMP to ensure sufficient protection for the gauging station.

ExA conclusion. The ExA considers that the applicant and EA have worked together to understand the potential impact of the Proposed Development on the gauging station and telemetry facilities, and as a result adequate protective measure have been included in the dDCO via the outline CEMP. (Note: EA Protective Provisions have been removed from the dDCO [[REP9-026](#)], as the outline CEMP contains protective measures for the gauging station). We therefore conclude that sufficient protective measures for the gauging station have been included in the outline CEMP [[REP11-012](#)]. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA and TP.

Name(s): Gateshead Council [[REP1-005](#); [AoC-002](#); [AS-007](#); [REP2-065](#); [REP2-066](#); [REP2-052](#); [REP2-075](#); [REP4-024](#); [REP4-063](#)]

Location(s): The main areas of land that are affected by the proposals are woodland areas within Council ownership and land that appears to be highway verge. In addition they are seeking temporary use over private access routes within Council ownership and public footpaths and public bridleway [[REP1-005](#)].

Interests: CA of plots 1-1, 3-2b, 3-3a, 3/3g, 3/3h, 3-3j, 3-3l, 3-3m, 3-3o, 3-3t, 3-3u, 3/3ff, 3/3hh, 3-3ii, 3-3kk, 3-3nn, 3-3rr, 3-3uu, 3-3vv, 3-3zz, 3-3ddd, 3-3iii, 3-3mmm, 3/4a, 3/4b, 3-4c, 3-4d, 3-4g, 3-4i, 3-4n, 3-4o, 3-10b, 3-10c, 3-10g, 4-11, 4-12c, 4-1k, 4-1s, 4-1t, 4-2c, 4-3c, 4-3d, 4-3e, 4-3f, 4-3g, 4-3h, 4-3k, 4-3r, 4-3s, 4-3t, 4-7a, 5-5b, 5-5d, 5-5f 5-10a, 5-10c, 5-10d, 5-10e, 5-10f, 5-10g

TP of Plots 3-3b, 3-3c, 3-3d, 3-3k, 3-3n, 3-3p, 3-3q, 3-3r, 3-3s, 3-3v, 3-3w, 3-3x, 3-3y, 3-3aa, 3-3bb, 3-3cc, 3-3ee, 3-3jj, 3-3oo, 3-3ss, 3-3xx, 3-3bbb, 3-3ccc, 3-3eee, 3-3fff, 3-3ggg, 3-3jjj, 3-4e, 3-4f, 3-4h, 3-4j, 3-4k, 3-4r, 3-4t, 3-10a, 4-12a, 4-13f, 4-14c, 4-15, 4-1p, 4-2a, 4-2e, 4-3a, 4-3i, 4-3j, 4-3n, 4-4c, 4-4e, 4-4f, 4-5, 5-10b, 5-1a, 5-1b, 5-5c, 5-5e

Rights in respect of Plots 3-3ll, 3-3yy, 3-3hhh, 3-3lll, 3-10e, 4-9b

Rights and TP in respect of Plots 3-3e, 3-3f, 3-3i, 3-3z, 3-3dd, 3-3gg, 3-3mm, 3-3pp, 3-3qq, 3-3tt, 3-3ww, 3-3aaa, 3-3kkk, 3-3nnn, 3-4q, 3-10d, 4-14b, 4-2d, 4-3b, 4-7b, 5-5a, 5-9

Status summary: The Applicant's legal representatives sent a letter to Gateshead Council on 8 July 2019 to formally ask for a response. Draft versions of the Land Plans, Works Plans, General Arrangement Plans and the dDCO schedules were also included with the request [[REP4-016](#)].

- Objector's case: The Council's initial representation was that they are entitled to compensation for the value of the land taken both permanently and temporarily. The Council submitted a further representation regarding ecology/biodiversity and the extent of Council land/rights to be acquired.
- Applicant's response: In response to their representation [[REP1-005](#)] regarding ecology/biodiversity and the extent of Council land/rights to be acquired by the Proposed Development, this will be addressed through the environmental mitigation proposed [[REP11-020](#)].
June 2020: Whilst the Applicant has been in contact with Gateshead Council regarding other matters (i.e. the next phase of site investigation works), the Applicant has not had a full response to their initial offer of compensation at the time of writing (1 June 2020). The Applicant will continue to engage with the Council [[REP11-020](#)].

ExA conclusion. The ExA considers that the environmental mitigation proposed is adequate and proportionate.

The ExA concludes that the matter of the next phase of site investigation works is effectively a compensation issue between the parties which is not a concern requiring our conclusion. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Name(s): Network Rail [[RR-003](#); [REP1-016](#); [REP1-017](#); [REP2-058](#); [REP2-063](#); [REP4-067](#); [REP5-013](#); [REP6-009](#)]

Location(s): Land around Allerdene Bridge over the ECML.

Interests: CA of Plots 3/3nn, 3/6e, 3/10b, 3/10c, 3/10g, 3/10j, 3/10k, 3/11, 3/12a, 3/12d, 3/12f

TP of Plots 3/3jj, 3/3ss, 3/5, 3/6a, 3/6c, 3/9, 3/10a, 3/10i

Rights in respect of Plots 3/6b, 3/10e, 3/10f, 3/12c, 3/12e

Rights and TP in respect of Plots 3/3mm, 3/6d, 3/6f, 3/6k, 3/10d, 3/10h, 3/12b

Status summary: Discussions with NR have taken place in relation to an agreement for Allerdene Bridge and the draft Protective Provisions contained in Schedule 11 of the dDCO. NR responded on 16 July 2019 to an email by the Applicant's legal representatives to confirm that the Protective Provisions sent to them are in a similar format to NR's standard provisions and they are generally satisfied. NR are consulting with their own legal team to confirm [[REP4-016](#)].

- Objector's case: The objector does not object in principle to the Proposed Development, but requests that the Protective Provisions appended to its WR be included in the dDCO.
- Applicant's response: The Applicant has held a series of meetings with NR between 2016 and 2019 to discuss the Proposed Development and proposals for the Allerdene Bridge demolition and replacement over the ECML. The District Valuer has sought written confirmation from NR on their stance in relation to the proposals. Discussions with NR have taken place in relation to an agreement for Allerdene Bridge and the draft Protective Provisions contained in Schedule 11 of the dDCO [[REP4-016](#)].

ExA conclusion. The ExA asked a series of questions regarding CA and/or TP as well Protective Provisions during the course of the examination [[PD-008](#); [PD-013](#)].

The outstanding matter relating to this objection concerns Protective Provisions relating to indemnity provisions. We have considered this in paragraphs 9.6.29 to 9.6.41 of this Report; concluding that we do not consider there to be adequate grounds for the inclusion of paragraph 32(4) of Schedule 11 of the Applicant's preferred DCO [[REP11-028](#)] representing a deviation from NR's standard indemnity. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Name(s): Northern Gas Networks Limited [[RR-004](#);
[REP2-073](#);
[REP1-019](#);
[REP2-057](#);
[REP2-071](#);
[REP2-072](#);
[REP2-073](#);
[REP3-009](#);
[REP4-041](#);
[REP4-068](#);
[REP5-017](#)]

Location(s): Land around Allerdene Bridge associated with the development of a proposed CNG refuelling station.

Interests: CA of Plots 3-6e, 3-6j, 3-2a, 3-2b, 3-2c, 3-3a, 3-3g, 3-3h, 3-3j, 3-3l, 3-3m, 3-3o, 3-3hh, 3-3ii, 3-3nn, 3-4a, 4-1a, 4-1b, 4-1c, 4-1g, 4-1h, 4-1k, 4-3c, 4-3g, 4-3l, 4-3o, 4-6c

TP of Plots 3-3ss, 3-6a, 3/6c, 3-6g, 3-6h, 3-6i, 3-6m, 3-3b, 3-3c, 3-3d, 3-3k, 3-3n, 3-3p, 3-3q, 3-3r, 3-3s, 3-3v, 3-3w, 3-3x, 3-3y, 3-3aa, 3-3cc, 3-3ee, 3-3jj, 3-3oo, 3-5, 3-8, 4-3a, 4-3m, 4-3n, 4-6a

Rights in respect of Plots 3-6b, 3-6l, 2-2, 3-1, 3-3ll,

Rights and TP in respect of Plots 3/6d, 3/6f, 3/6k, 3/3e, 3/3f, 3/3dd, 3/3mm, 3/3qq, 3/3tt, 4/3b, 4/3q, 4/6b

Status summary: The parties have agreed Protective Provisions for inclusion in a separate asset protection agreement regulating the use of powers in respect of NGN's land, which has also been agreed [[REP11-031](#)]. NGN has also agreed to the inclusion of Article 32(12) in the dDCO regarding the amended Land Ownership Plan.

- Objector's case: Representation with regards the extent of land to be acquired; reservation of space for the CNG filling station; and the inclusion of more comprehensive Protective Provisions in the DCO for their benefit.
- Applicant's response: Objections Schedule [[REP11-020](#)] details discussions and correspondence between Applicant and the Objector.

NGN's representations objecting to the Proposed Development on the basis that it seeks to retain a portion of land proposed for TP (for a construction compound) in order to implement its own proposals for a CNG) refuelling station within Plot3/6c of the order land are dealt with in detail from paragraph 5.4.35. NGN considers this to be in the wider public interest due to the contribution it could make to improvements in air quality. It also considered that the Applicant has not made a compelling case in the public interest for the whole of Plot3/6c within the unamended scheme. Consequently, it sought an amendment to the Proposed Development so that its proposed site for the CNG facility is excluded from the Order.

However, NGN is supportive of the amended scheme involving the additional land provided that the parcel of land it is seeking to use

for the CNG station can be retained by NGN. The respective land areas are shown in the Applicant's D9 submission [[REP9-020](#)].

The SoCG between NGN and the Applicant [[REP11-031](#)] also confirms that the parties have agreed Protective Provisions for inclusion in a separate asset protection agreement regulating the use of powers in respect of its land and that the parties intend to shortly enter into the asset protection. We have not received any further details of this.

ExA conclusion. The ExA asked WQs regarding NGN's objection [[PD-008](#)] including details of the stage the CNG facility is currently at in the design, planning and consenting process. Further to responses received [[REP2-072](#)] it became apparent that, in terms of seeking planning permission, the CNG facility is still at an early stage. No formal application for permission has yet been submitted and there is no guarantee that planning permission would be granted. This limits the weight that can be given to this proposal at the current stage. We also consider that, based on the application as submitted without the additional land (and taking account its illustrative construction compound layouts), the Applicant has satisfactorily demonstrated the need for the TP of the whole of Plot3/6c for use as a construction compound.

Notwithstanding this, the inclusion of additional land within the application, extending the size of the construction compound would mean that the parcel of land needed for the CNG facility by NGN would no longer be required by the Applicant for TP. We have previously agreed to the inclusion of the additional land within the application.

The Applicant has added Article 32(12) to its preferred DCO which would restrict the power of the Applicant so it would not be able to exercise the power of TP over the CNG filling station parcel of land, allowing NGN to carry out its development. We note NGN's agreement with the Applicant's inclusion of Article 32(12) and its approach regarding the additional land. The detail wording of Article 32(12) and other related matters is considered in further detail in paragraphs 9.6.42 to 9.6.49 of this Report.

We conclude that, subject to the exception provided by Article 32(12) of the DCO, the land sought is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Name(s):	St Mary Magdalene and Holy Jesus Trustee Limited	[RR-010]
Location(s):	Land around Longbank Bridleway Underpass.	
Interests:	CA of Plot 4/6c	

TP of Plot 4/6a

Rights and TP in respect of Plot 4/6b

Status summary: The District Valuer received written confirmation from St Mary Magdalene and Holy Jesus Trustee Limited on 12 October 2018 that there are no objections and they are willing to engage in negotiations [[REP4-016](#)].

- Objector's case: The Trust do not object to the Proposed Development but would require undertakings that the restoration of the land to be returned to the farm is done to the highest possible standards and that all necessary accommodation works are carried out [[RR-010](#)].
- Applicant's response: A formal offer was made, and the concerns outlined in [[RR-010](#)] were noted and discussions regarding the restoration of the land commenced [[REP11-020](#)]. These have been delayed by the COVID restrictions but are on-going.

ExA conclusion. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

Name(s): Thomas Arthur Hamish Ninth [[RR-016](#)]
Baron Ravensworth (as executor
for Lord Arthur Waller Eighth
Baron)

Location(s): Land around junction 67 (Coal House)
Roundabout and junction 66 (Eighton Lodge).

Interests: CA of Plots 1-1, 2-1, 3-2a, 3-2b, 3-2c, 3-2d, 3-2e, 3-2f, 3-2g, 3-2h, 3-2i, 3-2j, 3- 2k, 3-2l, 3-2m, 3-2n, 3-3a, 3-3g, 3- 3h, 3-3j, 3-3l, 3-3m, 3-3o, 3-3t, 3-3u, 3-3ff, 3-3hh, 3-3ii, 3-3kk, 3-3nn, 3- 3rr, 3/3uu, 3-3vv, 3-3zz, 3-3ddd, 3- 3iii, 3-3mmm, 3-4a, 3-4b, 3-4c, 3-4d, 3-4g, 3-4i, 3-4l, 3-4m, 3-4n, 3-4o, 3-4p, 3-4s, 3-6e, 3-6j, 3/10c, 3-10g, 3-10j, 3-10k, 3-12a, 3-12d, 3-12f, 4-1a, 4-1b, 4-1c, 4-1d, 4-1e, 4-1f, 4-1g, 4-1h, 4-1i, 4-1j, 4-1k, 4-1l, 4- 1n, 4-1o, 4-1q, 4-1r, 4-1s, 4-1t, 4-2c, 4-3d, 4-3e, 4-3f, 4-3g, 4-3h, 4-3k, 4- 3o, 4-6c, 4-7a, 5-2a

TP of Plots 3-3b, 3-3c, 3-3d, 3-3k, 3-3n, 3-3p, 3-3q, 3-3r, 3-3s, 3-3v, 3-3w, 3- 3x, 3-3aa, 3-3bb, 3-3cc, 3-3ee, 3-3jj, 3-3oo, 3-3xx, 3-3y, 3-3bbb, 3-3ccc, 3-3fff, 3-3ggg, 3-3jjj, 3-4e, 3-4f, 3-4h, 3-4j, 3-4k, 3-4r, 3-4t, 3-5, 3-6a, 3-6c, 3-6g, 3-6h, 3-6i, 3-6m, 3-7,

3-9, 3-10i, 3/13a, 4-1m, 4-2b, 4-3a, 4-3i, 4-3j, 4-3m, 4-4a, 4-4d, 4-6a, 4-7c, 4-8

Rights in respect of Plots 2-2, 3-1, 3-3ll, 3-3yy, 3-3hhh, 3-3lll, 3-6b, 3-6l, 3-10e, 3-10f, 3-12c, 3-12e

Rights and TP in respect of Plots 3-3e, 3-3f, 3-3i, 3-3z, 3-3dd, 3-3gg, 3-3pp, 3-3qq, 3-3tt, 3-3ww, 3-3aaa, 3-3kkk, 3-3mm, 3-3nnn, 3-4q, 3-6d, 3-6f, 3-6k, 3-10d, 3-10h, 3-12b, 4-3b, 4-3q, 4-4b, 4-6b, 4-7b

Status summary: The District Valuer received written confirmation from Thomas Arthur Hamish Ninth Baron Ravensworth on 11 January 2019 that there are no objections and he is willing to engage in negotiations [[REP4-016](#)].

June 2020: The Applicant has reached a provisional agreement on the compensation due with the claimant via his agent [[REP11-020](#)].

- Objector's case: The objector has mineral interests which would have to be acquired. He is agreeable in principle with the overall Proposed Development and the proposed acquisition of his minerals subject to appropriate compensation [[RR-016](#)].
- Applicant's response: Objections Schedule [[REP11-020](#)] details the dates of issue of a formal offer of compensation and subsequent negotiations.

ExA conclusion. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for CA, TP and rights acquisition.

Name(s):	Northumbrian Water Limited	[REP1-026]
Location(s):	Land around junction 67 (Coal House) Roundabout, junction 66 (Eighton Lodge), and junction 65 (Birtley).	
Interests:	CA of Plots 3-2a, 3-2b, 3-2c, 3-2d, 3-2e, 3-2f, 3-2g, 3-2h, 3-3a, 3-3g, 3-3h, 3-3j, 3-3l, 3-3m, 3-3o, 3-3ii, 3-3zz, 3-4a, 3-4n, 3-4o, 3-6e, 3-6j, 4-1a, 4-1b, 4-1c, 4-1f, 4-1g, 4-1h, 4-1i, 4-1j, 4-1k, 4-1s, 4-3c, 4-3d, 4-3e, 4-3f, 4-6c, 5-10f, 5-2a, 5-2b, 5-3a, 5-4c, 5-5b TP of Plots 3-3c, 3-3d, 3-3k, 3-3n, 3-3q, 3-3r, 3-3v, 3-3x, 3-3aa, 3-3cc, 3-3ee, 3-3oo, 3-3ss, 3-3bbb, 3-6a, 3-6c, 3-6g, 3-10i, 4-15, 4-3a, 4-6a, 5-1a, 5-1b	

Rights and TP in respect of Plots 3/3e, 3/3f, 3/3i, 3/3dd, 3/3qq, 3/3aaa, 4/3b, 4/6b, 5/3b, 5/4d, 5/5a

Status summary:

Discussions with Northumbrian Water have taken place in relation to draft Protective Provisions contained in Schedule 11 of the dDCO. The most recent contact was on 26 June 2019 when the Applicant contacted Northumbrian Water by email to discuss the Derwent Pipeline investigation works and a general update on the delivery of the Proposed Development [[REP4-016](#)].

June 2020: There does not appear to be any impact on a compensatable interest belonging to Northumbrian Water. A SoCG was drafted with Northumbrian Water for submission shortly after Deadline 8 [[REP11-020](#)]. This confirmed that the parties have now agreed the draft Protective Provisions and the final issues in respect of the draft Agreement are in the process of being closed out. The Agreement is expected to complete after the close of the examination [[REP11-033](#)].

- Objector's case: The objector has land interests within the Proposed Development and wishes to ensure the assets are protected or diverted (as appropriate).
- Applicant's response: Objections Schedule [[REP11-020](#)] details discussions and correspondence between Applicant and the Objector including: protection of assets and services for customers; and compensation.

ExA conclusion. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA, TP and rights acquisition.

8.6. OTHER PARTICULAR CONSIDERATIONS

Special Land and Rights Provisions

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

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

SU land, rights or apparatus

- 8.6.2. S127 of PA2008 applies to land acquired by SUs for the purposes of their undertaking, and places restrictions on the CA, or CA of a new right, of such land where a representation is made in relation to a DCO application and is not withdrawn by the close of the Examination of that application. The dDCO includes provision to authorise the CA of land and rights held by SUs for the purposes of their undertaking.
- 8.6.3. If s127 applies CA of SU's land can only be authorised if the SoS is satisfied:
- that the land can be purchased and not replaced without serious detriment to the SU or, if purchased, can be replaced by other land belonging to or available for purchase by the SU without detriment; or
 - the right can be purchased without serious detriment to the SU or, any detriment to the SU, in consequence of the acquisition of the right, can be made good by the SU by the use of other land belonging to or available for acquisition by them.
- 8.6.4. S138 of PA2008 applies where an Order authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right or there is on, under or over the land relevant apparatus.
- 8.6.5. S138(4) provides that an Order may include provision for the extinguishment of the relevant right or the removal of relevant apparatus only if the SoS is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the Order relates.
- 8.6.6. At the close of the Examination the Applicant's position in relation to these matters is contained in the document entitled Applicant's Responses to ExA's Third WQs – Appendix 3.3.C - s138 SU's Apparatus [[REP8-020](#)].
- 8.6.7. The Applicant recognises that where s127 applies to land or rights which are required to be acquired to enable the delivery of the Proposed Development, and the SU that owns such land or rights makes a representation to the SoS in relation to the dDCO and does not withdraw that representation before the completion of the Examination into the application, the Applicant will be required to seek confirmation that the SoS is satisfied of the matters set out in subsections 127(3) and/or 127(6) as appropriate.
- 8.6.8. The Applicant has engaged with all of the SUs affected by the Proposed Development in order to address any representations that have been raised by them where s127 or s138 apply. The final agreed positions are contained in Appendix 3.3 B - S127 SUs Land and Rights (Rev 1) [[REP8-019](#)] and Appendix 3.3 B - S127 SU's Land and Rights (Rev 1) [[REP8-020](#)]. No representations were withdrawn.
- 8.6.9. SoCG have been agreed and signed with all SUs as follows:

- EA [[REP10-006](#)];
- NGN [[REP11-031](#)]; and
- Northumbrian Water Ltd [[REP11-033](#)].

These demonstrate that these SUs are content with the Proposed Development.

- 8.6.10. The SoCG with NR [[REP11-032](#)] is in an agreed form, but the document remained unsigned by the end of the Examination. We have therefore given only limited weight to this particular SoCG although the respective positions of the parties are clear from their separate representations.
- 8.6.11. The Applicant considers that the tests set out in subsections 127(3) and/or 127(6) (as appropriate) can be demonstrated as detailed in Appendix 3.3 B - S127 SUs Land and Rights (Rev 1) [[REP8-019](#)]. The ExA has concluded in relation to individual objections and issues above, including in relation to matters that were outstanding with NR and NGN.
- 8.6.12. In relation to s127 the dDCO proposes to CA the land in the ownership of the EA, NR, and NGN. The Applicant states that:
- although the land to be acquired from the EA includes a gauging station, the works relating to the construction of the Proposed Development would be downstream of the gauging station and would not directly interfere with its continued operation. We agree with this conclusion.
 - acquisition of NR land would not result in serious detriment to the carrying on of the undertaking, rather a benefit. We agree with this conclusion.
 - acquisition of NGN land would not result in serious detriment to the carrying on of the undertaking, and NGN have not raised any concerns to this effect in their RRs or WRs [[REP8-019](#)]. We agree with this conclusion.
- 8.6.13. The dDCO includes provision to authorise necessary interference by the Applicant with the apparatus of SUs, in connection with the delivery of the Proposed Development. The location of these works is shown on the Works Plans [[REP4-006](#)] and defined as specific Works within Schedule 1 (Authorised Development) of the dDCO [[REP11-004](#)].
- 8.6.14. The Applicant proposes to acquire and provide new permanent rights over land for the benefit of the relevant SU and the carrying out of their undertakings, in such cases where existing rights have will be extinguished or interfered with.
- 8.6.15. We therefore conclude that the tests set out in subsections 127(3) and/or 127(6) (as appropriate) can be met.
- 8.6.16. In accordance with s138(4) we are satisfied that the extinguishment of the SU rights, and removal of the SU apparatus is necessary for the purpose of carrying out the development to which the Order relates.

Crown Land

8.6.17. The BoR confirms that there are no Crown interests [[REP11-008](#)] and consequently s135 of PA 2008 does not apply.

Human Rights Act 1988 Considerations

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

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

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

8.6.20. Chapter 6 of the SoR deals with Human Rights [[REP4-016](#)]. There are no residential properties to be acquired for the Proposed Development.

8.6.21. The Applicant deals with compliance with the relevant provisions of the ECHR and fair compensation in Chapter 6 of the SoR [[REP4-016](#)].

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

8.6.23. We conclude that the CA and TP sought is compatible with the Human Rights Act and the ECHR.

Creation of new rights over Schedule 8 Land

8.6.24. Under Article 32(9) (Temporary use of land for carrying out the authorised development) the undertaker may not compulsorily acquire land referred to in column (1) of Schedule 8 (land of which TP may be taken) with specified exceptions.

8.6.25. We asked the Applicant a WQ [[PD-013](#)] to (a) clarify how a judgement can be made as to whether the acquisition of such new rights under Article 32(9)(a) meets the CA tests in PA2008 or addresses Human Rights matters and (b) to provide further details of the new rights that would need to be acquired. Our primary concern about this Article is that it could result in the creation of new undefined rights over land in circumstances where it is not clear that the affected landowners or occupiers have been consulted by the Applicant in a way that they would have been aware that something other than TP could occur on their land.

- 8.6.26. The Applicant's response and further discussions regarding this matter are detailed from paragraph 9.6.9 of this Report.
- 8.6.27. We conclude that Article 32(9) should be amended by deleting the wording contained in Article 32(9)(a). This is set out in our recommended DCO in Appendix D.

8.7. CONCLUSIONS

Conclusions regarding creation of new rights over Schedule 8 land

- 8.7.1. We conclude that Article 32(9) needs to be amended by deleting the wording contained in Article 32(9)(a).

Conclusion relating to design change request & additional land

- 8.7.2. The Applicant provided notification under the CA Regulations and an opportunity for representations for the TP of additional land. Representations were received relating to planning merits rather than TP. We conclude that there were no objections to TP of the additional land.

Conclusion relating to individual objections and issues

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

Conclusion relating to SU land, rights or apparatus

- 8.7.4. The Applicant engaged with all of the SUs affected in order to address any representations that had been raised by them where s127 or s138 apply. SoCG have been agreed with three of the four SUs demonstrating that the SUs are content with the Proposed Development (in the case of NGN this is on the provision that the additional land is included in the Order). The SoCG with NR was in an agreed form but remained unsigned by the end of the Examination.
- 8.7.5. We conclude that the tests set out in subsections 127(3) and/or 127(6) (as appropriate) can be met.
- 8.7.6. In accordance with s138(4) of PA2008 we are satisfied that the extinguishment of relevant rights and removal of the relevant apparatus is necessary for the purpose of carrying out the development to which the order relates.

Crown Land

- 8.7.7. There are no Crown Interests.

Human rights and PSED

- 8.7.8. We have considered carefully the grounds on which the powers for CA and TP have been sought in each case and consider that they are compatible with the Human Rights Act in terms of being a proportionate

interference with property and family life. We also consider that there are no implications arising which conflict with the PSED in terms of groups disproportionately affected.

Final Conclusion

- 8.7.9. We conclude that the SoS can be satisfied that the tests in s122(2)(a) and (b) and s122(3) PA2008 are met and recommend acceptance of the CA and TP powers proposed in the DCO, with the recommended amendment of Article 32(9).
- 8.7.10. We conclude that the SoS can be satisfied that the conditions in s123(2) and s123(4) PA2008 are met.

9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1. INTRODUCTION

9.1.1. This section of the Report describes the dDCO as applied for and the changes made to it during the Examination. It also describes matters that remained in dispute at the end of the Examination, our recommendations on those matters and the changes to the dDCO that would result.

9.1.2. This section is organised as follows:

- The Examination of the DCO
- The DCO as applied for
- Changes during the Examination
- Discussion of outstanding matters
- Conclusion

9.2. THE EXAMINATION OF THE DCO

9.2.1. The Applicant submitted a dDCO with the application [[APP-013](#)]. An EM to the dDCO was also submitted [[APP-014](#)].

9.2.2. The Applicant subsequently submitted eight iterations of the dDCO, the first of which was submitted prior to the PM and the remainder during the Examination. These sought to respond to matters raised in written and oral questions from the ExA and in written and oral submissions from other parties. Versions of the dDCO were submitted as follows (this list does not include the alternative versions submitted at DL4 and DL5 which related to the then undecided proposed application change request):

- Prior to the PM [[AS-013](#)]
- Deadline 2 [[REP2-045](#)]
- Deadline 4 [[REP4-074](#)]
- Deadline 5 [[REP5-004](#)]
- Deadline 6 [[REP6-004](#)]
- Deadline 8 [[REP8-004](#)]
- Deadline 9 [[REP9-003](#)]
- Deadline 11 [[REP11-004](#)] (the Applicant's preferred DCO)

9.2.3. At each stage the Applicant provided a tracked changes version against the previous version. A schedule of changes to the dDCO has also been provided, the most up to date version being at DL11 [[REP11-022](#)]. The EM has also been updated during the Examination, the final version also being submitted at DL11 [[REP11-006](#)].

9.2.4. The ExA asked questions about the content of the dDCO and the justification for the various provisions within it at the following ISHs:

- ISH1 on 21 January 2020 [[EV-004](#) & [EV-005](#)]
- ISH5 on 25 June 2020 [[EV-018](#) & [EV-019](#)]
- Further ISH on 14 July 2020 [[EV-027](#)]

9.2.5. The ExA also sought information about the dDCO at three stages through WQs:

- WQs (ExQ1) [[PD-008](#)]
- FWQs (ExQ2) [[PD-013](#)]
- FWQs (ExQ3) [[PD-023](#)]

9.2.6. On 16 June 2020 we issued a schedule of suggested changes to the dDCO [[PD-025](#)]. Comments on the schedule were invited by DL9 and the matters raised in the schedule was also discussed at ISH5.

9.2.7. Throughout the Examination written submissions were received which included comments on the dDCO. In addition, several of the final SoCG recorded agreements and disagreements over the content of the dDCO. We have taken account of all these submissions, together with the information gained in the ways set out above, in reaching our recommendations on the DCO.

9.3. THE DCO AS APPLIED FOR

9.3.1. The dDCO as applied for [[APP-013](#)] included a number of provisions to enable the construction, operation and maintenance of the Proposed Development. Its general structure is set out below:

- Part 1 (Preliminary): Articles 1 and 2 set out how the DCO may be cited, when it would come into force and the meaning of various terms used in the Order;
- Part 2 (Principal Powers): Articles 3 to 6 provide development consent for the Proposed Development and allow it to be carried out and maintained. Article 7 provides for limits of deviation. Articles 8 and 9 set out who has the benefits of the powers of the DCO and how those powers can be transferred;
- Part 3 (Streets): Articles 10 to 19 provide powers in relation to street works. These include the ability for the undertaker to be able to carry out works to and within streets, powers for temporary and permanent stopping up, create or improve access, the modification of Road Traffic Regulation Orders and traffic regulation powers;
- Part 4 (Supplementary Powers): Articles 20 to 22 relate to discharge of water, protective work to buildings and authority to survey and investigate land;
- Part 5 (Powers of Acquisition and Possession): Articles 23 to 36 provide powers in relation to the CA and TP of land, along with powers in relation to SUs;
- Part 6 (Operations): Articles 37 to 39 contain powers in relation to trees, hedgerows and SMs;
- Part 7 (Miscellaneous): Articles 40 to 46 relate to the application of landlord and tenant law, operational land under the Town and Country Planning Act 1990, defence to proceedings in respect of statutory nuisance, protection of interests, document certification, the serving of notices and arbitration.

9.3.2. There are twelve Schedules to the dDCO, providing for:

- the description of the Authorised development (Schedule 1);
- the requirements applying to it (Schedule 2);
- classification of roads (Schedule 3);
- permanent stopping up of streets, public rights of way and private means of access (Schedule 4);
- public rights of way to be temporarily stopped up and for which a substitute is to be provided (Schedule 5);
- land in respect of which only new rights etc. may be acquired (Schedule 6);
- modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants (Schedule 7);
- land of which TP may be taken (Schedule 8);
- trees subject to tree preservation order (Schedule 9);
- SMs (Schedule 10);
- Protective Provisions (Schedule 11); and
- documents to be certified (Schedule 12).

9.3.3. Although there were numerous changes made to the dDCO during the Examination, as described below, its broad structure did not change.

9.4. CHANGES DURING EXAMINATION

9.4.1. This section sets out the most significant ways in which the dDCO changed during the Examination. There were also numerous minor changes, corrections and drafting improvements. These are recorded in the Applicant's schedule of changes [[REP11-022](#)] and can be seen in the various track changes versions of the dDCO. It is not necessary to record them all here.

9.4.2. Table 1 sets out the most significant changes made during the course of the Examination, as reflected in the Applicant's preferred DCO [[REP11-004](#)]. The changes in Table 1 generally flowed from discussions at Hearings, responses to our questions and submissions from IPs.

9.4.3. We are satisfied that the majority of these changes are justified by the evidence before us and can be recommend for inclusion in the DCO if the SoS concludes that development consent should be granted. Where we have gone on to suggestion further amendments to matters the subject of change in Table 1, these are reflected in section 9.6 and Table 2 of our report below. We have also noted such occurrences under the 'ExA Comment' column in Table 1.

Table 1: Main changes made by the Applicant during the Examination

Provision	Change	ExA Comment
Articles		
Article 2 Interpretation	Deadline 2 Definition of "business day" inserted	Responds to ExA request for clarity at ISH1
Article 2 Interpretation	Deadline 2 Definition of "commence" revised to apply a different definition in relation to R4, 5, 7, 8 ,9 and 10	Responds to ExA question at ISH1 regarding how this definition would relate to particular requirements where approval is required prior to commencement
Article 2 Interpretation	Deadline 9 Definition of "commence" revised, including removal exceptions for site clearance and demolition work	Further to the ExA's schedule of changes to the dDCO [PD-025]
Schedule 1 Authorised development	Preliminary Meeting Version Descriptions of Work Nos 8b and 19 updated	Proposed by the Applicant to ensure correct description
Article 7 Limits of deviation And several other clauses	Deadline 2 Various clauses updated with consistent wording on treatment of environmental effects ("not give rise to any materially new or materially different environmental effects")	Proposed further to discussion at ISH1 on need for consistency

Provision	Change	ExA Comment
Article 32 Temporary use of land for carrying out the authorised development	Deadline 9 Sub-paragraph (12) added regarding temporary possession over that part of plot 3/6c shown on the NGN Land Ownership Plan	Further to ExA questions at ISH5. Our further consideration of the detailed wording of this provision is set out in section 9.6 of our report below.
Article 37 Felling or lopping of trees and removal of hedgerows	Deadline 2 Revised to include requirement for the consent of the local authority to be obtained for removal of hedgerows	Responds to ExA question at ISH1
Schedule 1 – Authorised Development		
Work No.5a	Deadline 4 Revised to include a viaduct structure with up to three spans	Following the Applicant’s proposed changes to the application
Schedule 2, Part 1 - Requirements		
R3 Detailed design	Deadline 2 Amendment to require that details of Work No. 10 (gas transfer station building) are submitted to and approved by the SoS	Responds to ExA question at ISH1
R3 Detailed design	Deadline 4 Amendments, including to require detailed approval for Work No.12	Responds to ExQ2.4.8 [REP4-052]

Provision	Change	ExA Comment
R3 Detailed design	Deadline 8 Further amendments including requirement for a signage strategy for signs in gantry areas to be approved by the SoS in consultation with Gateshead Council	Responds to concerns raised regarding the impact of the proposed gantries and ExA questions including ExQ3.6.3 & 3.6.4 [REP8-024].
R3 Detailed design	Deadline 9 Revised wording including setting out additional details needing to be included in signage strategy and the approval of design elements of the replacement Allerdene Bridge.	Responds to ExA questions at ISH5
R4 Construction and handover environmental management plans	Deadline 2 Amended to include list of management plans to be included with the CEMP	Responds to ExA question at ISH1
R4 Construction and handover environmental management plans	Deadline 5 Revised to include consultation with HE on the CEMP	Responds to HE's response to ExQ2.0.13 [REP4-066]
R4 Construction and handover environmental management plans	Deadline 4 Provision included for consultation with EA and for amendments to the CEMP to be approved in writing by the SoS	Responds to the WR from the EA [REP1-009] and to ExQ2.0.13 [REP4-052]

Provision	Change	ExA Comment
R5 Landscaping	Deadline 2 Amended to prevent any part of the authorised development from commencing until a landscaping scheme has been approved for that part	Responds to ExA question at ISH1
R5 Landscaping	Deadline 9 Revised wording including additional drafting relating to potential landscaping options	Responds to questions and oral representations at ISH2 regarding potential impacts upon the Angel of the North
R9 Archaeological mitigation	Deadline 2 Amended to include consultation with HE and for a final written scheme of investigation to be prepared in accordance with mitigation measures in the REAC	Responds to RR from HE [RR-006] and discussion at ISH1
R9 Archaeological mitigation	Deadline 4 Revised to require that reporting and publication must be agreed with the planning authority in consultation with HE and to clarify requirements in relation to unexpected remains	Responds to RR from HE [REP3-007]
R9 Archaeological mitigation	Deadline 6 Amended so that the final written scheme of investigation is required to be "substantially in	To replace the word "reflecting" used in the original draft DCO

Provision	Change	ExA Comment
	accordance with" the mitigation measures in the REAC	
R10 Traffic management	Deadline 2 Amended to require consultation with SCC	Responds to ExA question at ISH1
R10 Traffic management	Deadline 8 Additional provision to require details of access to construction and working compounds to be approved.	Responds to ExQ3.9.2 [REP8-024]
R12 Pedestrian, cyclist and horse-riding facilities	Deadline 4 Additional provision requiring the details of the North Dene Footbridge to be approved by the SoS	Responds to Gateshead Council's LIR [REP2-075] and ExQ2.0.6 [REP4-052]
R12 Pedestrian, cyclist and horse-riding facilities	Deadline 8 Revised to require demolition/construction details to be approved for the replacement North Dene Footbridge works	Responds to concerns raised by Gateshead Council [REP2-075]
R14 Allerdene Bridge replacement	Deadline 4 Revised to include specifications for three span structure	Following the Applicant's proposed changes to the application
R16 Advance site clearance works	Deadline 9 New provision included to require vegetation clearance works to be carried out in accordance with a	Proposed by the Applicant to ensure suitable mitigation is in place for site clearance works

Provision	Change	ExA Comment
	construction management plan to be approved (and reference added regarding site clearance to this new provision in other relevant Requirements 4, 5, 7, 8, 9 & 10)	
R17 Details of construction compound	Deadline 11 Requirement added to limit the exercise of power of temporary occupation over plot 3/13a where the replacement Allerdene Bridge is by means of a six or seven span viaduct	Further to ExA question at ISH5. Our further consideration of the detailed wording of this provision is set out in section 9.6 of our report below.
Schedule 8 – Land of which temporary possession may be taken		
Land Plans Sheet 3	Deadline 4 Updated to include reference to plot 3/13a being required for the construction compound for Allerdene Bridge	Following the Applicant’s proposed changes to the application (including additional land)
Schedule 10 – Scheduled Monuments		
Scheduled Monuments	Deadline 4 Additional specification provided of the works to be carried out to the Bowes Railway SM	Responds to the WRs from HE [REP1-012 and REP3-007] and ExQ2.4.12 [REP4-052]
Schedule 11 – Protective Provisions		
Part 4	Deadline 2	Responds to WR from the EA [REP1-009]

Provision	Change	ExA Comment
Protection of the Environment Agency	Part 4 added to include protection of the EA	
Part 4 Protection of the Environment Agency	Deadline 9 All Part 4 Protective Provisions removed	In agreement with the EA [REP9-026]
Part 3 Protection of railway interests	Deadline 8 Several paragraphs revised	To reflect where agreement has been reached with Network Rail [REP7-002]
Part 3 Protection of railway interests	Deadline 9 Updated to reflect the latest position with Network Rail	Following discussions between Applicant and Network Rail [REP9-029]
Part 3 Protection of railway interests	Deadline 11 Updated to reflect final state of negotiations with Network Rail	Updated to reflect final positions of the parties [REP11-023 & REP11-032]
Schedule 12 – Documents to be certified		
Documents to be certified	Updated to include additional relevant plans and documents	Updated by Applicant to ensure all relevant plans/documents are listed

9.6. DISCUSSION OF MATTERS OF CONTENTION

9.6.1. This section of the Report addresses those matters which have not been agreed between any IP and the Applicant by the end of the Examination and certain matters which have been the subject of ExA WQs and/or discussion at ISH5 about potential changes to the dDCO. Table 2 then sets out those DCO provisions that we recommend are changed. This includes matters raised in our proposed Schedule of Changes to the dDCO [[PD-025](#)] that are not included in Table 1 above.

Article 2(1) Interpretation – “maintain”

9.6.2. The ExA questioned the interpretation of “maintain” during the Examination including at ISH1 [[EV-004](#)], ISH5 [[EV-019](#)] and through ExQ2.4.2 [[PD-013](#)]. Our suggested changes to the dDCO, issued in advance of ISH5, suggested the removal of the word “alter”, “improve” and “landscape” from the interpretation. The concern being that the terms “alter” and “improve” and the measures or works that could allow for, appear to go beyond a reasonable definition of maintain and may result in changes to the Proposed Development without appropriate consultation. The inclusion of “landscape” within the interpretation was questioned as it was not considered to have been reasonably justified and landscape maintenance is also covered by the draft R5.

9.6.3. The Applicant response at ISH5 [[REP9-014](#)] explained that as normal permitted development rights⁵ would not be able to be relied upon to carry out works that would be contrary to the Requirements of the DCO, these terms need to be included within the definition to ensure that the new trunk road can be managed as part of the network including the powers available under s62 of the Highways Act 1980. In the absence of these provisions, the Applicant would not be able to undertake improvements to the road such as changes to carriageway configuration and landscaping the works without promoting an amendment to the Order. The Applicant also stated that it would still be constrained if proceeding under the Order by the need for the scheme to be constructed and operated within the assessed parameters of the ES. Therefore, any alterations to the Proposed Development could not have a material impact beyond the impacts assessed in the ES. The Applicant, in its response to ExQ2.4.2 also cites examples of where ongoing landscaping management will be required or might be required in relation to landscape and biodiversity interests [[REP4-052](#)].

9.6.4. We have considered the justification provided by the Applicant and note that no IP has objected to the interpretation of maintain as proposed by the Applicant. We accept that the terms “alter” and “improve” can remain in the definition. However, landscaping works do not necessarily amount to development that would be covered by permitted development rights and, in this respect, we do not believe that the DCO would serve to restrict landscaping under permitted development in the manner

⁵ Part 9 Class B of the Town and Country Planning (General Permitted Development)) (England) Order 2015

envisaged by the Applicant. Landscape works would also not relate to issues with actual carriageway repair and maintenance.

- 9.6.5. We note that no precedent has been provided for the inclusion of "landscape" within the definition of maintain. We are also mindful that R5 (Landscaping) provides for the maintenance of landscaping, albeit for a five-year period and that the CEMP would be developed into the HEMP which would include the monitoring and management arrangements going forward during future maintenance and operation. It would also appear that elements of landscaping could still be maintained without needing specific reference to it under the interpretation of maintain. We are therefore not satisfied, that there is a compelling justification for the inclusion of this term in the definition of maintain and recommend that the word "landscape" is removed accordingly.

Article 7 Limits of deviation

- 9.6.6. At ISH1 [[EV-004](#)] the Applicant explained that limits of deviation of up to 1 m are required (as set out in Article 7 of the dDCO) as the Proposed Development is located within an undulating area and therefore requires flexibility of design for elements such as carriageways and slip roads. There is also a critical need to ensure that there is the necessary clearance over the railway for the replacement Allerdene Bridge. This was further questioned through ExQ2.4.3 [[PD-013](#)] and at ISH5 [[EV-019](#)]. The Applicant's responses explained that the reasonable worst case resulting from the proposed limits of deviation have been assessed as part of the ES, including in relation to the effect of the proposed gantries upon the views of the Angel of the North and the replacement North Dene Footbridge. At ISH5 Gateshead Council observed that it considers the 1 m limit to be excessive [[REP9-022](#)].
- 9.6.7. We note that following amendments to the dDCO Requirements made during the Examination, that the designs of the proposed gantries and the replacement North Dene Footbridge would need to be submitted for approval. This will provide certainty for these aspects which may impact upon views of the Angel of the North.
- 9.6.8. We are consequently satisfied that the proposed limits of deviation set out in Article 7 are appropriate in this case taking account of the particular circumstances of the Proposed Development as set out by the Applicant.

Article 32(9) Temporary use of land for carrying out the authorised development

- 9.6.9. Under Article 32(9) (Temporary use of land for carrying out the authorised development) the undertaker may not compulsorily acquire land referred to in column (1) of Schedule 8 (land of which TP may be taken) except that the undertaker is not to be precluded from (a) acquiring new rights over any part of the that land under Article 26 (CA of rights and restrictive covenants) or (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under Article 30 (acquisition of subsoil or airspace only).

- 9.6.10. We asked the Applicant through ExQ2.3.3 [[PD-013](#)] to (a) clarify how a judgement can be made as to whether the acquisition of such new rights under Article 32(9)(a) meets the CA tests in PA2008 or addresses Human Rights matters and (b) to provide further details of the new rights that would need to be acquired.
- 9.6.11. The Applicant's response [[REP4-080](#)] includes details (Table 2 of the response) of the new rights which may be acquired although it stresses that these should only be considered as examples of the new rights and that it does not provide an exhaustive list of all such new rights which may be acquired to achieve the stated purpose. The Applicant states that where the detailed design is not yet sufficiently progressed to determine whether a new right will be required for a greater duration than the temporary occupation of the land, the dDCO seeks authority for the purpose in respect of which the relevant land is required (rather than the mechanism by which to achieve that purpose). The fulfilment of that purpose may require the acquisition of new rights, as provided for by Article 32(9)(a). The Applicant also notes that there have been no objections from landowners or stakeholders in relation to the powers under Article 32(9)(a) and therefore considers it unlikely that providing any further detail of any new rights which may be required for a greater duration than the temporary occupation of the land would elicit any new representations.
- 9.6.12. Our Proposed Schedule of Changes to the dDCO [[PD-025](#)] issued during the Examination proposed the deletion of Article 32(9)(a). This was subsequently discussed further at ISH5 [[EV-013](#) & [EV-018](#)] with the Applicant's oral submissions subsequently confirmed in writing at DL9 [[REP9-014](#)].
- 9.6.13. Our primary concern about this Article is that it could result in the creation of new undefined rights over land in circumstances where it is not clear that the affected landowners or occupiers have been consulted by the Applicant so that they would have been aware that something other than TP could occur on their land.
- 9.6.14. We note that there are a considerable number of plots which are included within column (1) of Schedule 8 but are not also included in column 1 of Schedule 6 (Land in respect of which only new right etc. may be acquired). Therefore, we are concerned there is a substantial likelihood that there would be landowners/occupiers who are aware that their land would be the subject of TP, but would not be aware that their land could also be subject to the acquisition of new rights. Furthermore, there is little detail as to the nature of such unspecified rights. As such we are concerned that it would not be possible to determine whether there is a justified case for the acquisition of such rights.
- 9.6.15. Whilst the Applicant refers to the lack of objection from IPs in relation to the powers sought in this regard, we do not consider this to be justification for the inclusion of power which could still come as a surprise to an IP.

- 9.6.16. Notwithstanding its earlier representations, the Applicant latterly made representations at ISH5 [REP9-014] that Article 32(9) does not give a power to create new rights. It prohibits the CA of land other than the acquiring of new rights under Article 26 (or the acquiring of subsoil under Article 30). The Applicant states that Article 26(1) provides a power to acquire rights over the Order land or impose restrictive covenants over the Order land for such purposes as may be required for any purpose for which that land may be acquired under Article 23 (CA of land). It states that this is an important provision as it means that the Applicant does not have to acquire an estate if a right would suffice.
- 9.6.17. The Applicant went on to state that the TP of land is not as a matter of law the acquisition of land or an interest in the land. Hence, the power to acquire rights only extends to that land which is expressed to be the subject of CA and not to that land which is subject only to temporary acquisition powers. Article 26(1) is subject to Article 26(2) which qualifies the limitations in Article 26(1) such that land in Schedule 6 (land in which new rights may be acquired) are limited to those specified.
- 9.6.18. The Applicant states that Article 32(9) is then a prohibition on the exercise of powers to acquire land compulsorily if it is temporary land. That prohibition is qualified by Article 32(9)(a) and (b). This means that as a matter of drafting, Article 32(9)(a) is not a free-standing power. It only has effect as a result of Article 26, which is the power to acquire rights. However, for the reasons set out, the Applicant considers that this power is limited to areas which are subject to powers of CA and the areas expressly specified in Schedule 6 as being subject to the acquisition of rights only or in common with temporary acquisition.
- 9.6.19. The Applicant notes that the issue of the interpretation of similarly worded provisions was discussed in the Examinations of the A585 Windy Harbour to Skippool Improvement Scheme and the A30 Chiverton to Carland Cross Scheme. It states that in those schemes it appears to have been accepted that the effect of the provision equivalent to Article 32(9) would allow the creation of additional rights on land where there had not been consultation on such rights. The Applicant considers that the position taken at these two previous Examinations is based on a misinterpretation of these provisions which have been regularly and properly included in previous Orders. It states that Article 32(9) does not provide a power to create additional rights. It is effectively a saving provision for the acquisition of land or rights over the same land over which the TP of land is required. This provision is necessary in order to ensure that the CA rights granted in terms of Article 23 and 26(1) can still be exercised and are not prohibited by the first part of Article 32(9).
- 9.6.20. We have carefully considered the Applicant's submissions. However, we remained concerned about the inclusion of Article 32(9)(a). We acknowledge that Article 26 allows CA of rights anywhere in the Order land (subject to the subsequent paragraphs 2 to 4 of that Article), and not only in land which is listed in both Schedules 6 and 8. Nevertheless, we remain concerned that those persons who have interests in land listed in column (1) of Schedule 8 regarding temporary use of their land, would

not be aware that their land could also be subject to the CA of rights if it is not included in Schedule 6 (land is which only new rights etc. may be acquired).

- 9.6.21. We have also noted the DCLG CA Guidance at paragraph 10 of Annex D which states that "*where it is proposed to create and acquire new rights compulsorily they should be clearly identified*". We are not satisfied that the creation of undefined new rights on APs consulted on the basis that the Applicant only intends to take TP of their land would accord with the CA tests in s122 of PA2008 or the DCLG CA Guidance.
- 9.6.22. We are not convinced that there is a compelling case in the public interest for these new rights. It is not sufficiently clear that the APs would have fully understood the potential implications of the inclusion of land within column (1) of Schedule 8.
- 9.6.23. We therefore conclude that Article 32(9) needs to be amended by deleting the wording contained in Article 32(9)(a) as set out in Table 2 below and our recommended DCO in Appendix D.
- 9.6.24. For the avoidance of doubt, we do not have the same concerns regarding Article 32(9)(b) as this relates to the acquisition of subsoil or airspace and so is unlikely to have the same effects on the future possible use of land as the acquisition of new rights over any part of the land under Article 26.

Schedule 2 Requirement 9 (Archaeological remains)

- 9.6.25. Following continued discussions between the Applicant and IPs, responses to our questions and resulting written and oral submissions, the vast majority of the Requirements within the dDCO have been agreed by the Applicant and IPs. The only exception being R9 where disagreement on the precise wording remained between the Applicant and HE at the end of the Examination. This is reflected in the final SoCG between these two parties [[REP11-015](#)].
- 9.6.26. R9 includes the provision that the FWSI shall be substantially in accordance with the mitigation measures included in the REAC and the outline WSI. HE considers that the word "substantially" should be deleted as it otherwise would create uncertainty and a lack of clarity in expectation of what the FWSI will provide. HE states that it is important the FWSI is in accordance with the outline WSI to ensure that there is consistency as to how the archaeological works are conducted; particularly in relation to the Bowes Railway SM as the dDCO, in lieu of SM Consent, ensures that works to this designated heritage asset will be carried out as agreed. HE goes on to state that the outline WSI has been drafted to give certainty as to the expectations but is not so rigid as to prevent opportunities to accommodate potential implications of design changes should this be appropriate.
- 9.6.27. In response [[REP11-021](#)] the Applicant states that the wording was included to provide flexibility for the final versions of the documents to be able to take into account the implications of any changes at detailed

design. It goes on to state that the wording achieves the desired aims of both parties by providing an appropriate amount of certainty and flexibility given the potential for slight variations at detailed design, for example in relation to drainage at Bowes Railway and access to the SM. The Applicant also notes that consultation provided for by R9 would allow HE and Gateshead Council to raise any concerns on the FWSI with the SoS who would make the decision on whether or not to approve it.

- 9.6.28. We note that the FWSI would need to be submitted for the approval of the SoS in consultation with both the relevant planning authority and HE. This approval of the final details will ensure that archaeological interests potentially affected by the Proposed Development, including the Bowes Railway SM would be appropriately protected. In the event that there is divergence from the outline WSI to such a degree that would prejudice the significance of any designated or non-designated heritage asset, then it would be open for the SoS to decline to approve the submitted details. We are therefore satisfied that the wording of R9 is appropriate as set out in the dDCO.

Schedule 11 Protective Provisions

- 9.6.29. By the end of the Examination the Protective Provisions within the dDCO had been agreed with the relevant IPs, except for those for the protection of railway interests (Part 3 of Schedule 11). Whilst most matters raised by NR have been agreed there remains to be one outstanding area of disagreement with the Applicant relating to the indemnity provisions within paragraph 32 of Part 3. NR requests that paragraph 32(4) is deleted. NR provided its final representation on this matter at D11 [[REP11-023](#)] a response to which was subsequently submitted by the Applicant before the close of the Examination [[REP11-037](#)].

- 9.6.30. Paragraph 32(4) states:

"In no circumstances is the undertaker liable to Network Rail under sub paragraph (1) for any indirect or consequential loss or loss of profits, except that the sums payable by the undertaker under that sub paragraph include a sum equivalent to the relevant costs in circumstances where-

a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and

b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise."

- 9.6.31. In arguing for the deletion of paragraph 32(4) NR states that it is anxious to ensure that the indemnity included in NR's standard Protective Provisions is included in the Order and that the scope of the indemnity is not diluted and that this should include consequential loss, which, in any event, would need to be properly justified and meet the relevant

common law tests. Further, NR goes on to state that it should not be obliged to provide advance details of agreements with train operators (as required by 32(4)(b)) which would create an unnecessary administrative burden and such agreements are commercially sensitive [[REP4-067](#)].

- 9.6.32. In response [[REP5-010](#)], the Applicant draws attention to the parallels with the Hinkley Point C Connection Project Order 2016 where the provision was included for the oversailing of a railway by an overhead line. Regarding 32(4)(b) the Applicant states that it should only be liable for losses of which it has knowledge and can control. If NR is not able to subscribe to this paragraph, the exclusion of consequential liability should be absolute. If NR cannot identify the risks that it considers should be protected, then the risks should not be for the Applicant to bear.
- 9.6.33. NR provided further details of its position in paragraphs 30-39 of its DL9 submission [[REP9-029](#)]. It draws attention to the extensive and complex works proposed to the land abutting and oversailing the railway including the works connected with the demolition and replacement of the Allerdene Bridge. NR considers that a full indemnity provision is vital given that the risk of there being a direct loss exists and that it is greater because of the complex nature of the works proposed over a mainline in constant use by high speed trains. NR also notes that there are many other DCOs where its preferred indemnity has been confirmed by the relevant SoS.
- 9.6.34. The Applicant [[REP11-021](#)] went on to refer again to the Hinkley Point C DCO and also to the more recent M42 Junction 6 Improvement Order 2020 where the provisions sought by Cadent Gas Ltd in respect of indemnity covering indirect and consequential loss were found to be at variance to the tests in s127 of the PA2008. In that case the ExA stated that whilst s127 protects SUs from serious detriment, that protection did not extend to all the costs which might be incurred. The Applicant states that in this case there would be no serious detriment to NR's undertaking as a result of the inclusion of the limitation upon the indemnity. It also says that NR is benefitting from the replacement Allerdene Bridge which is reaching the end of its operational life and the disruption that would be caused would be managed.
- 9.6.35. NR's final submission on this matter was made at DL11 [[REP11-023](#)]. It notes that by proposing the exclusion in Article 32(4) it appears that the Applicant is seeking to protect itself from losses of which it is unaware. This, it states, is misleading and an incorrect statement of common law principles as common law requires that for losses to be recoverable, they must be foreseeable. If they are not foreseeable, then they are not direct or indirect losses and so are not recoverable under law. NR states that there is no need to expressly exclude liability for loss which is unforeseeable as the law does that. NR contends that it is neither reasonable nor proper that a loss it suffers as a result of the actions of the Applicant which would be recoverable under common law, should be excluded from being recoverable under the Protective Provisions. It also points out that the proposed drafting is inconsistent with NR's standard

asset protection agreements which are regulated by the Office of Rail and Road and are subject to statutory consultation.

- 9.6.36. NR also states that if the SoS is minded to accept the provision as proposed by the Applicant then the exclusion should be limited so that it addresses only the mischief relating to the lack of foreseeability. In such circumstances it proposes the redrafting of paragraph 32(4) as follows (whilst noting that such amendment would leave NR open to an element of risk for which it is not funded):

"In no circumstances is the undertaker liable to Network Rail under subparagraph (1) for any indirect or consequential loss that was not in the reasonable contemplation of the parties at the time of making the Order"

- 9.6.37. NR also draws attention to three other Orders⁶ made, involving works to or adjacent to operational railway which do not include the Applicant's proposed exclusion.
- 9.6.38. The Applicant made a final submission on this matter at the close of the Examination [[REP11-037](#)]. It argues that NR has not provided sufficient justification for the deletion of paragraph 32(4). The Applicant submits that NR's standard indemnity is far more onerous than the position at common law and the inclusion of paragraph 32(4) restores the position to that which the courts of England and Wales have long held as the correct approach. Regarding common law, the Applicant states that NRs argument omits a critical part of the well-established legal test in respect of consequential losses, which is that they must be within the contemplation of the parties and similarly must not be too remote. NR has not provided details of the loss which it might seek to claim on which basis the Applicant considers that such loss cannot legitimately be claimed. It reiterates its position that it should only be responsible for losses of which it has knowledge and can control.
- 9.6.39. The Applicant notes the trend in SoS decision making is to include provisions that exclude indirect and consequential losses incurred by SUs who benefit from the infrastructure improvements of the authorised works.
- 9.6.40. We have considered the full submissions made by both parties on this matter. We note that there are Orders where the disputed paragraph has been both included and excluded. It is difficult to draw direct comparisons with such cases given that the detailed circumstances will inevitably vary from case to case. In this instance we do not consider there to be adequate grounds for the inclusion of paragraph 32(4) representing a deviation from NR's standard indemnity. Whilst we note that the replacement Allerdene Bridge works will bring a benefit to NR given current maintenance issues, we also recognise the significant

⁶ The Northampton Gateway Rail Freight Interchange Order 2019, the Norfolk Vanguard Offshore Windfarm Order 2020 and the A14 Cambridge to Huntingdon Improvement Scheme Consent Order 2016

extent of the works being proposed in this case including the demolition of the existing bridge and the adjacent construction of its replacement.

- 9.6.41. We recommend that paragraph 32(4) of Part 3, Schedule 11 should be deleted from the dDCO.

Matters concerning Northern Gas Networks Ltd land (plot references 3/6c and 3/13a)

- 9.6.42. In Chapter 8 (paragraph 8.5.12) we set out our consideration of the issues regarding the proposed TP of NGN land, specifically plots 3/6c and 3/13a of the Land Plans [REP4-005] which are proposed to be used as a construction compound near junction 67 (Coal House).

- 9.6.43. We note that the inclusion of the additional land (plot 3/13a) within the application, extending the size of the construction compound from that previously proposed, would mean that the parcel of land within plot 3/6(c) that NGN seeks to retain for its CNG facility, would no longer be required by the Applicant for TP. We have agreed to the inclusion of the additional land within the application.

- 9.6.44. Following the Applicant's discussions of this matter with NGN and our questions at the CAH [EV-013a], the Applicant drafted a further paragraph (12) to Article 32 (Temporary use of land for carrying out the authorised development) of its preferred DCO [REP11-028]. This states (including reference to the submitted land ownership plan [REP9-020]):

"In the event that this Order includes powers of temporary possession and compulsory purchase over all of the land shown delineated with a broken line on the Northern Gas Networks Land Ownership Plan than the undertaker shall be prohibited from exercising that power of temporary possession over that part of plot 3//6c shown delineated and hatched purple on the Northern Gas Networks Land Ownership Plan".

- 9.6.45. The Applicant's reasoning for the inclusion of article 32(12) is set out in Table 2 section 2(c) of its post hearing submission [REP11-019]. It explains that if all the requested rights for the construction compound (including the additional land) are granted to the Applicant then there would be sufficient space with the area allowed for the construction compound to allow for NGN to retain the land on which they proposed to build the CNG filling station. Article 32(12) therefore restricts the power of the Applicant in these circumstances so that the Applicant would not be able to exercise the power of TP over the CNG filling station land, thereby enabling NGN to carry out its development (subject to the necessary permissions being in place).

- 9.6.46. As we are satisfied that the additional land should be included in the Order (and recommend accordingly to the SoS) we do not see any need for the superfluous first part of this paragraph. We therefore recommend that the words *"In the event that this Order includes powers of temporary possession and compulsory purchase over all of the land shown delineated with a broken line on the Northern Gas Networks Land*

Ownership Plan” should be deleted. This is reflected in our recommended DCO in Appendix D.

- 9.6.47. The Applicant also made a further addition in its preferred DCO in the form a new R17 (Details of construction compound) in Part 1 of Schedule 2 [REP11-028]. The Applicant’s reasoning for its inclusion is also set out in Table 2 part 2(c) in its post hearing submission [REP11-019]. This explains that the additional land (plot 3/13a) would be required for whichever of the replacement Allerdene Bridge Options is implemented on the basis of a parcel of land within plot 3/6(c) being retained for NGN’s CNG facility being excluded from TP as set out above. However, for the Six/Seven Span Viaduct Option, there may be scope to reduce the amount of plot 3/13a that is required for the construction compound to ensure that the land acquired is no more than necessary.
- 9.6.48. R17 has therefore been proposed by the Applicant in order to prevent it from acquiring rights over plot 3/13a (in the event of the Six/Seven Span Viaduct Option being pursued) until a plan showing the extent and layout of the construction compound is approved by the SoS, in consultation with the planning authority. The area of TP of plot 3/13a would therefore be limited to that shown on such approved plan. In the event of the Three Span Viaduct or Embankment Option for Allerdene Bridge being pursued, we are satisfied that the entirety of plot 3/6c would be required for the construction compound.
- 9.6.49. We agree that R17 is required, in principle, in order to ensure that the TP of land for the construction compound at junction 67 is not more than is reasonably necessary. However, we have made several recommended amendments to the drafting of this Requirement as set out in Table 2 below. These reflect our conclusion that it is acceptable for the additional land (plot 3/6(c) to be included within the Proposed Development and therefore there is no need for the TP of the parcel of land for NGN’s proposed CNG facility. We therefore have recommended the deletion of sub-paragraph 17(2)(b) of R17, on the basis that the parcel of land to which it refers would no longer be required for TP. It therefore would not be necessary to consider its ‘availability’ as provided for in the Applicant’s preferred drafting. Our other recommended minor revisions to the drafting of R17 as set out in Table 2 are for clarity and precision.

The ExA’s proposals for changes to the Applicant’s final draft DCO

- 9.6.50. Table 2 below draws together all of the substantive changes that we recommend to the Applicant’s preferred DCO [REP11-028]. Where we have struck through words in Table 2 (~~like this~~) this is where we have recommended that such words be deleted and text which is recommended to be added is underlined (like this). These changes are reflected in the ExA’s recommended DCO which is at Appendix D.
- 9.6.51. We have also identified the need for some further minor or typographical amendments which are also reflected in our recommended DCO. These are set out in Table 3 below.

Table 2: DCO Provisions recommended to be changed

Provision	Amendment proposed by the ExA	ExA Comment
<p>Note – text which is recommended to be deleted from the Applicant’s final draft DCO [REP11-028] is struck through (like this) and text which is recommended to be added is underlined (<u>like this</u>)</p>		
<p>Article 2(1) Interpretation</p>	<p>“maintain” in relation to the authorised development includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, improve, landscape, remove, reconstruct, refurbish or replace and any derivative of “maintain” is to be construed accordingly</p>	<p>See this chapter for ExA’s reasons (paragraphs 9.6.2 to 9.6.5)</p>
<p>Article 32 (9) Temporary use of land for carrying out the authorised development</p>	<p>Delete 32(9)(a) as follows: (a) acquiring new rights over any part of that land under article 26 (compulsory acquisition); or Delete (b) so that Article 32(9) as recommended states: The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 30 (acquisition of subsoil or airspace only).</p>	<p>See this chapter for ExA’s reasons (paragraphs 9.6.9 to 9.6.24)</p>
<p>Article 32 (12)</p>	<p>Delete those parts of 32(12) as follows and add the words underlined:</p>	<p>See this chapter for ExA’s reasons (paragraphs 9.6.42 to 9.6.46)</p>

Provision	Amendment proposed by the ExA	ExA Comment
	<p>In the event that this Order includes powers of temporary possession and compulsory purchase over all of the land shown delineated with a broken blue line on the Northern Gas Networks Land Ownership Plan then the <u>The</u> undertaker shall be prohibited from exercising that the power of temporary possession over that part of plot 3/6c shown delineated and hatched purple on the Northern Gas Networks Land Ownership Plan.</p>	
<p>Schedule 2, Part 1, R17</p> <p>Details of construction compound</p>	<p>Delete those parts as follows and add the words underlined:</p> <p>(1) <u>Subject to sub-paragraph (3)</u>, in the event that the undertaker proposes to undertake Work No.5a as provided in paragraph (iii) or (iv) of Work No. 5a comprising a six span or seven span viaduct respectively then the undertaker may only exercise powers of temporary possession over plot 3/13a <u>of the land plans</u> where a plan based upon those in Appendix A to the CEMP showing the extent and layout of the construction compound to be established at Junction 67 within the land delineated by a broken blue line on the Northern Gas Networks Land Ownership Plan has been submitted to and approved in writing by the Secretary of State, following consultation with</p>	<p>See this chapter for ExA's reasons (paragraphs 9.6.47 to 9.6.49)</p>

Provision	Amendment proposed by the ExA	ExA Comment
	<p>the relevant planning authority.</p> <p>(2) In considering the details to be submitted in terms of sub-paragraph (1), the undertaker and the Secretary of State shall have regard to-</p> <p>(a) the construction requirements of the chosen engineering design for Work No.5a; <u>and</u></p> <p>(b) the availability of the land shown delineated and hatched purple on the Northern Gas Networks Land Ownership Plan; and</p> <p>(b) the need to minimise land take <u>the temporary possession of land</u> within plot 3/13a of the land plans so far as reasonably practical.</p> <p>(3) <u>In the event that the undertaker proposes to undertake Work No. 5a as provided in paragraph (iii) or (iv) of Work No. 5a then</u> the undertaker shall be restricted to exercising the power of temporary possession over plot 3/13a in accordance with <u>to that part of the land identified in the details approved in terms of sub-paragraph (1).</u></p>	
<p>Schedule 11</p> <p>Protective provisions</p>	<p>Delete paragraph 32(4) as follows:</p> <p>In no circumstances is the undertaker liable to Network Rail under sub paragraph (1)</p>	<p>See this chapter for ExA's reasons (paragraphs 9.6.29 to 9.6.41)</p>

Provision	Amendment proposed by the ExA	ExA Comment
Part 3 (Railway interests)	<p>for any indirect or consequential loss or loss of profits, except that the sums payable by the undertaker under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where-</p> <p>a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and</p> <p>b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise.</p>	

Table 3: Further recommended minor or typographical amendments

Provision	Amendment proposed by the ExA	ExA Comment
Pre-amble (pages 3 and 4)	<p>In the second paragraph change the first part of the sentence to "The application was initially examined by a single appointed person and subsequently by a Panel (appointed by the Secretary of State)"</p> <p>In both the third and sixth paragraphs delete "single appointed person" and replace with "Panel".</p>	To reflect the change to the ExA during the Examination from a single appointed person to a Panel

Provision	Amendment proposed by the ExA	ExA Comment
<p>Schedule 2, Part 1</p> <p>R4 (Construction and handover environmental management plans),</p> <p>R5 (Landscaping),</p> <p>R7 (Protected species),</p> <p>R8 (Surface and foul water drainage),</p> <p>R9 (Archaeological remains) and</p> <p>R10 (Traffic management)</p>	<p>In sub-paragraph (1) for each of these paragraphs, delete "paragraph 15" and replace with "paragraph 16"</p>	<p>To correct the paragraph reference in each case so that it relates to R16 (Advance site clearance works)</p>
<p>Schedule 2, Part 1, R5 (Landscaping)</p>	<p>In sub-paragraph (1) delete "authorised" after "planning" and replace with "authority".</p>	<p>To ensure the correct term "planning authority" is used</p>
<p>Schedule 2, Part 1, R10 (Traffic Management)</p>	<p>In sub-paragraph (1) insert "City" between "Sunderland" and "Council".</p>	<p>To reflect the correct name for Sunderland City Council</p>
<p>Schedule 2, Part 1, R14 (Allerdene bridge replacement)</p>	<p>Delete "either" from the first line, replace "(i) or (ii)" with "(i), (ii), (iii) or (iv)".</p>	<p>To ensure the correct reference to the four Options within Work No.5a (as revised during the course of the Examination)</p>

Provision	Amendment proposed by the ExA	ExA Comment
Schedule 2, Part 1, R14 (Allerdene bridge replacement)	In sub-paragraph (c) delete "ii" and replace it with "iii").	To ensure the correct reference to the relevant Option within Work No.5a
Schedule 2, Part 1, R14 (Allerdene bridge replacement)	<p>Move the wording erroneously in bold below R14 "In the event that the Work No.5a is to comprise a seven span bridge structure in terms of paragraph (ii) of Work No.5a then it shall be carried out in accordance with Sheet 5 of the structures engineering drawings and sections" to a new sub-paragraph (d)</p> <p>Within the new sub-paragraph (d) replace "ii" with "iv"</p> <p>Delete from the bold wording at the end of R14 "Primary Design Mitigation".</p> <p>Delete the wording in bold at the end of R14 "Primary Design Mitigation"</p>	To correct the errant drafting in the Applicant's final draft DCO and to ensure the correct reference to the relevant Option within Work No.5a.
Schedule 2, Part 1, R15 (Primary Design Mitigation)	Add title in bold "Primary Design Mitigation".	To correct the errant drafting in the Applicant's final draft DCO (in this case to ensure the correct heading is inserted for R15).

9.7. CONCLUSIONS

9.7.1. We have considered all the iterations of the dDCO submitted by the Applicant. We have noted the significant number of changes made during

the Examination, as detailed in Table 1, and we are in agreement with the majority of those changes, save for the matters set out in Table 2 above. Further matters are also the subject of our recommendations as set out in Table 2 and are included in the recommended DCO in Appendix D of this Report.

- 9.7.2. Taking all matters in this Chapter into account, and having regard to all matters relevant to the DCO raised in the remainder of this Report, we conclude that, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix D.

10. SUMMARY OF FINDINGS AND CONCLUSIONS

10.1. INTRODUCTION

This Chapter summarises our conclusions arising from the Report as a whole and sets out our primary recommendation to the SoS.

10.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

- 10.2.1. In relation to s104 of PA2008 we conclude that making the recommended DCO would be in accordance with the NNNPS and would not substantially conflict with relevant development plan policy and other relevant policy, all of which have been taken into account in our Report. We have also had regard to the LIR from Gateshead Council in reaching our conclusions.
- 10.2.2. Whilst the SoS is the competent authority under the Habitats Regulations, and will make the definitive assessment, we are satisfied that the Proposed Development would not be likely to have significant effects on European sites and this finding has been taken into account in reaching the recommendation.
- 10.2.3. With regard to all other matters and representations received, we are satisfied that there are no important and relevant matters that would individually or collectively lead to a different recommendation from that below.
- 10.2.4. We have considered whether the determination of this application in accordance with the relevant NPS would lead the UK to be in breach of any of its international obligations where relevant. We are satisfied, in all respects, this would not be the case. Neither would it lead to the SoS being in breach of any duty imposed on the SoS by or under any enactment, or be otherwise unlawful by virtue of any enactment.
- 10.2.5. With the mitigation proposed through the recommended DCO in Appendix D of this Report, there are no adverse impacts arising from the Proposed Development that would outweigh its benefits. There is nothing to indicate that the application should be decided, other than in accordance with the relevant NPS, the NNNPS.
- 10.2.6. We have considered the case for CA and TP of land and rights in order to implement the Proposed Development. We have accepted the inclusion of the additional land near junction 67 which represented a material change to the application. We have concluded that there is no overriding reason why this additional land should not be included in the Order.
- 10.2.7. Subject to the change we propose to Article 32(9) of the recommended DCO, we are satisfied that the CA and TP powers sought by the Applicant are justified and should be granted. They are necessary to enable the Applicant to complete the Proposed Development. In addition, there is a compelling case in the public interest for land and interests to be

compulsorily acquired. The Applicant has a clear idea of how is intends to use the land, and funds are available for the implementation of the Proposed Development.

- 10.2.8. We have also had regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998.
- 10.2.9. However, with the weight of national policy in favour of the Proposed Development, the wider public interest qualifies any interference with the human rights of the owners and occupiers affected by CA and TP. The interference in their human rights would be proportionate and justified in the public interest.
- 10.2.10. We have had regard to the PSED. The Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there is no breach of the PSED.
- 10.2.11. As required by Regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess. We have also had regard to the desirability of preserving or enhancing the character or appearance of conservation areas and the desirability of preserving a scheduled monument or its setting.
- 10.2.12. Where we have found that there would be harm to the significance of designated heritage assets (as set out in Chapter 5), we consider that this would be less than substantial in each instance. In Chapter 7 we conclude that, taking account of the public benefits of the Proposed Development, there is clear and convincing justification for the harm that would result, both individually and collectively, upon designated heritage assets.
- 10.2.13. We are satisfied that the Proposed Development meets the tests in s104 of PA2008.

Matters where the SoS may wish to consult

- 10.2.14. As set out in paragraphs 5.9.43 to 5.9.47 and 5.11.16 to 5.11.17 of this Report, the SoS may wish to consult on the effects and implications of any changes in transport use and related transport modelling arising as a result of the Covid-19 pandemic and following the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This could include a request for representations including an assessment of the effects and implications in relation to the following:
- the need for the Proposed Development;
 - air quality;

- noise and vibration; and
- climate change, including the relevant carbon budget and cumulative impacts.

10.2.15. As set out in paragraph 4.6.6 of this Report, the SoS may wish to request an update on the progress towards adoption of the emerging MSGP document that Gateshead Council intends to form Part 3 of Gateshead's Local Plan, including any implications that may have a bearing on the application.

10.3. RECOMMENDATION

10.3.1. For all of the above reasons, and in the light of our findings and conclusions on important and relevant matters set out in the Report, we recommend that the SoS makes The A1 Birtley to Coal House DCO in the form recommended at Appendix D of this Report.

APPENDICES

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APPENDIX A: EXAMINATION EVENTS

APPENDIX A: THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA)

Date	Examination Event
21 January 2020	Preliminary Meeting
21 January 2020	Issue Specific Hearing on the draft DCO (ISH1)
28 January 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Examination Timetable <p>Publication of:</p> <ul style="list-style-type: none"> • The ExA's Written Questions
04 February 2020	<p>Deadline 1 (D1)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on updated application documents • Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Post Hearing submissions including written submissions of oral case made at ISH1 • Notification by Statutory Parties of their wish to be considered as an IP by the ExA • Applicant's draft itinerary for Accompanied Site Inspection (ASI) • Suggested locations for site inspections, and justification, for consideration by the ExA • Notification of wish to speak at an Open Floor Hearing (OFH) • Notification of wish to make oral representations at an Issue Specific Hearing (ISH) • Notification of wish to speak at a Compulsory Acquisition Hearing (CAH) • Notification of wish to have future correspondence received electronically • Comments on any additional information/submissions received • Responses to any further information requested by the ExA for this deadline
6 February 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Variation of Examination Timetable

APPENDIX A: THE EXAMINATION

25 February 2020	<p>Deadline 2 (D2)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs • Local Impact Reports (LIRs) • Statements of Common Ground (SoCG) requested by the ExA • Statement of Commonality of SoCG • Responses to the ExA's Written Questions • Applicant's first revised draft DCO • Responses to comments on RRs • Comments on draft itinerary for ASI and suggested locations for site inspections • Comments on any additional information/submissions received by D1 • Responses to any further information requested by the ExA for this deadline
02 March 2020	<p>Deadline 2A (D2A)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Written submissions from specific parties as specified in the ExA's letter to specific parties dated 6 February 2020
03 March 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Notification of Hearings
10 March 2020	<p>Deadline 3 (D3)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on LIRs • Comments on SoCG • Comments on responses to the ExA's Written Questions • Comments on Applicant's first revised draft DCO • Notification of wish to attend an ASI • Comments on any additional information/submissions received by D2 • Responses to any further information requested by the ExA for this deadline
16 March 2020	<p>Deadline 3A (D3A)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on submissions by specific parties received at D2A
24 March 2020	<p>Issue by the ExA of:</p>

APPENDIX A: THE EXAMINATION

	<ul style="list-style-type: none"> • Procedural Decision following the postponement of the hearings due to be held w/c 30 March 2020) • Variation of Examination Timetable
06 April 2020	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA's second Written Questions
20 April 2020	<p>Deadline 4 (D4)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Responses to the ExA's second Written Questions • Written submissions on matters parties had intended raising at the postponed Hearings • Any revised/updated SoCG • Applicant's revised draft DCO (if required) • Responses to any further information requested by the ExA for this deadline
29 April 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Request for Further Information from the Applicant regarding its material change request
01 May 2020	<p>Deadline 5 (D5)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on any responses to the ExA's second Written Questions • Comments on any revised/updated SoCG (if any) • Comments on Applicant's revised draft DCO (if any) • Comments on any additional information/submissions received by D4 • Responses to any further information requested by the ExA for this deadline
06 May 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Proposed provision checklist (Compulsory Acquisition) • Notification of decision to accept the proposed provision for the Compulsory Acquisition of additional land as part of the Application • Procedural Decision to accept the material change and non-material changes to the Application

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07 May 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Variation of Examination Timetable • Request for Further Information • Frequently Asked Questions (FAQ)
19 May 2020	<p>Deadline 6 (D6)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Responses to the Remote Hearings Questionnaire • Comments on any additional information/submissions received by D5 • Responses to any further information requested by the ExA under Rule 17 for this deadline
22 May 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Notification of change from Single Examiner to Panel • Notification of Hearings
26 May 2020	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA's third Written Questions
02 June 2020	<p>Deadline 7 (D7)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Representations on the Applicant's changes to the application received at D4 • Comments on any additional information/submissions received by D6 • Responses to any further information requested by the ExA under Rule 17 for this deadline
09 June 2020	<p>Deadline 8 (D8)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Responses to ExA's third Written Questions • Updated Statements of Common Ground • Responses to the request for notification of a wish to speak at Hearings and/or to access a recording and, if available, a streamed broadcast of Hearings • Comments on any additional information/submissions received by D7 • Responses to any further information requested by the ExA under Rule 17 for this deadline

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11 June 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Virtual Hearing Arrangements letter
16 June 2020	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA's proposed schedule of changes to the draft DCO • Updated version of the FAQ
22 June 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Procedural Decision regarding the Examination of the Amendment to the Application and inclusion of additional land • Variation of Examination Timetable • Notification of Hearings
22 June 2020	<p>Open Floor Hearing 1 (OFH1)</p>
23 June 2020	<p>Issue Specific Hearing 2 (ISH2)</p> <p>On Landscape and visual (including matters relating to the Angel of the North)</p>
23 June 2020	<p>Issue Specific Hearing 3 (ISH3)</p> <p>On Water Environment and drainage</p>
24 June 2020	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Procedural Decision in relation to Site Inspection
24 June 2020	<p>Issue Specific Hearing 4 (ISH4)</p> <p>On Transport and traffic</p>
25 June 2020	<p>Issue Specific Hearing 5 (ISH5)</p> <p>On Draft Development Consent Order</p> <p>(Sessions 1 and 2)</p>
26 June 2020	<p>Compulsory Acquisition Hearing (CAH1)</p> <p>(Sessions 1 and 2)</p>
06 July 2020	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA's fourth written questions <p>Issue by the ExA of:</p>

APPENDIX A: THE EXAMINATION

	<ul style="list-style-type: none"> • Virtual Hearing Arrangements letter
08 July 2020	<p>Deadline 9 (D9)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Written summaries of oral contributions at Hearings • Post-Hearing submissions requested by the ExA • Comments on the ExA's proposed schedule of changes to the draft DCO • Comments on any additional information/submissions received by D8 • Comments on additional Relevant Representations • Responses to any further information requested by the ExA under Rule 17 for this deadline
13 July 2020	<p>Deadline 10 (D10)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Additional Written Representations • Responses to ExA's written questions
14 July 2020	<p>Further Issue Specific Hearing</p> <p>Pursuant to the Compulsory Acquisition regulations on matters discussed at previous ISHs and matters raised in Relevant Representations regarding the Additional Land</p>
14 July 2020	<p>Further Compulsory Acquisition Hearing</p> <p>On the Additional Land</p>
16 July 2020	<p>Unaccompanied Site Inspection</p>
17 July 2020	<p>Deadline 11 (D11)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Written summaries of oral contributions at Hearings • Post-Hearing submissions requested by the ExA • Comments on additional Written Representations • Comments on responses to ExA's written questions • Responses to comments on the ExA's proposed schedule of changes to the draft DCO • Final DCO to be submitted by the Applicant in the SI template with the SI template validation report • Final updated Book of Reference • Final SoCG • Final Statement of Commonality of SoCG • Final Compulsory Acquisition Schedule • Final updated Guide to the Application

APPENDIX A: THE EXAMINATION

	<ul style="list-style-type: none">• Responses to any further information requested by the ExA under Rule 17 for this deadline
21 July 2020	Close of Examination
22 July 2020	Issue by the ExA of: <ul style="list-style-type: none">• Notification of completion of the Examination under section 99 of the Planning Act 2008.

APPENDIX B: EXAMINATION LIBRARY

A1 Birtley to Coal House Improvement Scheme

Examination Library

Updated – 20 October 2020

This Examination Library relates to the A1 Birtley to Coal House improvement Scheme application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

TR010031–A1 Birtley to Coal House Improvement Scheme**Examination Library - Index**

Category	Reference
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination including responses to Rule 6 and Rule 8 letters	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications and applicant's hearing notices	EV-xxx
Representations – by Deadline	
Deadline 1: State what type of submissions was requested for this deadline in the heading Includes R17 responses	REP1-xxx

<p>Deadline 2:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	REP2-xxx
<p>Deadline 2A:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	REP2A-xxx
<p>Deadline 3:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	REP3-xxx
<p>Deadline 3A:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	REP3A-xxx
<p>Deadline 4:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	REP4-xxx
<p>Deadline 5:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	REP5-xxx
<p>Deadline 6:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	REP6-xxx
<p>Deadline 7:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	REP7-xxx

<p>Deadline 8:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	<p>REP8-xxx</p>
<p>Deadline 9:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	<p>REP9-xxx</p>
<p>Deadline 10:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	<p>REP10-xxx</p>
<p>Deadline 11:</p> <p>State what type of submissions was requested for this deadline in the heading Includes R17 responses</p>	<p>REP11-xxx</p>
<p>Other Documents</p> <p>Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents</p>	<p>OD-xxx</p>

TR010031–A1 Birtley to Coal House Improvement Scheme**Examination Library****Application Documents**

APP-001	Highways England 1.1 Covering Letter and Schedule of Compliance with Section 55
APP-002	Highways England 1.2 Application Form
APP-003	Highways England 1.3 Introduction to the Application
APP-004	Highways England 1.4 Guide to the Documents to be Certified
APP-005	Highways England 2.1 Location Plan
APP-006	Highways England 2.2 Land Plans (Details of Plots of Land Required for the Project)
APP-007	Highways England 2.3 Works Plan (Shows the authorised development for which consent is sought in draft development consent order)
APP-008	Highways England 2.4 Streets, Rights of Way and Access Plans (Shows streets and public rights of way which may be subjected to temporary closures for construction of the proposed project and access routes to be used)
APP-009	Highways England 2.5 Engineering Section Drawings
APP-010	Highways England 2.6 General Arrangement Plans
APP-011	Highways England 2.7 Structures Engineering Drawings and Sections
APP-012	Highways England 2.8 Special Category Land Plan
APP-013	Highways England 3.1 Draft Development Consent Order (sets out details of the proposed authorised development and deals with the powers needed to carry out the proposed project)
APP-014	Highways England 3.2 Explanatory Memorandum (Explains the reasons for the inclusion of powers in the draft development consent order and reasons for any departures from the model Development Consent Order)
APP-015	Highways England 3.3 Consents and Agreements Position Statement
APP-016	Highways England 4.1 Statement of Reasons (Reasons for the seeking of powers for compulsory acquisition of rights over land)
APP-017	Highways England

	4.2 Funding Statement (Indicates how compulsory acquisition is proposed to be funded)
APP-018	Highways England 4.3 Book of Reference (Part 1 to 5) Details all relevant landholdings and interests/rights which might be required for or interfered with by the proposed project. To be read in conjunction with The Land Plan
APP-019	Highways England 5.1 Consultation Report (including all Annexes)
APP-020	Highways England 5.2 Statement Relating to Statutory Nuisance (Whether the proposals engage one or more of the matters set out in Section 79 (1) Environmental Protection Act 1990 if so how the applicant proposes to mitigate or limit them)
APP-021	Highways England 6.1 Environmental Statement - Chapter 0 Table of Contents, Glossary and Abbreviations
APP-022	Highways England 6.1 Environmental Statement - Chapter 1 Introduction
APP-023	Highways England 6.1 Environmental Statement - Chapter 2 The Scheme
APP-024	Highways England 6.1 Environmental Statement - Chapter 3 Assessment of Alternatives
APP-025	Highways England 6.1 Environmental Statement - Chapter 4 Environmental Assessment Methodology
APP-026	Highways England 6.1 Environmental Statement - Chapter 5 Air Quality
APP-027	Highways England 6.1 Environmental Statement - Chapter 6 Cultural Heritage
APP-028	Highways England 6.1 Environmental Statement - Chapter 7 Landscape and Visual
APP-029	Highways England 6.1 Environmental Statement - Chapter 8 Biodiversity
APP-030	Highways England 6.1 Environmental Statement - Chapter 9 Geology and Soils
APP-031	Highways England 6.1 Environmental Statement - Chapter 10 Material Resources
APP-032	Highways England 6.1 Environmental Statement - Chapter 11 Noise and Vibration
APP-033	Highways England 6.1 Environmental Statement - Chapter 12 Population and Human Health
APP-034	Highways England 6.1 Environmental Statement - Chapter 13 Road Drainage and the Water Environment
APP-035	Highways England 6.1 Environmental Statement - Chapter 14 Climate
APP-036	Highways England

	6.1 Environmental Statement - Chapter 15 Cumulative and Combined Assessment
APP-037	Highways England 6.1 Environmental Statement - Chapter 16 Summary
APP-038	Highways England 6.2 Environmental Statement - Figure 2.1 Scheme Location Plan
APP-039	Highways England 6.2 Environmental Statement - Figure 2.2 Environmental Constraints Plan
APP-040	Highways England 6.2 Environmental Statement - Figure 2.3 Site Compound Plan
APP-041	Highways England 6.2 Environmental Statement - Figure 2.4 Environmental Masterplan
APP-042	Highways England 6.2 Environmental Statement - Figure 5.1 Air Quality Study Area
APP-043	Highways England 6.2 Environmental Statement - Figure 5.2 Monitored Concentrations 2017
APP-044	Highways England 6.2 Environmental Statement - Figure 5.3 Modelled Receptors Overview
APP-045	Highways England 6.2 Environmental Statement - Figure 5.4 Pollution Climate Mapping (NO2)
APP-046	Highways England 6.2 Environmental Statement - Figure 5.5 Construction Impacts
APP-047	Highways England 6.2 Environmental Statement - Figure 5.6 Monitored Concentrations 2017
APP-048	Highways England 6.2 Environmental Statement - Figure 5.7 Modelled Do-Minimum Concentrations (2023)
APP-049	Highways England 6.2 Environmental Statement - Figure 5.8 Modelled Do-Something Concentrations (2023)
APP-050	Highways England 6.2 Environmental Statement - Figure 5.9 Modelled Change in Concentrations (2023)
APP-051	Highways England 6.2 Environmental Statement - Figure 6.1 Heritage Constraints Plan - Designated Sites
APP-052	Highways England 6.2 Environmental Statement - Figure 6.2 Heritage Constraints Plan - Non-Designated Sites
APP-053	Highways England 6.2 Environmental Statement - Figure 6.3 Areas for Archaeological Topographical Survey
APP-054	Highways England 6.2 Environmental Statement - Figure 7.1 Landscape Character Study Area and Landscape Character Areas

APP-055	Highways England 6.2 Environmental Statement - Figure 7.2 Landscape Character Photos
APP-056	Highways England 6.2 Environmental Statement - Figure 7.3 Zone of Visual Influence
APP-057	Highways England 6.2 Environmental Statement - Figure 7.4 Visual Effects Drawing
APP-058	Highways England 6.2 Environmental Statement - Figure 7.5 Viewpoint Photos - A
APP-059	Highways England 6.2 Environmental Statement - Figure 7.5 Viewpoint Photos - B
APP-060	Highways England 6.2 Environmental Statement - Figure 7.5 Viewpoint Photos - C
APP-061	Highways England 6.2 Environmental Statement - Figure 7.6 Landscape Mitigation Design
APP-062	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 5 – A
APP-063	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 5 – B
APP-064	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 6 – A
APP-065	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 6 – B
APP-066	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 10
APP-067	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 15
APP-068	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 26
APP-069	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 28 – A
APP-070	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 28 – B
APP-071	Highways England 6.2 Environmental Statement - Figure 7.7 Viewpoint Photomontages - Viewpoint 30
APP-072	Highways England 6.2 Environmental Statement - Figure 8.1 Statutory and Non-Statutory Sites
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	6.2 Environmental Statement - Figure 8.2 Protected Species Habitats
APP-074	Highways England 6.2 Environmental Statement - Figure 9.1 Study Area
APP-075	Highways England 6.2 Environmental Statement - Figure 9.2 Shallow Workings and Mine Shaft Plan
APP-076	Highways England 6.2 Environmental Statement - Figure 9.3 Artificial Ground Plan
APP-077	Highways England 6.2 Environmental Statement - Figure 11.1 Construction Phase Study Areas and Assessment Location
APP-078	Highways England 6.2 Environmental Statement - Figure 11.2 Operational Phase Study Areas and Overlapping NIAs
APP-079	Highways England 6.2 Environmental Statement - Figure 11.3 Baseline Survey Noise Measurement Locations
APP-080	Highways England 6.2 Environmental Statement - Figure 11.4 Do Minimum 2023 Noise Map
APP-081	Highways England 6.2 Environmental Statement - Figure 11.5 Do Minimum 2038 Noise Map
APP-082	Highways England 6.2 Environmental Statement - Figure 11.6 Do Minimum 2023 v Do Minimum 2038 Noise Change Map
APP-083	Highways England 6.2 Environmental Statement - Figure 11.7a Noise Barrier - Birtley Barrier
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APP-085	Highways England 6.2 Environmental Statement - Figure 11.8 Do Something 2023 Noise Map
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APP-087	Highways England 6.2 Statement - Figure 11.10 Do Minimum 2023 v Do Something 2023 Noise Change Map
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APP-089	Highways England 6.2 Environmental Statement - Figure 12.1 Public Rights of Way Network
APP-090	Highways England 6.2 Environmental Statement - Figure 12.2 Community and Associated Facilities

APP-091	Highways England 6.2 Environmental Statement - Figure 12.3 Index of Multiple Deprivation Deciles for Lower Super Output Areas
APP-092	Highways England 6.2 Environmental Statement - Figure 13.1 Scheme Extents and Extent of Works
APP-093	Highways England 6.2 Environmental Statement - Figure 13.2 Water Feature Location Plan
APP-094	Highways England 6.2 Environmental Statement - Figure 13.3 Scheme Extents and Environmental Constraints
APP-095	Highways England 6.2 Environmental Statement - Figure 13.4 Outfall Location Plan
APP-096	Highways England 6.2 Environmental Statement - Figure 13.5a Fluvial Flood Zones
APP-097	Highways England 6.2 Environmental Statement - Figure 13.5b Risk of Flooding from Surface Water
APP-098	Highways England 6.2 Environmental Statement - Figure 13.6 Superficial Deposits Designations
APP-099	Highways England 6.2 Environmental Statement - Figure 13.7 Flood Plain Compensation Area
APP-100	Highways England 6.2 Environmental Statement - Figure 13.8 Water Framework Directive Waterbodies
APP-101	Highways England 6.2 Environmental Statement - Figure 15.1 Study Area
APP-102	Highways England 6.2 Environmental Statement - Figure 15.2 Shortlist of Planning Applications
APP-103	Highways England 6.3 Environmental Statement - Appendix 4.1 Scoping Opinion and Scoping Opinion Response Table
APP-104	Highways England 6.3 Environmental Statement - Appendix 4.2 Transboundary Screening
APP-105	Highways England 6.3 Environmental Statement - Appendix 4.3 Major Accidents and Disasters Assessment Report
APP-106	Highways England 6.3 Environmental Statement - Appendix 4.4 Environmental Consultation
APP-107	Highways England 6.3 Environmental Statement - Appendix 5.1 Screening for PM10 and PM2.5
APP-108	Highways England 6.3 Environmental Statement - Appendix 5.2 Construction Traffic Assessment

APP-109	Highways England 6.3 Environmental Statement - Appendix 5.3 Traffic Data
APP-110	Highways England 6.3 Environmental Statement - Appendix 5.4 Human Receptors
APP-111	Highways England 6.3 Environmental Statement - Appendix 5.5 Ecological Receptor Transects
APP-112	Highways England 6.3 Environmental Statement - Appendix 5.6 Model Methodology
APP-113	Highways England 6.3 Environmental Statement - Appendix 5.7 Model Verification
APP-114	Highways England 6.3 Environmental Statement - Appendix 5.8 Highways England Monitoring
APP-115	Highways England 6.3 Environmental Statement - Appendix 5.9 Model Results - Human Receptors
APP-116	Highways England 6.3 Environmental Statement - Appendix 5.10 Model Results - Ecological Receptors
APP-117	Highways England 6.3 Environmental Statement - Appendix 5.11 Model Results - PCM Compliance
APP-118	Highways England 6.3 Environmental Statement - Appendix 6.1 Historic Environment Desk Based Assessment
APP-119	Highways England 6.3 Environmental Statement - Appendix 6.2 Geophysical Survey Report
APP-120	Highways England 6.3 Environmental Statement - Appendix 6.3 Bowes Railway Retaining Wall Survey Report
APP-121	Highways England 6.3 Environmental Statement - Appendix 7.1 Visual Effects Schedule
APP-122	Highways England 6.3 Environmental Statement - Appendix 7.2 Arboriculturally Report
APP-123	Highways England 6.3 Environmental Statement - Appendix 8.1 Preliminary Ecological Appraisal
APP-124	Highways England 6.3 Environmental Statement - Appendix 8.2 Habitats Regulations Assessment
APP-125	Highways England 6.3 Environmental Statement - Appendix 8.3 Bat Activity Survey Report
APP-126	Highways England 6.3 Environmental Statement - Appendix 8.4 Preliminary Roost Assessment
APP-127	Highways England

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APP-129	Highways England 6.3 Environmental Statement - Appendix 8.7 Great Crested Newt Survey Report (2018)
APP-130	Highways England 6.3 Environmental Statement - Appendix 8.8 Reptile Survey Report
APP-131	Highways England 6.3 Environmental Statement - Appendix 8.9 Breeding Bird Report
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APP-133	Highways England 6.3 Environmental Statement - Appendix 8.11 Badger Report
APP-134	Highways England 6.3 Environmental Statement - Appendix 8.12 Red Squirrel Report
APP-135	Highways England 6.3 Environmental Statement - Appendix 8.13 Biodiversity Net Gain Report
APP-136	Highways England 6.3 Environmental Statement - Appendix 8.14 Draft European Protected Species License
APP-137	Highways England 6.3 Environmental Statement - Appendix 9.1 Agricultural Land Assessment
APP-138	Highways England 6.3 Environmental Statement - Appendix 9.2a Ground Investigation Factual Report
APP-139	Highways England 6.3 Environmental Statement - Appendix 9.2b Ground Investigation Factual Report
APP-140	Highways England 6.3 Environmental Statement - Appendix 9.2c Ground Investigation Factual Report
APP-141	Highways England 6.3 Environmental Statement - Appendix 9.2d Ground Investigation Factual Report
APP-142	Highways England 6.3 Environmental Statement - Appendix 9.2e Ground Investigation Factual Report
APP-143	Highways England 6.3 Environmental Statement - Appendix 9.3 Coal Mining Risk Assessment Report
APP-144	Highways England 6.3 Environmental Statement - Appendix 10.1 Material Resources
APP-145	Highways England

	6.3 Environmental Statement - Appendix 11.1 Noise and Vibration Glossary
APP-146	Highways England 6.3 Environmental Statement - Appendix 11.2 Legislation, Policy and Guidance
APP-147	Highways England 6.3 Environmental Statement - Appendix 11.3 Address base Data Categorisation
APP-148	Highways England 6.3 Environmental Statement - Appendix 11.4 Noise and Vibration Level Prediction and Modelling Methods
APP-149	Highways England 6.3 Environmental Statement - Appendix 11.5 Construction Criteria, Data and Prediction Results
APP-150	Highways England 6.3 Environmental Statement - Appendix 11.6 Baseline Noise Survey- Details
APP-151	Highways England 6.3 Environmental Statement - Appendix 11.7 Baseline Noise Survey, Meteorological Data
APP-152	Highways England 6.3 Environmental Statement - Appendix 11.8 Noise Consultation
APP-153	Highways England 6.3 Environmental Statement - Appendix 11.9 Sensitive Receptors
APP-154	Highways England 6.3 Environmental Statement - Appendix 11.10 Noise Important Areas
APP-155	Highways England 6.3 Environmental Statement - Appendix 11.11 Baseline Noise Survey - Measurement Data
APP-156	Highways England 6.3 Environmental Statement - Appendix 11.12 Construction Phase Traffic Diversions
APP-157	Highways England 6.3 Environmental Statement - Appendix 11.13 Construction Traffic Noise
APP-158	Highways England 6.3 Environmental Statement - Appendix 11.14 Construction Vibration
APP-159	Highways England 6.3 Environmental Statement - Appendix 11.15 Wider Area 50m Buffers and Property Counts
APP-160	Highways England 6.3 Environmental Statement - Appendix 11.16 Noise Nuisance
APP-161	Highways England 6.3 Environmental Statement - Appendix 11.17 Vibration Nuisance
APP-162	Highways England 6.3 Environmental Statement - Appendix 12.1 Walking Cycling and Horse-Riding Assessment

APP-163	Highways England 6.3 Environmental Statement - Appendix 13.1 Flood Risk Assessment
APP-164	Highways England 6.3 Environmental Statement - Appendix 13.2 Water Framework Directive Assessment
APP-165	Highways England 6.3 Environmental Statement - Appendix 13.3 Highways Agency Water Risk Assessment Tool
APP-166	Highways England 6.3 Environmental Statement - Appendix 14.1 Description of the Climate Baseline
APP-167	Highways England 6.3 Environmental Statement - Appendix 15.1 Long List of Proposed Developments
APP-168	Highways England 6.3 Environmental Statement - Appendix 15.2 Short List of Proposed Developments
APP-169	Highways England 6.3 Environmental Statement - Appendix 15.3 Assessment of Cumulative Effects
APP-170	Highways England 6.4 Environmental Statement - Non-Technical Summary (Summarises the information contained within the Environmental Statement)
APP-171	Highways England 7.1 Planning Statement (explains how the Scheme complies with National and Local Planning Policy. Also detailing the need and Justification for the Scheme)
APP-172	Highways England 7.2 National Networks National Policy Statement (NNNPS) Accordance Table (explains how the Scheme complies with National Planning Policy)
APP-173	Highways England 7.3 Transport Assessment Report (Provides an overview of the relevant national / local transport policy, junction capacity, Mitigation measures and traffic generation)
APP-174	Highways England 7.4 Outline Construction Environmental Management Plan (provides an essential Scheme specific tool to manage on-site construction activities that may affect the environment)
Adequacy of Consultation Responses	
AoC-001	Durham County Council Adequacy of Consultation Representation
AoC-002	Gateshead Council Adequacy of Consultation Representation
AoC-003	Newcastle City Council Adequacy of Consultation Representation
AoC-004	Northumberland County Council

	Adequacy of Consultation Representation
AoC-005	Sunderland City Council Adequacy of Consultation Representation
Relevant Representations	
RR-001	Environment Agency
RR-002	Natural England
RR-003	Network Rail Infrastructure Limited
RR-004	Northern Gas Networks Limited
RR-005	Sunderland City Council
RR-006	Historic England
RR-007	Public Health England
RR-008	QE Facilities Limited
RR-009	Tyne & Wear Joint Local Access Forum
RR-010	Galbraith on behalf of St Mary Magdalene and Holy Jesus Trustee Ltd
RR-011	Galbraith on behalf of David Hankey
RR-012	Antony Gormley Studio on behalf of Antony Gormley
RR-013	Andy Blanchflower on behalf of The Green Party
RR-014	Lesley Shotton on behalf of The Shotton Family
RR-015	Lady Park and Lamesley Residents Association
RR-016	Wardell Armstrong LLP on behalf of The Rt Hon The Lord Ravensworth 9th Baron
RR-017	George F White on behalf of B, C, G Askew
RR-018	Antony Gormley
RR-019	Craig Robson
RR-020	Christine Delaney
RR-021	David John Bartlett
RR-022	George Smith
RR-023	Peter Talbot
RR-024	Roderick Matthew Crawley
RR-025	Lynn Wilson
RR-026	Historic England
RR-027	Lady Park and Lamesley Residents Association
RR-028	Squire Patton Boggs on behalf of Northern Gas Networks Limited
RR-029	Winckworth Sherwood on behalf of Northumbrian Water Limited
RR-030	Public Health England
RR-031	Trinity Chambers on behalf of Stevie Pattinson + 5
Procedural Decisions	
PD-001	Notification of Decision to Accept Application
PD-002	S55 Checklist
PD-003	S51 Advice to the Applicant
PD-004	Notice of Appointment of Examining Authority
PD-005	Rule 6 Letter - Notification of the Preliminary Meeting and matters to be discussed
PD-006	Rule 13 - Notification of Hearing Scheduled 21 January 2020
PD-007	Rule 8 letter - notification of timetable for the examination
PD-008	Examining Authority's (ExA's) written questions and requests for information
PD-009	Variation to Timetable – Rule 8(3)

PD-010	Variation to Timetable – Issued to Specific Parties Rule 8(3)
PD-011	Notification of hearings
PD-012	Rule 9 and Rule 8(3) - Notification of Procedural Decision and amendment to the Examination Timetable
PD-013	Examining Authority Written Questions 2
PD-014	Request for Further Information - Rule 17
PD-015	Proposed Provision Checklist
PD-016	Regulation 6 Letter
PD-017	Rule 9 Letter
PD-018	Rule 17 and Rule 8 (3) letter
PD-019	Frequently Asked Questions (FAQ)
PD-020	Rule 4(2) Change of Appointment from Single to Panel of Examiners
PD-021	Rule 13 and Rule 14 - Notification of Hearings and Notification of change from Single Examiner to Panel
PD-022	Not used
PD-023	Examining Authority Written Questions 3
PD-024	Notification of Procedural Decision regarding forthcoming Hearings
PD-025	Examining Authority Proposed Schedule of Changes to the draft Development Consent Order (dDCO)
PD-026	Not used
PD-027	Frequently Asked Questions (FAO) (v2)
PD-028	The Examining Authority's Rule 8(3) letter Letter notifying of the Amendment to the Application and inclusion of additional land, inviting Written Representations and providing Notification of Hearings and request for a wish to speak at Hearings
PD-029	Rule 9 - Site Inspection Procedural Decision
PD-030	Examining Authority's further Written Questions (ExQ4)
PD-031	Virtual Hearing Arrangements Letter (v2)
PD-032	Notification of the completion of the Examining Authority's Examination
PD-033	Notification of hearings
Additional Submissions	
AS-001	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Cover Letter
AS-002	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.2 Land Plans
AS-003	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.8 Special Category Land Plans
AS-004	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.3 Book of Reference
AS-005	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.3 Book of Reference - tracked changes

AS-006	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.3 Book of Reference - Schedule of Changes
AS-007	Gateshead Council Additional Submission - Accepted at the discretion of the Examining Authority
AS-008	Highways England Additional Submission - Cover Letter – Document accepted at the discretion of the Examining Authority
AS-009	Highways England Additional Submission – Summary of Proposed Changes to Application – Document accepted at the discretion of the Examining Authority
AS-010	Highways England Additional Submission - 1.4 Guide to Documents to be Certified – Accepted at the discretion of the Examining Authority
AS-011	Highways England Additional Submission - 2.3 Works Plan – Accepted at the discretion of the Examining Authority
AS-012	Highways England Additional Submission - 3.1 Daft Development Consent Order (Clean) – Accepted at the discretion of the Examining Authority
AS-013	Highways England Additional Submission - 3.1 Draft Development Consent Order (Tracked Changes) – Accepted at the discretion of the Examining Authority
AS-014	Highways England Additional Submission - 4.1 Statement of Reasons (Clean) - Accepted at the discretion of the Examining Authority
AS-015	Highways England Additional Submission - 4.1 Statement of Reasons (Tracked Changes) - Accepted at the discretion of the Examining Authority
AS-016	Highways England Additional Submission - 6.1 Environmental Statement Addendum - Accepted at the discretion of the Examining Authority
AS-017	Highways England Additional Submission - Composite Land and Works Plan – Accepted at the discretion of the Examining Authority
Events and Hearings	
Preliminary Meeting	
EV-001	Note of Unaccompanied Site Inspections - 27 and 28 November 2019
EV-001a	Recording of Preliminary Meeting - 21 January 2020
EV-002	Preliminary Meeting Note - 21 January 2020
EV-002a	Note of Unaccompanied Site Inspection - 16 July 2020
Accompanied Site Visits and Hearings	
EV-003	Issue Specific Hearing 21 January 2020

	Hearing agenda for ISH1 on draft Development Consent Order
EV-004	Recording of Issue Specific Hearing 1 - 21 January 2020 Part 1 of 2
EV-005	Recording of Issue Specific Hearing 1 - 21 January 2020 Part 2 of 2
EV-006	Action Points from Issue Specific Hearing 1 (ISH1) - 21 January 2020
EV-007	Reference no longer in use
EV-008	Virtual Hearings Arrangements
EV-009	Agenda for the Open Floor Hearings (OFH1 & OFH2) - 22 June 2020
EV-010	Agenda for the Issue Specific Hearing 2 (ISH2) on Landscape and visual matters (including matters relating to Angel of the North) - 23 June 2020
EV-011	Agenda for the Issue Specific Hearing 3 (ISH3) on Water environment and drainage - 23 June 2020
EV-012	Agenda for Issue Specific Hearing 4 on Transport and traffic - 24 June 2020
EV-013	Agenda for the Issue Specific Hearing 5 (ISH5) on Draft Development Consent Order (DCO) - 25 June 2020
EV-013a	Agenda for the Compulsory Acquisition Hearing (CAH1) - 26 June 2020
EV-014	Recording of Open Floor Hearing 1 - 22 June 2020
EV-015	Recording of Issue Specific Hearing 2 (ISH2): Landscape and visual matters (including matters relating to Angel of the North) 23 June 2020
EV-016	Recording of Issue Specific Hearing 3 (ISH3): Water environment and drainage - 23 June 2020
EV-017	Recording of Issue Specific Hearing 4 (ISH4): Transport and traffic 24 June 2020
EV-018	Recording of Issue Specific Hearing 5 (ISH5): Draft Development Consent Order (DCO) - Session 1 - 25 June 2020
EV-019	Recording of Issue Specific Hearing 5 (ISH5): Draft Development Consent Order (DCO) - Session 2 - 25 June 2020
EV-019a	Recording of Compulsory Acquisition Hearing 1 Session 1 – 26 June 2020
Ev-019b	Recording of Compulsory Acquisition Hearing (CAH): Session 2 - 26 June 2020
EV-020	Action Points arising from the Issue Specific Hearing 2 (ISH2) on Landscape and visual matters (including matters relating to Angel of the North) - 23 June 2020
EV-021	Action Points arising from the Issue Specific Hearing 4 (ISH4) on Transport and Traffic- 24 June 2020
EV-022	Action Points arising from the Issue Specific Hearing 5 (ISH5) on Draft Development Consent Order (DCO) - 25 June 2020
EV-023	Action Points arising from the Compulsory Acquisition Hearing (session 1 and 2) - 26 June 2020
EV-024	Agenda for Open Floor Hearing 2 - 13 July 2020
EV-025	Agenda for further Issue Specific Hearing - 14 July 2020
EV-026	Agenda for further Compulsory Acquisition Hearing - 14 July 2020
EV-027	Recording of Further Issue Specific Hearing - 14 July 2020

EV-028	Recording of Further Compulsory Acquisition Hearing - 14 July 2020
EV-029	Action Points arising from the Further Issue Specific Hearing - 14 July 2020
EV-030	Action Points arising from the Further Compulsory Acquisition Hearing - 14 July 2020
Representations	
Deadline 1 – 04 February 2020	
<ul style="list-style-type: none"> • Comments on updated application documents • Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Post Hearing submissions including written submissions of oral case made at ISH1 • Notification by Statutory Parties of their wish to be considered as an IP by the ExA • Applicant’s draft itinerary for Accompanied Site Inspection (ASI) • Suggested locations for site inspections, and justification, for consideration by the ExA <ul style="list-style-type: none"> • Notification of wish to speak at an Open Floor Hearing (OFH) • Notification of wish to make oral representations at an Issue Specific Hearing (ISH) • Notification of wish to speak at a Compulsory Acquisition Hearing (CAH) • Notification of wish to have future correspondence received electronically • Comments on any additional information/ submissions received • Responses to any further information requested by the ExA for this deadline 	
REP1-001	Highways England Deadline 1 Submission - Cover Letter
REP1-002	Highways England Deadline 1 Submission - Comments on Relevant Representations
REP1-003	Highways England Deadline 1 Submission - Written Submission of Oral Case at Issue Specific Hearing 1
REP1-004	Highways England Deadline 1 Submission - Draft Accompanied Site Inspection Itinerary
REP1-005	Gateshead Council Deadline 1 Submission - Written Representations
REP1-006	Gateshead Council Deadline 1 Submission - Notification of wish to be considered as an IP by the ExA and Notification of wish to speak at an Open Floor Hearing, Issue Specific Hearing and Compulsory Acquisition Hearing
REP1-007	Sunderland City Council Deadline 1 Submission - Written Representations
REP1-008	Antony Gormley Studio Deadline 1 Submission - Written Representations, response to ExA Written Questions, suggested location for site inspection and notification of wish to speak at Issue Specific Hearing
REP1-009	Environment Agency Deadline 1 Submission - Written Representations
REP1-010	Gateshead Green Party Deadline 1 Submission - Written Representations

REP1-011	Gateshead Green Party Deadline 1 Submission - Notification of wish to speak at an Open Floor Hearing and Issue Specific Hearing
REP1-012	Historic England (HBMCE) Deadline 1 Submission - Written Representations with Appendices
REP1-013	Historic England (HBMCE) Deadline 1 Submission - Summary of Written Representation
REP1-014	Lamesley and Lady Park Residents Association Deadline 1 Submission - Written Representation
REP1-015	Natural England Deadline 1 Submission - Written Representations and response to ExA Written Questions
REP1-016	Network Rail Infrastructure Limited Deadline 1 Submission - Written Representations
REP1-017	Network Rail Infrastructure Limited Deadline 1 Submission - Summary of Written Representation
REP1-018	Northern Gas Networks Limited Deadline 1 Submission - Cover Letter
REP1-019	Northern Gas Networks Limited Deadline 1 Submission - Written Representations
REP1-020	Northern Gas Networks Limited Deadline 1 Submission - Notification of wish to speak at an Open Floor Hearing, Issue Specific Hearing and Compulsory Acquisition Hearing
REP1-021	Northern Gas Networks Limited Deadline 1 Submission - Suggested locations for site inspections
REP1-022	Nigel Harrison on behalf of Tyne and Wear Joint local Access Forum Deadline 1 Submission - Written Representation and suggested location for site inspection
REP1-023	George F White LLP on behalf of B, C, & G Askew Deadline 1 Submission - Written Representations
REP1-024	Mr and Mrs Leonard Deadline 1 Submission - Written Representations
REP1-025	Craig Robson Deadline 1 Submission - Post hearing submission
REP1-026	Northumbrian Water Ltd Deadline 1 Submission - Written Representation
Deadline 2 – 25 February 2020 <ul style="list-style-type: none"> • Comments on Written Representations • Statements of Common Ground (SoCG) requested by the ExA • Responses to the ExA'S Written Questions • Comments on any additional information/submissions received by D1 • Applicant's first revised draft DCO • Responses to comments on RRs • Comments on draft itinerary for ASI and suggested locations for • Site inspections • Responses to any further information requested by the ExA for thus deadline 	
REP2-001	Highways England Deadline 2 Submission - 1.1 Cover Letter
REP2-002	Highways England

	Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.0 A -Above Ground Structures
REP2-003	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.0B - Note on Other Harm
REP2-004	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.0 C - Differences in Mitigation Required for Each Option
REP2-005	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.0 D - Main Phases of Construction Works and Scheme Areas
REP2-006	Highways England Deadline 2 Submission – Applicant's Responses to ExA's First Written Questions – Appendix 1.0 E - Potential Compounds Constraint
REP2-007	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.0 F - Cumulative Long List
REP2-008	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.0 G - DMRB Review Option
REP2-009	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.0 H - Climate Mitigation Measures
REP2-010	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.1 A - Air Quality Mitigation Measures in the ES and CEMP
REP2-011	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.2A - Biodiversity Mitigation Measures
REP2-012	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.3 A - CA Objections Schedule
REP2-013	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.3 C - S127 Statutory Undertakers Land and Rights
REP2-014	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.3 D - S138 Statutory Undertakers Apparatus
REP2-015	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.3E - Justification for Temporary Land Take

REP2-016	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.3 F - Land Take at Longacre Woods
REP2-017	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.3 G - Public Benefit
REP2-018	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.3 H - Reasonable Alternatives Compulsory Acquisition
REP2-019	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.5 A - Angel of the North Narrative
REP2-020	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.5 B - Gantry Assessment Schedule
REP2-021	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.5 C - Banesley Lane Woodland Photomontage
REP2-022	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.5 D - Lamesley Road Photomontage
REP2-023	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.5 E - Angel of the North Photomontage
REP2-024	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.5 F - Chowdene Bank Photomontage
REP2-025	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.5 G - Kibblesworth Photomontage
REP2-026	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.6 A - Benefits Realisation and Evaluation Plan Template
REP2-027	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.7A - Receptor Locations
REP2-028	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions - Appendix 1.7 B - Diversion Routes
REP2-029	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.7 C - Dwellings in Assessment Locations

REP2-030	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.7 D - Photograph of Noise Barrier
REP2-031	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.8 A - Details of PRow Closure
REP2-032	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.9 A - Estimated ARN
REP2-033	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.9 B - Opportunities at the Coal House Interchange
REP2-034	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.9 C -WCH Improvements
REP2-035	Highways England Deadline 2 Submission - Applicant's Responses to ExA's First Written Questions – Appendix 1.10 A - Correspondence on Climate Change Guidance
REP2-036	Highways England Deadline 2 Submission - 2.1 Location Plan - Revision 1
REP2-037	Highways England Deadline 2 Submission - 2.2 Land Plan - Revision 2
REP2-038	Highways England Deadline 2 Submission - 2.3 Works Plan - Revision 2
REP2-039	Highways England Deadline 2 Submission - 2.4 Streets Rights of Way and Access Plan - Revision 1
REP2-040	Highways England Deadline 2 Submission - 2.5 Engineering Section Drawings - Revision 1
REP2-041	Highways England Deadline 2 Submission - 2.6 General Arrangement Plan - Revision 1
REP2-042	Highways England Deadline 2 Submission - 2.7 Engineering Section Drawings - Revision 1
REP2-043	Highways England Deadline 2 Submission - 2.8 Special Category Land Plan - Revision 2
REP2-044	Highways England Deadline 2 Submission - 3.1 Revised Draft Development Consent Order (Tracked Changed version) - Revision
REP2-045	Highways England Deadline 2 Submission - 3.1 Revised Draft Development Consent Order (Clean version) - Revision 2
REP2-046	Highways England Deadline 2 Submission - 3.2 Explanatory Memorandum (Tracked Changed version) - Revision 1
REP2-047	Highways England

	Deadline 2 Submission - 3.2 Explanatory Memorandum (Clean version) - Revision 1
REP2-048	Highways England Deadline 2 Submission - 7.1 Planning Statement (Tracked Changed version)
REP2-049	Highways England Deadline 2 Submission - 7.1 Planning Statement (Clean version)
REP2-050	Highways England Deadline 2 Submission - 7.4 Outline Construction Environmental Management Plan (Tracked Changes) - Revision 1
REP2-051	Highways England Deadline 2 Submission - 7.4 Outline Construction Environmental Management Plan (Clean) - Revision 1
REP2-052	Highways England Deadline 2 Submission - 7.5A Statement of Common Ground with Gateshead Council
REP2-053	Highways England Deadline 2 Submission - 7.5B Statement of Common Ground with Sunderland City Council
REP2-054	Highways England Deadline 2 Submission - 7.5C Statement of Common Ground with the Environment Agency
REP2-055	Highways England Deadline 2 Submission - 7.5D Statement of Common Ground with Historic England
REP2-056	Highways England Deadline 2 Submission - 7.5E Statement of Common Ground with Natural England
REP2-057	Highways England Deadline 2 Submission - 7.5F Statement of Common Ground with Northern Gas Networks Limited
REP2-058	Highways England Deadline 2 Submission - 7.5G Statement of Common Ground with Network Rail Infrastructure Limited
REP2-059	Highways England Deadline 2 Submission - 7.6 Statement of Commonality for Statements of Common Ground
REP2-060	Highways England Deadline 2 Submission - Applicant's Responses to ExA's first Written Question
REP2-061	Highways England Deadline 2 Submission - Applicant's Comments on Written Representations
REP2-062	Highways England Deadline 2 Submission - Hearing Action Points Response Table
REP2-063	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 2 Submission - Responses to any further information requested by the ExA for this deadline
REP2-064	The Environment Agency

	Deadline 2 Submission - Responses to ExA's First Written Questions
REP2-065	Gateshead Council Deadline 2 Submission - Response to Written Question on Transport
REP2-066	Gateshead Council Deadline 2 Submission - Response to ExA's First Written Questions
REP2-067	Historic England Deadline 2 Submission - Comments on any additional information/ submissions received by Deadline 1
REP2-068	Historic England Deadline 2 Submission - Responses to ExA's First Written Questions
REP2-069	Ministry of Defence Deadline 2 Submission
REP2-070	Not used
REP2-071	Northern Gas Networks Limited Deadline 2 Submission - Comments on any additional information/ submissions received by Deadline 1
REP2-072	Northern Gas Networks Limited Deadline 2 Submission - Responses to ExA's First Written Questions
REP2-073	Northern Gas Networks Limited Deadline 2 Submission - Responses to comments on Relevant Representations
REP2-074	Sunderland City Council Deadline 2 Submission - Responses to ExA's First Written Questions
REP2-075	Gateshead Council Deadline 2 Submission - Local Impact Report
Deadline 2A – 02 March 2020	
<ul style="list-style-type: none"> • Written submissions from specific parties as specified in the ExA's letter to specific parties dated 6 February 2020 	
REP2A-001	CenturyLink Deadline 2a - Written submission
Deadline 3 – 10 March 2020	
<ul style="list-style-type: none"> • Comments on LIRs • Comments on SoCG • Comments on responses to the ExA's Written Questions • Comments on Applicants First revised draft DCO • Notification of wish to attend an ASI • Comments on any additional information/submissions received by D2 • Responses to any further information requested by the ExA for this deadline 	
REP3-001	Highways England Deadline 3 Submission - 1.1 Cover letter
REP3-002	Highways England Deadline 3 Submission - 1.4 Guide to Documents to be Certified
REP3-003	Highways England

	Deadline 3 Submission - Applicants Accompanied Site Inspection Itinerary
REP3-004	Highways England Deadline 3 Submission - Applicants Comments on Responses to Examining Authority's Written Questions
REP3-005	Highways England Deadline 3 Submission - Applicant's Comments on Local Impact Report
REP3-006	Highways England Deadline 3 Submission - Applicants Responses to Consultee Responses to Deadline 1, Deadline 2 and Relevant Representations
REP3-007	Historic England Deadline 3 Submission - Comments on Other Matters Required
REP3-008	Historic England Deadline 3 Submission - Comments on draft Statement of Common Ground
REP3-009	Northern Gas Networks Limited Deadline 3 Submission - Comments on draft Statement of Common Ground
REP3-010	Ella Bucklow on behalf of Antony Gormley Studio and Sir Antony Gormley Deadline 3 Submission - Comments on the Applicant's responses to the Examining Authority's First Written Questions and Relevant Written Representations
Deadline 3A – 16 March 2020	
<ul style="list-style-type: none"> • Comments on submissions by specific parties received at D2 	
REP3A-001	Highways England Deadline 3a Submission - 1.1 Covering Letter
REP2A-002	Centurylink Deadline 3a Submission - Applicant's Response to Consultee Response to Deadline 2a Submission
Deadline 4 – 20 April 2020	
<ul style="list-style-type: none"> • Responses to the ExA's second Written Questions • Written submissions on matters parties had intended raising at the postponed Hearings • Any revised/updated SoCG • Applicant's revised draft DCO (if required) • Responses to any further information requested by the ExA for this deadline 	
REP4-001	Highways England Deadline 4 Submission - Cover Letter
REP4-002	Highways England Deadline 4 Submission - Material Change Request (Rev0)
REP4-003	Highways England Deadline 4 Submission - 1.4 Guide to the Documents to be Certified (Rev 3)
REP4-004	Highways England Deadline 4 Submission - 2.1 Location Plan (Rev 2)

REP4-005	Highways England Deadline 4 Submission - 2.2 Land Plans (Rev 3)
REP4-006	Highways England Deadline 4 Submission - 2.3 Works Plans (Rev 3)
REP4-007	Highways England Deadline 4 Submission - 2.4 Streets, Rights of Way and Access Plan (Rev 2)
REP4-008	Highways England Deadline 4 Submission - 2.5 Engineering Section Drawings (Rev 2)
REP4-009	Highways England Deadline 4 Submission - 2.6 General Arrangement Plans (Rev 2)
REP4-010	Highways England Deadline 4 Submission - 2.7 Structures Engineering Drawings and Sections (Rev 2)
REP4-011	Highways England Deadline 4 Submission - 2.8 Special Category Land Plans (Rev 3)
REP4-012	Highways England Deadline 4 Submission - 3.1 Draft Development Consent Order (Clean) (Rev 3a)
REP4-013	Highways England Deadline 4 Submission - 3.1 Draft Development Consent Order (Tracked Changes) (Rev 3a)
REP4-014	Highways England Deadline 4 Submission - 3.2 Explanatory Memorandum (Clean) (Rev 2)
REP4-015	Highways England Deadline 4 Submission - 3.2 Explanatory Memorandum (Tracked Changes) (Rev 2a)
REP4-016	Highways England Deadline 4 Submission - 4.1 Updates to Statement of Reasons (Rev 2)
REP4-017	Highways England Deadline 4 Submission - 4.3 Book of Reference (Clean) (Rev 2)
REP4-018	Highways England Deadline 4 Submission - 4.3 Book of Reference (Tracked Changes) (Rev 2)
REP4-019	Highways England Deadline 4 Submission - 4.3 Book of Reference Schedule of Changes (Rev 1)
REP4-020	Highways England Deadline 4 Submission - 7.1 Update to Planning Statement (Clean) (Rev 1)
REP4-021	Highways England Deadline 4 Submission - 7.1 Update to Planning Statement (Tracked Changes) (Rev 1)
REP4-022	Highways England Deadline 4 Submission - 7.4 Outline Construction Environmental Management Plan (Clean) (Rev 2)
REP4-023	Highways England

	Deadline 4 Submission - 7.4 Outline Construction Environmental Management Plan (Tracked Changes) (Rev 2)
REP4-024	Highways England Deadline 4 Submission - 7.5A Statement of Common Ground with Gateshead Council (Rev 1)
REP4-025	Highways England Deadline 4 Submission - 7.5B Statement of Common Ground with Sunderland Council (Rev 1)
REP4-026	Highways England Deadline 4 Submission - 7.5C Statement of Common Ground with Environment Agency (Rev 1)
REP4-027	Highways England Deadline 4 Submission - 7.5D Statement of Common Ground with Historic England (Rev 1)
REP4-028	Highways England Deadline 4 Submission - 7.5E Statement of Common Ground with Natural England (Rev 1)
REP4-029	Highways England Deadline 4 Submission - Gantry Details - Appendix 2.0B (Rev 0)
REP4-030	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0C - Structure Options Report 1 - Kingsway Viaduct Underbridge (Rev 0)
REP4-031	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0D - Structure Options Report 3 - Allerdene Railway Underbridge (Rev 0)
REP4-032	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0E - Structure Options Report 11 - PCF Stage 3 - Allerdene Viaduct (Rev 0)
REP4-033	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0F - Structure Options Report 2 - Allerdene Culvert (Rev 0)
REP4-034	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0G - Structure Options Report 4 - Smithy Lane Overbridge (Rev 0)
REP4-035	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0H - Structure Options Report 8 - North Side Overbridge (Rev 0)
REP4-036	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0I - Structure Options Report 7 - North Dene Footbridge (Rev 0)
REP4-037	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0J - Structure Options Report 5 - Eighton Lodge North, Slip Road and South Underbridges (Rev 0)

REP4-038	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0K - Structure Options Report 6 - Longbank Bridleway Underpass (Rev 0)
REP4-039	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0L - Structure Options Report 9 - ADS Gantries (Rev 0)
REP4-040	Highways England Deadline 4 Submission - Applicant's Response to ExA's Second Written Questions - Appendix 2.0M - Structure Options Report 10 - Retaining Wall Structures (Rev 0)
REP4-041	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.0N - NGN Above Ground Installation Drawings (Rev 0)
REP4-042	Highways England Deadline 4 Submission - Written Question 2.0.12 Appendix 2.0O - DMRB Updates Biodiversity/Air Quality (Rev 0)
REP4-043	Highways England Deadline 4 Submission - Written Question 2.0.12 Appendix 2.0P - DMRB Updates Water HEWRAT Assessment (Rev 0)
REP4-044	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.5A - Angel of the North Sketch Proposal (Rev 0)
REP4-045	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.5B - Tyne and Wear Archaeology Officer Response (Rev 0)
REP4-046	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.8A - Agricultural Land Holding Assessment (Rev 0)
REP4-047	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.8B - Agricultural Land Plans (Rev 0)
REP4-048	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.8C - Dunkirk Farm (Rev 0)
REP4-049	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.10B - Flood Modelling response to Environment Agency Comments (Rev 0)
REP4-050	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.10C - Environment Agency confirmation of Flood Model (Rev 0)
REP4-051	Highways England

	Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions - Appendix 2.10D - Meeting Minutes with Environment Agency and WSP (Rev 0)
REP4-052	Highways England Deadline 4 Submission - Applicant's Responses to ExA's Second Written Questions (Rev 0)
REP4-053	Highways England Deadline 4 Submission - AS-017 Composite Land and Works Plan (Rev 1)
REP4-054	Highways England Deadline 4 Submission - Consultation Statement (Rev 0)
REP4-055	Highways England Deadline 4 Submission - Planning Statement Addendum (Rev 0)
REP4-056	Highways England Deadline 4 Submission - Addendum to Transport Assessment Report (Rev 0)
REP4-057	Highways England Deadline 4 Submission - Applicant's Comments on Submissions to Deadline 3 (Rev 0)
REP4-058	Highways England Deadline 4 Submission - Environmental Statement Addendum - Additional Land (Rev 0)
REP4-059	Highways England Deadline 4 Submission - Environmental Statement Addendum - Additional Land (Non Technical Summary) (Rev 0)
REP4-060	Highways England Deadline 4 Submission - Environmental Statement Addendum - Allerdene Three Span Viaduct Option (Rev 0)
REP4-061	Highways England Deadline 4 Submission - Environmental Statement Addendum - Allerdene Three Span Viaduct Option (Non Technical Summary) (Rev 0)
REP4-062	Highways England Deadline 4 Submission - Objections Schedule (Rev 0)
REP4-063	Gateshead Council Deadline 4 Submission - Responses to ExA's Second Written Questions (ExQ2)
REP4-064	Sunderland City Council Deadline4 Submission - Responses to ExA's Second Written Questions (ExQ2)
REP4-065	Environment Agency Deadline4 Submission - Responses to ExA's Second Written Questions (ExQ2)
REP4-066	Historic England Deadline4 Submission - Responses to ExA's Second Written Questions (ExQ2)
REP4-067	Network Rail Infrastructure Limited Deadline4 Submission - Responses to ExA's Second Written Questions (ExQ2)
REP4-068	Northern Gas Networks Limited (NGN)

	Deadline 4 Submission - Responses to ExA's Second Written Questions (ExQ2)
REP4-069	Ella Bucklow on behalf of Sir Antony Gormley and Antony Gormley Studios Deadline 4 Submission - Responses to ExA's Second Written Questions (ExQ2) and written submission on matters that would have been raised at the postponed hearing
Late Submissions for Deadline 4	
REP4-070	Highways England Deadline 4 submission - 1.1 Covering Letter - Late submission accepted at the discretion of the Examining Authority
REP4-071	Highways England Deadline 4 submission - 1.4 Guide to Documents to be Certified (Rev 4) - Late submission accepted at the discretion of the Examining Authority
REP4-072	Highways England Deadline 4 submission - 3.1 Change Request Revised Draft Development Consent Order (Clean) (Rev 2a) - Late submission accepted at the discretion of the Examining Authority
REP4-073	Highways England Deadline 4 submission - 3.1 Change Request Revised Draft Development Consent Order (Tracked Changes) (Rev 2a) - Late submission accepted at the discretion of the Examining Authority
REP4-074	Highways England Deadline 4 submission - 3.1 Updated Draft Development Consent Order - Clean (1) (Rev 3) - Late submission accepted at the discretion of the Examining Authority
REP4-075	Highways England Deadline 4 submission - 3.1 Updated Draft Development Consent Order - Tracked Changes (2) (Rev 3a) - Late submission accepted at the discretion of the Examining Authority
REP4-076	Highways England Deadline 4 submission - 3.2 Change Request Revised Explanatory Memorandum (Clean) (Rev 2a) - Late submission accepted at the discretion of the Examining Authority
REP4-077	Highways England Deadline 4 submission - 3.2 Change Request Revised Explanatory Memorandum (Tracked Changes) (Rev 2a) - Late submission accepted at the discretion of the Examining Authority
REP4-078	Highways England Deadline 4 submission - 3.2 Updated Explanatory Memorandum Clean (1) (Rev 2) - Late submission accepted at the discretion of the Examining Authority
REP4-079	Highways England Deadline 4 submission - 3.2 Updated Explanatory Memorandum Tracked Changes (2) (Rev 2a) - Late submission accepted at the discretion of the Examining Authority
REP4-080	Highways England

	Deadline 4 submission - Responses to Examining Authority's Second Written Questions (2.3) (Rev 0) - Late submission accepted at the discretion of the Examining Authority
REP4-081	Highways England Deadline 4 Submission - Appendix 2.0A - Response to ExA Second Written Questions - Technical Note on the Green Belt (Rev 0) - Late submission accepted at the discretion of the Examining Authority
REP4-082	Highways England Deadline 4 Submission - Appendix 2.3A - Response to ExA Second Written Questions - Technical Note on Junction 67 (Rev 0) - Late submission accepted at the discretion of the Examining Authority
REP4-083	Highways England Deadline 4 Submission - Appendix 2.3B - Response to Examining Authority's Second Written Questions - Technical Note on Grouting (Rev 0) - Late submission accepted at the discretion of the Examining Authority
REP4-084	Highways England Deadline 4 submission - Addendum to Statement of Reasons (Rev 0) - Late submission accepted at the discretion of the Examining Authority
REP4-085	Gateshead Council Deadline 4 Submission - Written Representation - Late submission accepted at the discretion of the Examining Authority
REP4-086	Gateshead Council Deadline 4 Submission - Written Representation - Late submission accepted at the discretion of the Examining Authority
Deadline 5 – 1 May 2020	
<ul style="list-style-type: none"> • Comments on any responses to the ExA's second Written Questions • Comments on any revised/updated SoCG (if any) • Comments on Applicant's revised draft DCO (if any) • Comments on any additional information/ submissions received by D4 Responses to any further information requested by the ExA for this deadline	
REP5-001	Highways England Deadline 5 Submission - 1.1 Covering Letter
REP5-002	Highways England Deadline 5 Submission - 1.4 Guide to the Documents to be Certified (Rev 5)
REP5-003	Highways England Deadline 5 Submission - 3.1 UpdateDraft DCO - (Tracked Changes) (Rev 4a)
REP5-004	Highways England Deadline 5 Submission - 3.1 UpdateDraft DCO - (Clean) (Rev 4)
REP5-005	Highways England Deadline 5 Submission - Appendix 1A - A1 BCH Landscape Mitigation - Angel of the North

REP5-006	Highways England Deadline 5 Submission - Environment Statement Addendum: Additional Land - Non -Technical Summary (Tracked Changes) (Rev 1)
REP5-007	Highways England Deadline 5 Submission - Environment Statement Addendum: Additional Land - Non-Technical Summary - (Clean) (Rev 1)
REP5-008	Highways England Deadline 5 Submission - Change Request Additional Land Draft DCO (Tracked Changes) (Rev 3a)
REP5-009	Highways England Deadline 5 Submission - Change Request Additional Land Draft DCO (Clean) (Rev 3a)
REP5-010	Highways England Deadline 5 Submission - Applicant's Response to Deadline 4 Submissions
REP5-011	Highways England Deadline 5 Submission - Late Consultation Response from the Environment Agency
REP5-012	Highways England Deadline 5 Submission - Applicant's Response to Rule 17 Letter
REP5-013	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 5 Submission - Update regarding the Statement of Common Ground between Network Rail and the Applicant
REP5-014	Ella Bucklow on behalf of Sir Antony Gormley and Antony Gormley Studios Deadline 5 Submission - Comments on Applicant's submissions for Deadline 4
REP5-015	Historic England Deadline 5 Submission - Comments on Applicant's submissions for Deadline 4
REP5-016	Royal Mail Deadline 5 Submission - Written Representation
REP5-017	Northern Gas Networks Limited (NGN) Deadline 5 Submission - Comments on Applicant's submissions for Deadline 4
Deadline 6 – 19 May 2020	
<ul style="list-style-type: none"> • Responses to the Remote Hearings Questionnaire • Comments on any additional information/submissions received by D5 • Responses to any further information requested by the ExA under Rule 17 for this deadline 	
REP6-001	Highways England Deadline 6 Submission - 1.1 Covering Letter
REP6-002	Highways England Deadline 6 Submission - 1.4 Guide to the Documents to be Certified (Rev 6)
REP6-003	Highways England

	Deadline 6 Submission - 3.1 Updated Draft DCO (Tracked Changes) (Rev 5a)
REP6-004	Highways England Deadline 6 Submission - 3.1 Update Draft DCO - (Clean) (Rev 5)
REP6-005	Highways England Deadline 6 Submission - 4.3 Book of Reference Schedule of Changes (Rev 3)
REP6-006	Highways England Deadline 6 Submission - 4.3 Book of Reference (Tracked Changes) (Rev 3)
REP6-007	Highways England Deadline 6 Submission - 4.3 Book of Reference (Clean) (Rev 3)
REP6-008	Highways England Deadline 6 Submission - 7.4 Outline Construction Environmental Management Plan (Clean) (Rev 3a)
REP6-009	Highways England Deadline 6 Submission - 7.5 Statement of Common Ground with Network Rail Infrastructure Limited (Rev 2)
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REP6-015	Highways England Deadline 6 Submission - Environment Statement Addendum: Additional Land – Appendix C Update Preliminary Ecological Appraisal: Updated to Incorporate Preliminary Bat Roost Assessment (Tracked Changes) (Rev 1)
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REP6-017	Ella Bucklow on behalf of Sir Antony Gormley and Antony Gormley Studios Deadline 6 Submission - Comments on Applicant's submissions for Deadline 5
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<ul style="list-style-type: none"> • Representations on the Applicant’s changes to the application received at D4 • Comments on any additional information/submissions received by D6 • Responses to any further information requested by the ExA under Rule 17 for this deadline 	
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REP7-002	Highways England Deadline 7 Submission - 7.5 Statement of Common Ground with Network Rail Infrastructure Limited (Rev 2)
REP7-003	Highways England Deadline 7 Submission - Applicant’s Response to Deadline 6 Submissions
REP7-004	Highways England Deadline 7 Submission - Letter of No Impediment from Natural England
REP7-005	Historic England Deadline 7 Submission - Comments on Matters for Deadline 7
REP7-006	Samantha Woods on behalf of Northumbrian Water Limited (NWL) Deadline 7 Submission - Written Representation
Deadline 8 – 9 June 2020	
<ul style="list-style-type: none"> • Responses to ExA’s third Written Questions (if required) • Updated Statements of Common Ground • Responses to the request for notification of a wish to speak at Hearings and/or to access a recording and, if available, a streamed broadcast of Hearings • Comments on any additional information/submissions received by D7 • Responses to any further information requested by the ExA under Rule 17 for this deadline 	
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REP8-004	Highways England Deadline 8 Submission - 3.1 Draft DCO (Clean)
REP8-005	Highways England Deadline 8 Submission - 3.2 Explanatory Memorandum (Tracked Changes) (Rev 3a)
REP8-006	Highways England

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REP8-011	Highways England Deadline 8 Submission - 7.5C Statement of Common Ground with Environment Agency (Rev 2)
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REP8-016	Highways England Deadline 8 Submission - Applicant's Response to ExA's Third Written Questions - Appendix 3.0C - Schedule of Changes to the Outline Construction Environmental Management Plan (Rev 0)
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REP8-018	Highways England Deadline 8 Submission - Applicant's Response to ExA's Third Written Questions - Appendix 3.3A - Objections Schedule (WQ 3.3.2a) Planning (Rev 2)
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REP8-031	Gateshead Green Party Deadline 8 Submission - Written Representation
REP8-032	Historic England Deadline 8 Submission - Written Representation
REP8-033	Royal Mail Deadline 8 Submission - Responses to ExA's Third Written Questions (ExQ3)
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<ul style="list-style-type: none"> • Responses to any further information requested by the ExA under Rule 17 for this deadline 	
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REP9-002	Highways England Deadline 9 Submission - 1.4 Guide to the Documents to be Certified (Rev 8)
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REP9-009	Highways England Deadline 9 Submission - 7.5A Statement of Common Ground with Gateshead Council (Clean) (Rev 3)
REP9-010	Highways England Deadline 9 Submission - 7.5A Statement of Common Ground with Gateshead Council (Tracked Changes) (Rev 3)
REP9-011	Highways England Deadline 9 Submission - 7.5H Statement of Common Ground with Northumbrian Water Limited
REP9-012	Highways England Deadline 9 Submission - Application Document Tracker (Rev 1)
REP9-013	Highways England Deadline 9 Submission - Consultation Statement (Rev 1)
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	Deadline 9 Submission - Applicant's Responses to ExA's Third Written Questions - Schedule of Changes to the Outline CEMP (Rev 1)
REP9-019	Highways England Deadline 9 Submission - ES Addendum: Appendix 8.9 Breeding Bird Report
REP9-020	Highways England Deadline 9 Submission - Land Ownership Plan - Northern Gas Networks Limited - Sheet 1 of 1
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REP9-023	Gateshead Council Deadline 9 Submission - Proposed amendment to the Statement of Common Ground
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REP9-026	Environment Agency Deadline 9 Submission
REP9-027	Gateshead Green Party Deadline 9 Submission - Written summary of oral contributions made at Open Floor Hearing 1
REP9-028	Historic England Deadline 9 Submission - Comments on Matters for Deadline 9
REP9-029	Network Rail Deadline 9 Submission - Post-Hearing Submission and Response to Further Written Questions
REP9-030	Northumbrian Water Limited Deadline 9 Submission - Position Statement in advance of Issue Specific Hearing 5 and the Compulsory Acquisition Hearing
REP9-031	Northumbrian Water Limited Deadline 9 Submission
REP9-032	Royal Mail Deadline 9 Submission - Examination Statement
REP9-033	Sir Antony Gormley Deadline 9 Submission - Post-Hearing submissions
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<ul style="list-style-type: none"> • Additional Written Representations • Responses to ExA's written questions 	
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	Deadline 10 Submission - Applicant's Response to ExA's Fourth Written Questions (Rev 0)
REP10-003	Highways England Deadline 10 Submission - Application Document Tracker (Rev 2)
REP10-004	Highways England Deadline 10 Submission - Vortex Separators Assessment (Rev 1)
REP10-005	Highways England Deadline 10 Submission - EXAD10005 Three Span Viaduct Photomontages for VP6 (Rev 0)
REP10-006	Highways England Deadline 10 Submission - 7.5C Statement of Common Ground: Environment Agency (Rev 3)
REP10-007	Gateshead Council Deadline 10 Submission - Responses to ExA's written questions ExQ4
REP10-008	Ella Bucklow on behalf of Sir Antony Gormley and Antony Gormley Studios Deadline 10 Submission - Additional Written Representations
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<p>Deadline 11 – 17 July 2020</p> <ul style="list-style-type: none"> • Written summaries of oral contributions at Hearings (if required) • Post-Hearing submissions requested by the ExA (if required) • Comments on additional Written Representations • Comments on responses to ExA's written questions (if required) • Responses to comments on the RIES (if required) • Responses to comments on the ExA's proposed schedule of changes to the draft DCO (if required) • Final DCO to be submitted by the Applicant in the SI template with the SI template validation report • Final updated Book of Reference • Final SoCG • Final Statement of Commonality of SoCG • Final Compulsory Acquisition Schedule • Final updated Guide to the Application • Responses to any further information requested by the ExA under Rule 17 for this deadline 	
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REP11-003	Highways England Deadline 11 Submission - 3.1 Final Development Consent Order in Statutory Instrument Template (Tracked Changes) (Rev 0)
REP11-004	Highways England Deadline 11 Submission - 3.1 Final Development Consent Order in Statutory Instrument Template (Clean) (Rev 0)
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REP11-006	Highways England Deadline 11 Submission - 3.2 Final Explanatory Memo (Clean) (Rev 5)
REP11-007	Highways England Deadline 11 Submission - 4.3 Book of Reference (Tracked Changes) (Rev 4)
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REP11-014	Highways England Deadline 11 Submission - 7.5B Statement of Common Ground with Sunderland City Council (Rev 3)
REP11-015	Highways England Deadline 11 Submission - 7.5D Statement of Common Ground with Historic England (Rev 4)
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REP11-018	Highways England Deadline 11 Submission - Application Document Tracker (Rev 3)
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REP11-023	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 11 Submission - Update to the Examining Authority about the Protective Provisions
REP11-024	Gateshead Council Deadline 11 Submission - Written summaries of oral contributions at Hearings
REP11-025	Historic England Deadline 11 Submission - Comments on Matters for Deadline 11
REP11-026	Northumbrian Water Limited Deadline 11 Submission - Written Representation
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REP11-027	Highways England Deadline 11 Submission - Cover Letter - Late submission accepted at the discretion of the Examining Authority
REP11-028	Highways England Deadline 11 Submission - 3.1 Updated Draft Development Consent Order (Clean) (Rev 9) - Late submission accepted at the discretion of the Examining Authority
REP11-029	Highways England Deadline 11 Submission - 7.2 National Networks National Policy Statement (NNNPS) Accordance Table (Tracked Changes) (Rev 1) - Late submission accepted at the discretion of the Examining Authority
REP11-030	Highways England Deadline 11 Submission - 7.5A Statement of Common Ground with Gateshead Council (Rev 5) - Late submission accepted at the discretion of the Examining Authority
REP11-031	Highways England Deadline 11 Submission - 7.5F Statement of Common Ground with Northern Gas Networks Limited (Rev 2) - Late submission accepted at the discretion of the Examining Authority
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REP11-035	Highways England Deadline 11 Submission Draft Development Consent Order Validation Report - Late submission accepted at the discretion of the Examining Authority

REP11-036	Highways England Deadline 11 Submission - Draft Development Consent Order Validation Report - Late submission accepted at the discretion of the Examining Authority
REP11-037	Highways England Deadline 11 Submission - Applicant's Response to Deadline 11 Submissions - Late submission accepted at the discretion of the Examining Authority
REP11-038	Highways England Deadline 11 Submission Validation Check snapshot - Late submission accepted at the discretion of the Examining Authority
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OD-002	Highways England Section 56 Notice

APPENDIX C: LIST OF ABBREVIATIONS

Appendix C:

Abbreviation or usage	Reference
AP	Affected Person
AQMA	Air Quality Management Area
ARN	Affected Road Network
ASI	Accompanied Site Inspection
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CA Regulations	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CCA 2008	Climate Change Act 2008
CEMP	Construction Environmental Management Plan
CNG	Compressed Natural Gas
CTMP	Construction Traffic Management Plan
DCLG	Department for Communities and Local Government
DCLG Guidance	'Planning Act 2008: Guidance Related to Procedures for Compulsory Acquisition of Land
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DL	Deadline
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
EA	Environment Agency
ECHR	European Convention on Human Rights
ECML	East Coast Main Line
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)
EM	Explanatory Memorandum
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ1	First Written Question(s)
ExQ2	Further written question(s)
ExQ3	Further written question(s)
EXQ4	Further written question(s)
FRA	Flood Risk Assessment
FS	Funding Statement
FWQ	Further written questions
FSI	Final Written Scheme of Investigation
Ha	Hectare
Habitats Regulations	Conservation of Habitats and Species Regulations 2017 (as amended)

Abbreviation or usage	Reference
HAWRAT	Highways Agency Water Risk Assessment Tool
HE	Historic England
HEMP	Handover Environmental Management Plan
HRA	Habitats Regulations Assessment
IAN	Interim Advice Note
IAPI	Initial Assessment of Principal Issues
IP	Interested Party
ISH	Issue Specific Hearing
km	Kilometre
LIR	Local Impact Report
LLCA	Local Landscape Character Area
LOAEL	Lowest Observed Adverse Effect Level
LV	Limit Values
LWS	Local Wildlife Site
m	metre
mph	miles per hour
MSGP	Making Spaces for Growing Places
NCA	National Character Area
NE	Natural England
NGN	Northern Gas Networks Ltd
NGWB	Newcastle Gateshead Western Bypass
NIDP	National Infrastructure Delivery Plan
NMU	Non-Motorised User
NNNPS	National Networks National Policy Statement
NO ₂	Nitrogen Dioxide
NO _x	Nitrogen Oxide
NOEL	No Observed Effect Level
NPA 2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NR	Network Rail Infrastructure Ltd
NRTM	Northern Regional Transport Model
NSIP	Nationally Significant Infrastructure Project
Outline CEMP	Outline Construction Environmental Management Plan
OFH	Open Floor Hearing
PA2008	Planning Act 2008
PM	Preliminary Meeting
PM _{2.5}	Particulate Matter which is 2.5 micrometres or less in diameter
PM ₁₀	Particulate Matter which is 10 micrometres or less in diameter
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
Q1	Quarter 1
R	Requirement

Abbreviation or usage	Reference
REAC	Register of Environmental Actions and Commitments
RIS	Road Investment Strategy
RR	Relevant Representation
s	section
SAC	Special Area of Conservation
SCC	Sunderland City Council
SM	Scheduled Monument
SO ₂	Sulphur Dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoST	Secretary of State for Transport
SPA	Special Protection Area
SPDs	Supplementary planning documents
SSSI	Site of Special Scientific Interest
SU	Statutory Undertakers
TAR	Transport Assessment Report
TCPA1990	Town and Country Planning Act 1990 (as amended)
The Air Quality Directive	Ambient Air Quality Directive 2008/50/EU
TP	Temporary Possession
TSCS	Thin Surface Course System
UDP	Unitary Development Plan
UK	United Kingdom
UNEP	United Nations Environment Programme
USI	Unaccompanied Site Inspection
WACA 1981	Wildlife and Countryside Act 1981
WFD	Water Framework Directive
WR	Written Representation
WSI	Written Scheme of Investigation
WQs	Written Questions

APPENDIX D: THE RECOMMENDED DCO

20[*] No.[**]**

INFRASTRUCTURE PLANNING

DEVELOPMENT CONSENT ORDER 20[]**

The A1 Birtley to Coal House Development Consent Order
20[**]

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 37 of the Planning Act 2008^(b) (“the 2008 Act”).

The application was initially examined by a single appointed person and subsequently by a Panel (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010^(c).

^(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

^(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

^(c) S.I. 2010/103, amended by S.I. 2012/635.

The Panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State is satisfied in terms of section 131(4B) of the 2008 Act that (a) the order land forms part of an open space; (b) none of the order land is of any of the other descriptions in section 131(1) of the 2008 Act; and (c) the order land is being acquired for a temporary (although possibly long-lived) purpose.

The Secretary of State is further satisfied in terms of section 131(5) of the 2008 Act that (a) the order land is required in connection with the widening or drainage of an existing highway; and (b) the giving of other land in exchange for the order land is unnecessary.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122, 131 and 132 of, and paragraphs 1 to 3, 10 to 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order:

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the A1 Birtley to Coal House Development Consent Order 20[*] and shall come into force on [****] 20[*].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979(c);

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

(a) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government Planning and Land Act 1990 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.

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

(c) 1979 c.46

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

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

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

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

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

“address” includes any number or address for the purposes of electronic transmission;

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

“authorised development” means the development described in Schedule 1 (authorised development) or any part of it and any other development authorised by this Order or part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act;

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

“business day” means Monday to Friday excluding Bank Holidays and other public holidays;

“cantilever gantry” means a gantry which spans a single carriageway with the support located in the verge of the carriageway only;

“carriageway” has the same meaning as in the 1980 Act;

“CEMP” means the construction environmental management plan approved pursuant to the requirements;

“commence” means—

unless otherwise provided, means beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly; and

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- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1984 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c. 66
- (c) 1984 c. 27
- (d) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act (c. 21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17 to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Part 3 of the 1991 Act was amended by Part 4 of the Traffic Management Act 2004 (c. 18). Section 74 was amended, and sections 74A and 74B inserted, by sections 255 and 256 of the Transport Act 2000 (c. 38). There are other amendments to the 1991 Act but they are not relevant to this Order.
- (f) 2008 c. 29.

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

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“engineering drawings and sections” means the drawings and sections listed in Schedule 12 (documents to be certified) and certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“environmental statement” means the document of that description submitted with the application for this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footway” and “footpath” have the same meaning as in the 1980 Act and include part of a footway or footpath;

“the general arrangement drawings” means the drawings listed in Schedule 12 (documents to be certified) and certified as the general arrangement drawings by the Secretary of State for the purposes of this Order;

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

“the land plans” means the plans listed in Schedule 12 (documents to be certified) and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“maintain” in relation to the authorised development includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, improve, remove, reconstruct, refurbish or replace and any derivative of “maintain” is to be construed accordingly;

“Northern Gas Networks Land Ownership Plan” means the plan listed in Schedule 12 (documents to be certified) and certified as the Northern Gas Networks Land Ownership Plan by the Secretary of State for the purposes of this Order;

“Northern Gas Networks Limited” means the company registered in England and Wales, company number 05167070, whose registered address is 1100 Century Way, Thorpe Park Business Park, Colton, Leeds LS15 8TU;

“Northumbrian Water Limited” means the company registered in England and Wales, company number 2366703, whose registered office address is Northumbria House, Abbey Road, Pity Me, Durham DH1 5FJ;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

“Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“outline CEMP” means the document of that description submitted with the application for this Order and certified as the outline CEMP by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(b);

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates;

“Secretary of State” means the Secretary of State for Transport;

(a) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c.54)

(b) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

“single span gantry” means a portal gantry which spans a single carriageway of a dual carriageway with one support located in the central reserve and the other support in the verge of the carriageway which it crosses;

“Southern Green Options Report” means the document entitled “options Appraisal for Managing and Enhancing the Angel” prepared by Southern Green listed in Schedule 12 (documents to be certified) and certified as Southern Green Options Report by the Secretary of State for the purposes of this Order;

“the special category land plans” means the plans certified by the Secretary of State listed in Schedule 12 (documents to be certified) for the purposes of this Order,

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8), of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“streets, rights of way and access plans” means the plans listed in Schedule 12 (documents to be certified) and certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order;

“structures engineering drawings and sections” means the drawings and sections listed in Schedule 12 (documents to be certified) and certified as the structures engineering drawings and sections by the Secretary of State for the purposes of this Order;

“super span gantry” means a portal gantry which spans both carriageways of a dual carriageway with the supports located in the verges of each respective carriageway;

“traffic authority” has the same meaning as in the 1984 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

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

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

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans listed in Schedule 12 (documents to be certified) and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the streets, rights of way and access plans.

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

(7) The provisions of the Neighbourhood Planning Act 2017^(a), insofar as they relate to temporary possession of land under articles 32 and 33 of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 33(11), any maintenance of any part of the authorised development.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out and operated within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Maintenance of drainage works

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991.^(b)

Planning permission

6. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the authorised development,

the carrying out of such development, under the terms of the planning permission does not breach the terms of this Order.

Limits of deviation

7. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and

(a) 2017 c. 20.

(b) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 1 metres upwards or 1 metres downwards,

except that these maximum limits of lateral and vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Benefit of the Order

8.—(1) Subject to paragraph (2) and article 9 (consent to transfer benefit of Order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of the Order

9.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), includes references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) Northumbrian Water Limited for the purposes of undertaking Work No. 22;
- (b) Northern Gas Networks Limited for the purposes of undertaking Work Nos. 9, 10, 12, 13, 14, 15 and 16.

PART 3 STREETS

Application of the 1991 Act

10.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and

roundabouts)(a) of the 1980 Act or section 184 (vehicle crossings over footways and verges)(b) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of Part 3 the 1991 Act do not apply in relation to any works executed under the powers of this Order—

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

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(l) referred to in paragraph (4) are—

- section 54 (advance notice of certain works)(m), subject to paragraph (6);
- section 55 (notice of starting date of works)(n), subject to paragraph (6);
- section 57 (notice of emergency works)(o);
- section 59 (general duty of street authority to co-ordinate works)(p);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation); and

-
- (a) Section 64 was amended by Schedule 17 to the Local Government Act 1965(c. 51) and Schedule 9 to the 1991 Act.
 - (b) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22) and sections 35 and 46 of the Criminal Justice Act 1982 (c. 48).
 - (c) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004(c.18).
 - (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).
 - (e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
 - (g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
 - (h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
 - (i) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 - (j) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
 - (k) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).
 - (l) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (m) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).
 - (n) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).
 - (o) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).
 - (p) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways);
- (b) means that the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

Power to alter layout etc. of streets

11.—(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(2) The undertaker must restore any street that has been temporarily altered under this Article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1)—

- (a) are exercisable on the giving of not less than 42 days' notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority.

(4) If a street authority which received an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of 6 weeks beginning with the date on which the application is made, it is deemed to have gained consent.

(5) Paragraphs (2), (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are to be carried out.

Street works

12.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel up or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new, altered or diverted streets

13.—(1) Any street (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority in whose area the street lies and, unless otherwise agreed with the local street authority, be maintained by and at the expense of the local street authority from its completion.

(3) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause dangers to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Classification of roads etc.

14.—(1) From the date on which the roads described in Part 1 (trunk roads) of Schedule 3 (classification of roads, etc) are complete and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) From the date that the public rights of way described in Part 2 (other public rights of way) of Schedule 3 (classification of roads, etc.) are completed and open to for use they will be of the types described in column (1) to the extent described in column (2).

(3) The application of paragraphs (1) to (2) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Temporary stopping up and restriction of use of streets

15.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article and which is within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 5 (Public rights of way to be temporarily stopped up and for which a substitute is to be provided) to the extent specified in column (2) of that Schedule

(5) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Permanent stopping up and restriction of use of streets, public rights of way and private means of access

16.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets, public rights of way and private means of access specified in column (1) of Parts 1, 2, and 3 of Schedule 4 (permanent stopping up of streets, public rights of way and private means of access) to the extent specified and described in column (2) of that Schedule.

(2) No street, public right of way or private means of access specified in column (1) of Parts 1, 2 and 3 of Schedule 4 (being a street, public right of way or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street, public right of way or private means of access to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street, public right of way or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street, public right of way or private means of access in accordance with sub-paragraph (a).

(3) Where a street, public right of way or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street, public right of way or private means of access so stopped up are extinguished; and

- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street, public right of way or private means of access as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 35 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

17. The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Modification of Road Traffic Regulation Orders

18.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic—

- (a) Paragraph 2 of The A1 Trunk Road (Birtley Interchange to Scottish Border) (24-Hour Clearway) Order 2004(a) shall be amended so that the definition of “the trunk road” includes the length of the A1 Trunk Road as realigned by this Order in terms of works 1a, 1b, 6a and 6b;
- (b) Paragraph 2 of The A1 Trunk Road (Gateshead/Newcastle Western Bypass) (Width Restriction) Order 2016(b) shall be amended as follows :-
 - (i) The definition of “the A1” shall include the length of the A1 Trunk Road as realigned by this Order comprised in works 1a, 1b, 6a and 6b;
 - (ii) The definition of “the northbound carriageway” shall include the A1 northbound carriageway as realigned by this Order comprised in works 1b and 6b;
 - (iii) The definition of “the southbound carriageway” shall include the A1 southbound carriageway as realigned by this Order comprised in works 1a and 6a;
- (c) Paragraph 2 of The A1 Trunk Road (Birtley to North Brunton) (Prohibition of Slow Moving Vehicles) Order 2001(c) shall be amended as follows:
 - (i) The definition of “the trunk road” shall include the length of the A1 Trunk Road as realigned by this Order comprised in works 1a, 1b, 6a and 6b;
 - (ii) The definition of “the northbound carriageway” shall include the A1 northbound carriageway as realigned by this Order comprised in works 1b and 6b;
 - (iii) The definition of “the southbound carriageway” shall include the A1 southbound carriageway as realigned by this Order comprised in works 1a and 6a; and
- (d) The Schedule to The A1 Trunk Road (Gateshead/Newcastle Western Bypass) (Birtley Interchange to Blaydon Viaduct) (50 Miles Per Hour Speed Restriction) Order 2010(d) shall be amended as follows:
 - (i) Paragraph (i) shall include the A1 northbound carriageway as realigned by this Order in terms of works 1b and 6b;
 - (ii) Paragraph (xiii) shall include the A1 southbound carriageway as realigned by this Order in terms of works 1a and 6a;

(a) S.I. 2004/197

(b) S.I. 2016/1013

(c) S.I. 2001/2230

(d) S.I. 2010/2820 as amended by S.I. 2016/1015

(2) Paragraph (1) shall have effect so as to give effect to the orders named in that paragraph as if the same had been imposed upon the works listed in that provision by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(3) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic, they shall cease to be restricted roads for the purpose of section 81 of the 1984 Act.

(4) Paragraph (3) has effect as if made by direction under section 82 of the 1984 Act.

Traffic regulation

19.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (4) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

- (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces)(a) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b).
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers of paragraph (2) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (9) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.
- (10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

- 20.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.
- (2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).
- (3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.
- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(a) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c. 18

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016^(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991^(b) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

Protective work to buildings

21.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or

^(a) S.I. 2016/1154.

^(b) 1991 c. 57.

expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 46 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

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

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation to the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the surveyor investigation or to make the trial holes.

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

- (a) in land located within a highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

PART 5

POWERS OF ACQUISITION AND POSSESSION

Compulsory acquisition of land

23.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (2) of article 26 (compulsory acquisition of rights and restrictive covenants) and paragraph (8) of article 32 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

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

Time limit for exercise of authority to acquire land compulsorily

25.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

(a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 29 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 32 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and restrictive covenants

26.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 6 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(a) 1981 c. 67.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 6.

(4) Subject to section 8 of the 1965 Act (other provisions as to divided land), as modified by Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Private rights over land

27.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
 - (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),
- whichever is the earlier.

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

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
 - (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),
- whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 34 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights over or the imposition of the restrictive covenant or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) The undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of Part 1 of the 1965 Act

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

(a) in section 4A(1) (extension of time limit during challenge)(a)—

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

(ii) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A1 Birtley to Coal House Development Consent Order 20[]”.

(2) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 25 (time limit for exercise of authority to acquire land compulsorily) of the A1 Birtley to Coal House Development Consent Order 20[]”.

(3) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective work to buildings), 32 (temporary use of land for carrying out the authorised development) or 33 (temporary use of land for maintaining the authorised development) of the A1 Birtley to Coal House Development Consent Order 20[].”

Application of the 1981 Act

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

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

(3) In section 1 (application of act) for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) Omit section 5 (earliest date for execution of declaration).(a)

(a) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c.22).

(5) Omit section 5A (which provides a time limit for the execution of a general vesting declaration).(b)

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

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

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A1 Birtley to Coal House Development Consent Order 20[]”.

(7) In section 6 (notices after execution of declaration) for subsection (1)(b)(d) there is substituted—

“(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008,”.

(8) In section 7 (constructive notice to treat) in subsection (1)(a)(e), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(f), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of power under paragraph (1) in relation to subsoil or airspace only –

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 28 (modification of Part 1 of the 1965 Act));

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

Rights under or over streets

31.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

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

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

(d) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(e) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016 (c. 22).

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

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

32.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land as are mentioned in Schedule 1 (authorised development), or any mitigation works in connection with the authorised development.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 8, or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;

- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) restore the land to a condition better than the relevant land was in before temporary possession;
- (d) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 30 (acquisition of subsoil or airspace only).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) (a) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(12) The undertaker shall be prohibited from exercising the power of temporary possession over that part of plot 3/6c shown delineated and hatched purple on the Northern Gas Networks Land Ownership Plan.

Temporary use of land for maintaining the authorised development

33.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken.

(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(4) The undertaker is not required to service notice under paragraph (3) where the undertaker has identified a potential risk to the safety of:

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker is not required to restore the land to a condition better than the relevant land was in before temporary possession was taken.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it

(11) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

34.—(1) Subject to the provisions of Schedule 11 (protective provisions), article 26 (compulsory acquisition of rights and restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over any Order land belonging to statutory undertakers;
- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 of the 1991 Act; and
- (b) article 35 of this Order (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

35.—(1) Where a street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on,

along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 16 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

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

“relocation works” means work executed, or apparatus provided, under paragraph (2); and
“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer, is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 35 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(b); and

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

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

37.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), and with the consent of local authority in whose area the hedgerow is located, remove any hedgerow within the Order limits that is required to be removed.

(a) There are amendments to this Act which are not relevant to this Order.
(b) There are amendments to this Act which are not relevant to this Order.

(5) An application for the consent of a local authority in terms of paragraph (4) shall not be unreasonably withheld.

(6) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) the local authority is deemed to have granted consent..

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

Trees subject to tree preservation orders

38.—(1) The undertaker may fell or lop any tree described in Schedule 9 (trees subject to tree preservation orders) or cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if it reasonably believes it to be necessary in order to so to prevent the tree or shrub—

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

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

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act shall not apply.

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

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

Scheduled Monuments

39. The undertaker is authorised to carry out the works specified in column 2 of Schedule 10 in relation to the scheduled monuments specified in column 1 of Schedule 10.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

40.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(a) S.I. 1997/1160.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the Town and Country Planning Act 1990

41. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

43. Schedule 11 (protective provisions) to the Order has effect.

Certification of documents, etc.

44.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 12 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

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

(b) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

(2) Where any plan or document set out in Schedule 12 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

45.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

^(a) 1978 c. 30. 29.

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

46. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

signed by authority of the Secretary of State for Transport

[Address]
Date

{name}
Parliamentary Under Secretary of State
Department of Transport

SCHEDULES

SCHEDULE 1

Articles 2 and 3

Authorised development

In the Metropolitan Borough of Gateshead

A nationally significant infrastructure project as defined in section 22(a) of the 2008 Act, and associated development as defined in section 115(2)(b) (development for which development consent may be granted) of the 2008 Act, comprising:

Work No. 1a – The widening, alteration and realignment of the southbound carriageway of the A1 dual carriageway on the approach to Junction 67 (Coal House) commencing at 424371E; 558644N and terminating at grid reference 425284E; 558511N;

Work No. 1b – The widening, alteration and realignment of the northbound carriageway of the A1 dual carriageway on the approach to Junction 67 (Coal House) commencing at grid reference 424366E; 558629N and terminating at grid reference 425277E; 558492N with Work No.s 1a and 1b including -

- (i) The widening, alteration and realignment of the existing highway with construction of new pavements, embankments, retaining walls, ground improvements (to increase bearing capacity of proposed retaining walls) and landscaping to create 3 no. lanes in each direction;
- (ii) The provision of a hardened central reserve with a rigid concrete barrier or steel step barrier dividing the southbound and northbound carriageways;
- (iii) Removal of existing road lighting and installation of new lighting columns within the highway verge of each carriageway;
- (iv) Associated drainage works and underground storage drainage facilities within the Coal House roundabout to collect and store water and works to associated existing outfalls to the River Team;
- (v) Treatment of underground historical mine workings to reduce the risk of ground instability to include drilling and grouting, mine shaft stabilisation and/or installation of other protection measures;
- (vi) The construction of advanced directional gantry signs, including sign foundations and sign structures;
- (vii) Installation of road signs including sign foundations, sign structure, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (viii) Associated utility works and diversions within the highway verge of each carriageway;
- (ix) Removal of Vehicle Activated Sign and motorway signals; and

(a) Section 22 was substituted by article 3 of S.I. 2013/1883

(b) Section 115(2) was amended by section 160(1) and (3) of the Housing and Planning Act 2016 (c. 22). There are other amendments to section 115(2) but none are relevant.

- (x) Installation of CCTV, MIDAS and traffic counting equipment with associated ducting.

Work No. 2 - The widening of the existing Kingsway Viaduct bridge over Coal House Roundabout at Junction 67 (Coal House) to accommodate the widened highway associated with Work No. 1b including substructure and superstructure elements and removal of existing road lighting and installation of new lighting columns on the bridge deck;

Work No. 3a - The widening, alteration and realignment of the southbound off slip with associated embankment, retaining walls, ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions and landscaping, commencing at grid reference 424691E; 558594N and terminating at grid reference 424877E; 558582N;

Work No. 3b - The widening, alteration and realignment of the southbound on slip with associated embankment, retaining walls, ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions and landscaping, commencing at grid reference 425012E; 558584N and terminating at grid reference 425255E; 558533N;

Work No. 3c - The widening, alteration and realignment of the northbound off slip with associated embankment, retaining walls, ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions and landscaping, commencing at grid reference 425232E; 558497N and terminating at grid reference 425009E; 558512N;

Work No. 3d - The widening, alteration and realignment of the northbound on slip with associated embankments, cuttings, retaining walls and associated ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions, realignment of existing noise barrier and landscaping commencing at grid reference 424895E; 558519N and terminating at grid reference 424636E; 558569N;

Work No. 4a – The construction of a new offline section of the A1 southbound carriageway between Junction 67 (Coal House) and Smithy Lane Overbridge commencing at grid reference 425284E; 558511N and terminating at grid reference 425772E; 558281N;

Work No. 4b – The construction of a new offline section of the A1 dual carriageway to create 4 no. lanes northbound between Junction 67 (Coal House) and Smithy Lane Overbridge commencing at grid reference 425277E; 558492N and terminating at grid reference 425755E; 558265N

With Work Nos. 4a and 4b including-

- (i) Construction of new highway with associated embankments, ground improvements, drainage facilities and roadside furniture;
- (ii) The provision of a hardened central reserve with a rigid concrete barrier or steel step barrier dividing the southbound and northbound carriageways;
- (iii) Installation of lighting columns in the verge;
- (iv) The construction of advanced directional gantry signs, including sign foundations and sign structures;
- (v) Demolition of existing verge mounted road signs and installation of replacement new road signs including sign foundations, sign structure, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (vi) Treatment of underground historical mine workings to reduce the risk of ground instability to include drilling and grouting and/or installation of other protection measures;
- (vii) Landscaping;

- (viii) Relocation of existing internally illuminated tactical variable message sign within verge with associated ducting and reinstallation of existing CCTV in its current position; and
- (ix) Associated utility works and diversions within the highway verge of each carriageway;

Work No. 5a – Construction of a new offline structure to cross the East Coast Main Line, accommodating the widened highway comprised in Works No. 4a and 4b including substructure and superstructure elements and removal of existing/installation of new road lighting, safety barriers, drainage, pavement and advance directional sign gantries comprising one of:

- (i) single span bridge structure supported by embankments with ground improvements in the form of rigid inclusions extending into subsoil beneath the embankments; or
- (ii) a viaduct structure with three spans supported on rigid piled foundations and associated superstructure, substructure and earthwork elements;
- (iii) a viaduct structure with six spans supported on rigid piled foundations and associated superstructure, substructure and earthwork elements;
- (iv) a viaduct structure with seven spans supported on rigid piled foundations and associated superstructure, substructure and earthwork elements

Work No 5b - The demolition of the existing Allerdene Railway bridge and its associated embankments in the area shown on the works plans;

Work No. 6a – The widening, alteration and realignment of the southbound carriageway of the A1 dual carriageway between Smithy Lane Overbridge and Junction 65 (Birtley) commencing at grid reference 425772E; 558281N and terminating at grid reference 428181E; 556704N;

Work No. 6b – The widening, alteration and realignment of the northbound carriageway of the A1 dual carriageway between Smithy Lane Overbridge and Junction 65 (Birtley) commencing at grid reference 425755E; 558265N and terminating at grid reference 428196E; 556627N with Works No.6a and 6b including:

- (i) The widening, alteration and realignment of the existing highway with construction of new pavements, embankments, retaining walls, ground improvements (to increase bearing capacity), drainage and landscaping to create 4 no. lanes in each direction, except through Junction 66 (Eighton Lodge) on the northbound carriageway, which will comprise of 3 no. lanes;
- (ii) The provision of a hardened central reserve with a rigid concrete barrier or steel step barrier dividing the southbound and northbound carriageways;
- (iii) Removal of existing lighting and installation of new lighting columns within the highway verge of each carriageway;
- (iv) Widening of the existing Eighton Lodge Slip Road Underbridge highway structure with associated embankment, substructure and superstructure elements;
- (v) Widening of the existing Eighton Lodge North Underbridge highway structure with associated embankment, substructure and superstructure elements;
- (vi) Widening of the existing Eighton Lodge South Underbridge highway structure with associated embankment, substructure and superstructure elements;
- (vii) Treatment of underground historical mine workings to reduce the risk of ground instability to include drilling and grouting, mine shaft stabilisation and/or installation of other protection measures;
- (viii) The construction of advanced directional gantry signs, including sign foundations and sign structures;
- (ix) Installation of road signs including sign foundations, sign structure, signs, signals, sign illumination, control cabinets, power and communication cable connections.

- (x) Removal of Vehicle Activated Sign and motorway signals;
- (xi) Installation of CCTV, MIDAS and traffic counting equipment with associated ducting.
- (xii) Associated drainage works and works to associated existing outfalls; and
- (xiii) Associated utility works and diversions within the highway verge;

Work No. 7a - The widening, alteration and realignment of the southbound off slip at Junction 66 (Eighton Lodge) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road signs, communications ducting, road lighting, drainage, utility diversions and landscaping commencing at grid reference 426300E; 557750N and terminating at grid reference 426436E; 557693N;

Work No. 7b - The widening, alteration and realignment of the southbound on slip at Junction 66 (Eighton Lodge) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road signs, communications ducting, road lighting, drainage, utility diversions and landscaping commencing at grid ref. 426846E; 557487N and terminating at grid reference 427105E; 557361N;

Work No. 7c - The widening, alteration and realignment of the northbound off slip at Junction 66 (Eighton Lodge) with associated embankment, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road lighting and landscaping commencing at grid reference 427092E; 557322N and terminating at grid reference 426817E; 557418N;

Work No. 7d - The widening, alteration and realignment of the northbound on slip at Junction 66 (Eighton Lodge) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road lighting and landscaping commencing at grid reference 426518E; 557514N and terminating at grid reference 426329E; 557677N;

Work No. 8a - The widening, alteration and realignment of the southbound off slip at Junction 65 (Birtley) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), verge ducting, road signs, communications ducting, road lighting, drainage, and landscaping commencing at grid reference 427878E; 556918N and terminating at grid reference 428173E; 556883N;

Work No. 8b -The widening, alteration and realignment of the northbound on slip at Junction 65 (Birtley) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), drainage, underground storage drainage facility, verge ducting, road signs, communications ducting, road lighting, and landscaping commencing at grid reference 428076E; 556499N with local access from the B1288 at grid reference 428151E; 556456N and terminating at grid reference 428150E; 556684N;

Work No. 9 –Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Lamesley Road that runs to the south of Work No. 10 commencing at grid reference 425100E, 558405N and terminating at grid reference 425176E, 558400N;

Work No. 10 – Construction of a gas transfer station building for the benefit of Northern Gas Networks Ltd with associated connections to Work Nos. 9, 13, 14 and 15;

Work No. 11 - Construction of a private maintenance access road from Lamesley Road for maintenance of gas, rail and highway structures;

Work No. 12 - Construction of a replacement gas transfer station building for the benefit of Northern Gas Networks Ltd with associated connections to Work Nos. 15 and 16;

Work No. 13 – Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Lamesley Road commencing at grid reference 425104E; 558478N and terminating at grid reference 425122E; 558409N;

Work No. 14 - Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Lamesley Road commencing at grid reference 425110E; 558482N and terminating at grid reference 425161E; 558455N;

Work No. 15 - Diversion of existing Northern Gas Networks Gas Pipeline extending under A1 highway between land adjacent to Lamesley Road and land adjacent to Chowdene Bank commencing at grid reference 425183E; 558448N and terminating at grid reference 425311E; 558568N;

Work No. 16 - Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Chowdene Bank commencing at grid reference 425315E; 558601N and terminating at grid ref. 425393E; 558655N;

Work No. 17 – Construction of an access road from the main A1 southbound carriageway that connects to a drainage attenuation pond and pipe outfall to Allerdene Culvert referred to in Work No. 20;

Work No. 18 – Demolition of existing North Dene Footbridge and construction of a new foot/cycle bridge in place of the existing with associated approach ramps over the A1 carriageway at a point approximately 900m south of Junction 66 (Eighton Lodge) and grid reference 427468E; 557101N including associated substructure and superstructure elements, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), embankments, retaining walls, utility diversions and hardstanding;

Work No. 19 – Extension of the north side of the Longbank Bridleway Underpass and its associated embankments and other substructure and superstructure elements and provision of lighting, in order to accommodate the highway widening above proposed under Work Nos. 6a and 7b and associated fencing, drainage and footpath improvements on approach to Underpass adjacent to the northbound and southbound carriageways at grid reference 427184E; 557331N; with realignment of the existing footpath and associated improvements commencing west of the Underpass at grid reference 427102E; 557500N and terminating east of the Underpass at grid reference 427364E; 557402N;

Work No. 20 – Alteration and realignment of existing culverted watercourse under the A1 carriageway in the vicinity of Allerdene Bridge, such works including:

- (i) Removal of existing culvert and creation of new culverted sections; and/or,
- (ii) Removal of existing culvert structure and creation of an open ditch with associated substructures, embankments, and landscaping.

Work No. 21 – Temporary construction access required between Woodford and Allerdene Bridge to carry out the demolition of the existing Allerdene Bridge;

Work No. 22 – Diversion of Northumbrian Water main under the A1 carriageway between Junction 67 (Coal House) and Smithy Lane Overbridge associated with Work No. 4a and 4b, commencing at grid reference 425672E; 558288N and terminating at grid reference 425983E; 558273N;

Work No. 23 – Removal of existing Overhead Line Equipment structures on the East Coast Main Line, including those attached to the underside of the existing Allerdene Bridge structure, and installation of replacement Overhead Line Equipment (with associated foundations and utility diversions) and drainage, signalling and power supply works to tie in with existing rail infrastructure commencing at grid reference 425620E; 558165N and terminating at grid reference 425435E; 558638N;

and in connection with the construction of any of those works, and to the extent that they do not otherwise form part of any such work, and whether or not shown on the plans referred to in the requirements further development within the order limits consisting of –

- (a) The provision of up to two construction compounds and two working compounds in the areas shown on the works plans;
- (b) alteration of the layout of any street permanently or temporarily, including but not limited to realignment of carriageways and increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (c) ramps, means of access, footpaths, bridleways, cycle tracks, embankments, aprons, abutments, shafts, foundations, retaining walls, wing walls, bunds, embankment swales, fencing, boundary treatments and highway lighting and culverts;
- (d) street works including breaking up or opening a street, or any sewer, drain or tunnel under it, tunnelling or boring under a street, work to place or maintain apparatus in a street, works to alter the position of apparatus, including mains, sewers, drains and cables;
- (e) the provision of thin surface course and carriageway markings;
- (f) temporary and permanent diversion of utilities apparatus, including gas and water pipelines and electric and telecommunication cables;
- (g) earthworks, including the extension of earthworks;
- (h) retaining structures;
- (i) barriers, including safety barriers;
- (j) fencing;
- (k) refurbishment works to any existing bridge or gantry;
- (l) works to alter the course of, or otherwise interfere with a watercourse, including without limitation works to the River Team including temporary culverting;
- (m) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (n) works for the benefit or protection of land affected by the authorised development;
- (o) works to place, alter, remove or maintain road furniture;
- (p) signage and road marking;
- (q) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping, storage, and site levelling);
- (r) the felling of trees and hedgerows;
- (s) the establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery apparatus, works and conveniences;
- (t) the provision of other works including pavements works, kerbing and paved areas works, signing, signals gantries, road markings, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development;
- (u) the provision of drainage works including attenuation ponds, outfalls, ditches, culverts; and
- (v) such other works, working sites storage areas, works of demolition or works of whatever nature as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised

development which do not give rise to any materially new or materially different environment effects in comparison with those reported in the environmental statement.

Requirements

PART 1

Requirements

Interpretation

1. In this Schedule —

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990(a);

“European protected species” has the same meaning as in regulation 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(b);

“HEMP” means the handover environmental management plan, to be developed and completed by the end of the construction, commissioning and handover stage of the authorised development which is to contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authorities for England, Scotland, Wales and Northern Ireland, or any equivalent replacement published for that document;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(c);

“outline CEMP” means the document of that description submitted with the application for this order and certified as the outline CEMP by the Secretary of State for the purposes of this Order; and

“REAC” means the register of environmental actions and commitments contained in the Outline CEMP.

Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

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

(b) S.I. 2017/1012 to which there are amendments not relevant to this Order.

(c) 1981 c. 69.

Detailed design

General design requirements

3.—(1) The authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Design of gas transfer buildings

(3) Except where carried out in accordance with the approved details submitted to comply with a condition issued by Gateshead Council on 4 March 2020 under reference DC/20/00059/NI no part of Work No. 10 or 12 may commence until the details of the layout, scale and external appearance (including materials which are proposed to be used and proposed finishes) of the above ground structures comprised in Work Nos. 10 and 12 have been submitted to and approved by the Secretary of State in consultation with the relevant planning authority. The approved details must not give rise to any materially new or materially different environmental effects in comparison to the approved details submitted to comply with a condition issued by Gateshead Council on 4 March 2020 under reference DC/20/00059/NI.

(4) Work Nos. 10 and 12 shall be constructed in accordance with the approved details submitted to comply with a condition issued by Gateshead Council on 4 March 2020 under reference DC/20/00059/NI or otherwise in accordance with the details approved under sub-paragraph (3).

(5) No part of Work No. 12 may be commenced by the undertaker until a scheme for the demolition of the existing gas transfer building (including the timescale for such demolition) has been submitted to and approved by the Secretary of State in consultation with the relevant planning authority. The demolition of the existing gas transfer building shall be carried out in accordance with the approved scheme.

(6) Without prejudice to Article 6, nothing in sub-paragraphs (3) to (5) shall restrict Northern Gas Networks Limited from undertaking works authorised by a separate grant of planning permission or authorised in terms of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Design of gantries

(7) No gantries shall be erected within the areas identified on the works plans as proposed new gantry areas until a signage strategy for the provision of signage in those areas (including the design and height of supporting gantries) has been submitted to and approved by the Secretary of State, in consultation with the relevant planning authority. The signage strategy shall consider or take account of:-

- (a) any replacement of the Design Manual for Roads and Bridges Interim Advice Note 144/16 Directional Signs on Motorway and All-Purpose Trunk Roads: Grade Separated Junctions and the need to relocate signs in the verge in place of super span gantries;
- (b) the use of single span gantries or cantilever gantries in substitution for super span gantries.
- (c) the potential impact of the gantries on the setting of the Angel of the North;
- (d) the safety of road users, public safety in general, the need for directional signage and the safety of maintenance operatives.

(8) The authorised development shall be constructed in accordance with the approved signage strategy.

(9) Notwithstanding the terms of paragraph 3(7), once the gantries have been erected in accordance with the approved signage strategy, the maintenance and, if necessary, replacement of the gantries shall be undertaken by the undertaker in accordance with the powers and duties of the 1980 Act. The carrying out of such maintenance and replacement in accordance with the 1980 Act shall not constitute a breach of this Order provided that maintenance or replacement not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Design of structures

(10) No part of Work No. 5a other than ground treatment, piling, abutments and supporting piers is to be constructed until a scheme for the following elements of the design of the bridge deck forming part of that work have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority:-

- (a) The colour scheme for the bridge beams;
- (b) use of sustainable materials;
- (c) parapet systems compliant with operational highway and railway requirements; and
- (d) soffits other than the design as shown on the engineering drawings and sections or which mirrors the existing Allerdene Bridge.

(11) Work No. 5a shall be constructed in accordance with the approved details.

Construction and handover environmental management plans

4.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until a CEMP, substantially in accordance with the outline CEMP, for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, the Environment Agency and Historic England to the extent that it relates to matters relevant to its function.

(2) The CEMP must be written in accordance with ISO14001 and must—

- (a) be substantially in accordance with the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to working hours of 07:00–19:00 Mondays to Fridays and 07:30–13:00 on Saturday except for—
 - (i) night-time closures for bridge demolition and installation;
 - (ii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iii) junction tie-in works;
 - (iv) works required in relation to the east coast main line;
 - (v) overnight traffic management measures;
 - (vi) cases of emergency; and
 - (vii) as otherwise agreed by the local authority in advance;
- (d) include the following management plans—
 - (i) Communications Plan;
 - (ii) Construction Traffic Management Plan;
 - (iii) Landscape Management Plan;
 - (iv) Ecological Management Plan including the Invasive Non-Native Species Management Plan, Riparian Protection Management Plan;
 - (v) Soil Handling Strategy
 - (vi) Materials Management Plan;

- (vii) Site Waste Management Plan; Water Management Plan including the Temporary Surface Water Drainage Strategy; and
- (viii) Any other specific management plans identified during subsequent stages of the authorised development.

(3) The construction of the authorised development must be carried out in accordance with the approved CEMP or such amendments to that CEMP as may be approved in writing by the Secretary of State following consultation with the relevant planning authority, the environment agency and Historic England to the extent that it relates to matters relevant to its function.

(4) A HEMP must be developed and completed by the end of the construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(5) The HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development, and must contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

(6) The authorised development must be operated and maintained in accordance with the HEMP.

Landscaping

5.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until a landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function .

(2) The landscaping scheme must be substantially in accordance with the mitigation measures set out in the REAC and must be based on either:-

- (a) the illustrative environmental masterplan and landscape mitigation design annexed to the environmental statement; and
- (b) to the extent not consistent with sub-paragraph (a) —
 - (i) Subject to sub-paragraph (3), Option 1 as set out on page 27 of the Southern Green Options Report;
 - (ii) Subject to sub-paragraph (4), Option 2 as set out on page 29 of the Southern Green Options Report; or
 - (iii) Subject to sub-paragraph (4), Option 3 as set out on page 31 of the Southern Green Options Report.

(3) Nothing shall require the landscaping scheme to be based on Option 1 of the Southern Green Options Report unless the relevant planning authority has entered into an agreement providing for any cost associated with Option 1 above the cost of the illustrative environmental masterplan and landscape mitigation design annexed to the environmental statement to be paid or otherwise secured by the relevant planning authority.

(4) Nothing shall require the landscaping scheme to be based on Option 2 or Option 3 of the Southern Green Options Report unless the relevant planning authority has—

- (a) made provision for sufficient land for the installation and maintenance of replacement woodland planting to mitigate the effects of the implementation of Option 2 or Option 3; and

- (b) entered into an agreement providing for any cost above the cost of Option 2 or Option 3 above the cost of the illustrative masterplan and landscape design annexed to the environmental statement to be paid or otherwise secured by the relevant planning authority.
- (5) The landscaping scheme prepared under sub-paragraph (1) must include details of—
- (a) location, number, species mix, size and planting density of any proposed planting;
 - (b) cultivation, importing of materials and other operations to ensure plant establishment;
 - (c) existing trees to be retained, with measures for their protection during the construction period;
 - (d) proposed finished ground levels;
 - (e) implementation timetables for all landscaping works; and
 - (f) how the landscaping scheme addresses the guidance in paragraph 4.29 of the National Policy Statement for National Networks for the appearance of national network projects to demonstrate good aesthetics as far as possible.
- (6) All landscaping works must be carried out in accordance with the scheme referred to in sub-paragraph (1) to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.
- (7) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.
- (8) Planting will be undertaken at Longacre Wood to replace any trees that were intended to be retained which are felled or die as a result of construction works. The size, species and location of replacement trees will be included in the landscaping scheme required by sub-paragraph (1).

Contaminated land and groundwater

6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.

(3) A suitable capping layer, comprising either 400mm layer of ‘clean’ soil or a shallow thickness with a geotextile marker layer, will be constructed in any areas of soft landscape planting located over areas of made ground contaminated with asbestos. The details of any such capping layers shall be included within any remedial measures required in terms of sub-paragraph (2).

(4) Remediation must be carried out in accordance with the approved scheme.

Protected species

7.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to confirm whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph, the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation with Natural England, and under any necessary licences.

Surface and foul water drainage

8.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, in substantial accordance with the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.

(2) The written details required by sub-paragraph (1) shall include culvert design. Where possible, culverts will be designed to include natural beds (between 100mm and 200mm) to maintain and assist fish passage. To mitigate for potential downstream impacts and maintain passage along watercourses, baffles or similar structures shall be included within existing culverts.

(3) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Archaeological remains

9.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until for that part a final written scheme of investigation (FWSI) of areas of archaeological interest has been submitted to and approved in writing by the Secretary of State, in consultation with the relevant planning authority and Historic England on matters related to its function. The FWSI shall be substantially in accordance with the mitigation measures included in the REAC and the outline written scheme of investigation and shall include a programme of archaeological reporting, post excavation and publication including a timescale for such reporting and publication.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A copy of any analysis, reporting, publication or archiving required as part of the FWSI must be agreed with the relevant planning authority and in consultation with Historic England and deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in

writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority, and to Historic England in the case of the scheduled monument area, as soon as reasonably practicable from the date they are identified.

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

(6) If the relevant planning authority or, in the case of a scheduled monument, Historic England determines in writing that the archaeological remains referred to in sub-paragraph (4) require further investigation or mitigation, no construction operations are to take place within 10 metres of the remains until provision has been made for such mitigation or the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority or, in the case of a scheduled monument, Historic England.

Traffic management

10.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation with Sunderland City Council and the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the traffic management plan referred to in sub-paragraph (1).

(3) The formation of a construction compound or working compound may not commence until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent or temporary means of access between that compound and the public highway to be used by vehicular traffic during construction, and the means of reinstating any temporary means of access after construction (where reinstatement is to take place) has been submitted to and approved by the Secretary of State, in consultation with the local highway authority. The access to the construction and working compounds must be constructed in accordance with the approved details.

Amendments to approved details

11. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing.

Design of North Dene Footbridge

12.—(1) The North Dene Footbridge shall be replaced in terms of Work No.18 in its current location with a new footbridge which will have a single drawstring truss.

(2) The existing North Dene Footbridge shall not be demolished and no part of the replacement bridge to be constructed in terms of Work No. 18 may commence until the details of the demolition of the existing bridge, design of the replacement bridge (including how the design addresses the guidance in paragraph 4.29 of the National Policy Statement for National Networks for the appearance of national network projects to demonstrate good aesthetics as far as possible), together with details of the timings for the demolition and construction works have been submitted to and approved by the Secretary of State in consultation with the relevant planning authority.

(3) Work No. 18 shall be constructed in accordance with the details approved under sub-paragraph (2).

Fencing

13. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works except :-

- (a) where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development; or
- (b) where the fencing or enclosure is an acoustic barrier which is required by an entry in the REAC.

Allerdene bridge replacement

14. The undertaker is restricted to carrying out Work No.5a as one of the works specified in paragraph (i), (ii), (iii) or (iv) of Work No. 5a as follows:-

- (a) In the event that the Work No. 5a is to comprise a single span bridge structure in terms of paragraph (i) of Work No. 5a then it shall be carried out substantially in accordance with Sheet 3 of the structures engineering drawings and sections;
- (b) In the event that the Work No. 5a is to comprise a three span bridge structure in terms of paragraph (ii) of Work No. 5a then it shall be carried out substantially in accordance with Sheet 16 of the structures engineering drawings and sections;
- (c) In the event that the Work No. 5a is to comprise a six span bridge structure in terms of paragraph (iii) of Work No. 5a then it shall be carried out substantially in accordance with Sheet 4 of the structures engineering drawings and sections;
- (d) In the event that the Work No. 5a is to comprise a seven span bridge structure in terms of paragraph (iv) of Work No. 5a then it shall be carried out substantially in accordance with Sheet 5 of the structures engineering drawings and sections.

Primary Design Mitigation

15.—(1) The Scheme shall include the following primary mitigation measures:-

- (a) A retaining wall will be included to retain the access road located adjacent to junction 65 (Birtley) southbound exit slip to ensure access is maintained to properties which use Northside to the north east of the A1 serving the Bowes Incline hotel and Angel of the North fishing lakes;
- (b) The earthworks design for the highway widening at Longacre Wood shall use a 1:2 slope at Longacre wood so as to minimise land take at this location as illustrated on the General Arrangements Plans.

Advance site clearance works

16.—(1) No vegetation clearance shall take place until a construction management plan for vegetation clearance to be undertaken as part of the authorised works has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, the Environment Agency and Historic England to the extent that it relates to matters relevant to the function of the relevant consulted party.

(2) The construction management plan required by sub-paragraph (1) shall include measures to address items G4, A1, A2, L1, L3, B5, B6, B7, B8, B12, B13, B15, B18, B22, B24, B25, M6 and N5 of the REAC.insofar as they relate to vegetation clearance.

(3) The vegetation clearance comprised in the authorised works shall be carried out in accordance with the construction management plan approved in terms of sub-paragraph (1).

Details of construction compound

17.—(1) Subject to sub-paragraph (3), in the event that the undertaker proposes to undertake Work No. 5a as provided in paragraph (iii) or (iv) of Work No. 5a comprising a six span or seven span viaduct respectively then the undertaker may only exercise powers of temporary possession over plot 3/13a of the land plans where a plan based upon those in Appendix A to the CEMP showing the extent and layout of the construction compound to be established at Junction 67 within the land delineated by a broken blue line on the Northern Gas Networks Land Ownership Plan has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) In considering the details to be submitted in terms of sub-paragraph (1), the undertaker and the Secretary of State shall have regard to—

- (a) the construction requirements of the chosen engineering design for Work No. 5a; and
- (b) the need to minimise the temporary possession of land within plot 3/13a of the land plans so far as reasonably practical.

(3) In the event that the undertaker proposes to undertake Work No. 5a as provided in paragraph (iii) or (iv) of Work No.5a then the undertaker shall be restricted to exercising the power of temporary possession over plot 3/13a to that part of the land identified in the details approved in terms of sub-paragraph (1).

PART 2

Procedure for discharge of requirements

Applications made under requirements

18.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval requirement by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 19;
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification at the end of that period).

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

19.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 18 (applications made under requirements) and in this paragraph.

Register of requirements

20.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

21. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Articles 14,18

Classification of roads etc.

PART 1

Trunk roads

<i>(1)</i> <i>Road</i>	<i>(1)</i> <i>Road</i>
Junction 67 (Coal House) to Smithy Lane Overbridge for Southbound and Northbound carriageways	Between point 2/1 on Sheet 2 and point 3/16 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Junction 67 (Coal House) Southbound on slip	Between point 3/1 and point 3/6 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Junction 67 (Coal House) Northbound off slip	Between point 2/2 on Sheet 2 and point 3/5 on Sheet 3 of the Streets, Rights of Way and Access Plans.

PART 2

Other rights of way

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
Public Right of Way BI/16/1 leading to North Dene Footbridge (including crossing facilities over the A1 Southbound and Northbound carriageway)	To be substituted in part at its southern end where it meets the proposed North Dene Footbridge and continues over A1 Southbound and Northbound carriageway between point 6/4 and point 6/5 on Sheet 6 of the Streets, Rights of Way and Access Plans.

SCHEDULE 4

Article 16

Permanent stopping up of streets, public rights of way and private means of access

PART 1

Streets to be stopped up and for which a substitute is to be provided

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
The permanent stopping up and removal of the existing A1 carriageway and its embankments and associated structures. between junction 67 (Coal House) and Smithy Lane Overbridge.	From point 2/1 on Sheet 2 (measuring approximately 800m in length) and terminating at point 3/16 on Sheet 3 of the Streets, Rights of Way and Access Plans.	Highway to be removed and replaced by Work No 4a, 4b and 5a.

PART 2

Public rights of way to be stopped up and for which a substitute is to be provided

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
Permanent stopping up of existing footpath that crosses Public Right of Way LA/72a/16 (Longbank Bridleway) adjacent to southbound onslip at junction 66 (Eighton Lodge).	From point 5/3 on Sheet 5 and terminating at point 6/2 on Sheet 6 of the Streets, Rights of Way and Access Plans.	To be substituted by a new footpath that runs to the north of the existing footpath from point 5/3 on Sheet 5 and terminating at point 6/2 on Sheet 6 of the Streets, Rights of Way and Access Plans.

PART 3

Private means of access to be stopped up and for which a substitute is to be provided

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
Private means of access from Lamesley Road to land adjacent to south side of proposed Allerdene Bridge and East Coast Main Line.	From point 3/3 on Sheet 3 to point 3/7 on Sheet 3 of the Streets, Rights of Way and Access Plans.	To be substituted by new access road from Lamesley Road from point 3/4 to point 3/8 on Sheet 3 of the Streets, Rights of Way and Access Plans.

SCHEDULE 5

Article 15

Public rights of way to be temporarily stopped up and for which a substitute is to be provided

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted</i>
Temporary stopping up of Public Right of Way BI/16/1 leading to North Dene Footbridge (including crossing facilities over the A1 Northbound and Southbound carriageway).	Southern end of public right of way where it connects with existing footbridge at point 6/4 to point 6/5 on Sheet 6 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily whilst the Footbridge is being demolished by a diversion route from point 6/4 to point 6/1 on Sheet 6 of the Streets, Rights of Way and Access Plans. The replacement Footbridge will be provided in the same location as the existing structure shown between point 6/4 and point 6/5 on Sheet 6 of the Streets, Rights of Way and Access Plans. A new footpath will be provided from point 6/5 to point 6/3 on Sheet 6 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way LA/72a/16 (referred to as Longbank Bridleway).	To be temporarily stopped up between point 5/4 on Sheet 5 and point 6/1 on Sheet 6 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route that runs between point 6/1 on Sheet 6 and point 5/2 and point 5/5 on Sheet 5 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way GA/7/1 to provide construction works access with a controlled crossing point.	To be temporarily stopped up between point 3/10 and point 3/11 on Sheet 3 of the Streets, Rights of Way and Access Plans.	To include a controlled crossing point between point 3/10 and point 3/11 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way GA/6/1 to provide construction works access.	To be temporarily stopped up between point 3/12 and point 3/14 on Sheet 3 of the Streets, Rights of Way and Access Plans.	To include a controlled crossing point between point 3/12 and point 3/14 on Sheet 3 of the Streets, Rights of Way and Access Plans
Temporary stopping up of footpath that runs parallel to A167 Durham Road from Angel of the North to junction 66 (Eighton Lodge).	To be temporarily stopped up from point 4/1 on Sheet 4 to point 5/1 on Sheet 5 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route that runs to the north of the existing footpath from point 4/1 on Sheet 4 to point 5/1 on Sheet 5 of the Streets, Rights of Way and Access Plans.

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted</i>
Temporary stopping up of footpath that runs adjacent to the southbound off slip at junction 65 (Birtley).	To be temporarily stopped up from point 7/1 to point 7/2 on Sheet 7 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route that runs to the north of the existing footpath from point 7/1 to point 7/2 on Sheet 7 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way LA/40/10 leading to the B1296 Longbank..	To be temporarily stopped up between point 5/6 and 5/7 on Sheet 5 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route from point 5/6 and 5/7 on Sheet 5 of the Streets, Rights of Way and Access Plans.

SCHEDULE 6

Article 26

Land in respect of which only new rights etc. may be acquired

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 2		
2/2	Construction of retaining wall, new/relocation of existing ADS signs, upgrading of road lighting (including rights for access and maintenance).	Work Nos. 1a and 3a
Land Plans – Sheet 3		
3/1	Construction of retaining wall, new/relocation of existing ADS signs, upgrading of road lighting (including rights for access and maintenance).	Work Nos. 1a and 3a
3/3e	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct and maintain works to junction 67 (Coal House) northbound on slip road. Rights to construct and retain grouting works under land and maintenance	Work Nos. 1b and 3d
3/3f	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct and maintain works to junction 67 (Coal House) northbound on slip road. Rights to construct and retain grouting works under land.	Work Nos. 2 and 3d
3/3g	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure.	Work Nos. 2 and 3d
3/3h	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure	Work Nos. 2 and 3a

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	(including the airspace underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure.	
3/3i	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Rights to construct and retain grouting works under land	Work Nos. 2 and 3a
3/3z	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Grouting works under land.	Work Nos. 2, 3c and 3d
3/3dd	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 1b, 2, 3c and 3d
3/3ff	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 2 and 3c
3/3gg	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Rights to construct and retain grouting works under land.	Work Nos. 2 and 3b
3/3hh	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up	Work Nos. 2 and 3b

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/3ll	to 15m either side) and for grouting works on the land underneath the proposed new structure New right to construct, operate, access and maintain a private maintenance access road on land adjacent to Lamesley Road and extending to land adjacent to south side of the proposed Allerdene Bridge and the East Coast Main Line for the benefit of Network Rail, Highways England and Northern Gas Networks Ltd.	Work No. 11
3/3mm	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 3c, 13 and 14
3/3pp, 3/3qq, 3/3tt	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Rights to construct and retain grouting works under land	Work Nos. 1a and 3b
3/3ww	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for installation and retention of grouting works on the land underneath the proposed new structure.	Work No. 5a, 5b and 23
3/3yy	New right to demolish the existing Allerdene Bridge and construct, operate, access and maintain a replacement offline Allerdene Bridge structure.	Work No. 5a, 5b and 21
3/3aaa	Required for proposed Northumbrian Water pipeline diversion. Rights to construct and retain grouting works under land.	Work Nos. 4b, 5a, and 22
3/3hhh	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline.	Work No. 6a

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/3kkk	Required for access and to construct proposed highway and associated embankment. Rights to construct and retain grouting works under land.	Work Nos. 6a and 7a
3/3lll	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline. Rights to construct and retain grouting works under land.	Work Nos. 6a and 7a
3/3nnn	Required for access and to construct proposed highway and associated embankment. Required to alter existing drainage outlets. Rights to construct and retain grouting works under land.	Work Nos. 6a and 7a
3/4a, 3/4b	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure.	Work Nos. 1a, 1b and 2
3/4q	Required to access, maintain and alter existing drainage outlet and ditch and to access the main highway works. Rights to construct and retain grouting works under land.	Work No. 6b
3/6b	New right to construct, operate, access and maintain a private maintenance access road on land adjacent to Lamesley Road and extending to land adjacent to south side of the proposed Allerdene Bridge and the East Coast Main Line for the benefit of Network Rail, Highways England and Northern Gas Networks Ltd.	Work No. 11
3/6d	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 9, 13, 14 and 15

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/6f	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway. Rights to construct and retain grouting works under land.	Work Nos. 10, 14 and 15
3/6k	Required for construction compound. Rights to construct and retain grouting works under land.	N/A
3/6l	New right to access and maintain Allerdene culvert and drainage ditch.	Work No. 20
3/10d	New right to demolish the existing Allerdene Bridge and construct, operate, access and maintain a replacement offline Allerdene Bridge structure and for installation and retention of grouting works on the land.	Work No. 5a, 5b and 23
3/10g, 3/12d, 3/12f	New right to construct, operate, access and maintain a replacement offline Allerdene Bridge structure and for grouting works on the land underneath the proposed new structure.	Work No. 5a
3/10e, 3/10f, 3/12c, 3/12e	New right to operate, access and maintain a replacement offline Allerdene Bridge structure and for installation and retention of grouting works on the land.	Work No. 5a
3/10h	New right to construct, operate, access and maintain a replacement offline Allerdene Bridge structure, associated Overhead Line Equipment and for installation and retentions of grouting works on the land.	Work Nos. 4a, 4b, 5a, 5b and 23
3/12b	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for installation and retention of grouting works on the land.	Work Nos. 4a, 4b, 5a, 5b and 23

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
4/2d	New right to extend the Longbank Bridleway Underpass and operate, access and maintain the structure and associated equipment. Grouting works under land.	Work Nos. 6a and 19
4/3b	Required for utility diversions and associated works within junction 66 (Eighton Lodge) Roundabout. Rights to construct and retain grouting works under land.	Work No. 6a
4/3q, 4/4b	Required for the construction compound at junction 66 (Eighton Lodge) and associated access. Rights to construct and retain grouting works under land.	N/A
4/6b	Required to construct the extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure. Rights to construct and retain grouting works under land.	Work Nos. 6a and 19
4/7b, 4/7e	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Rights to construct and retain grouting works under land.	Work No. 18
4/7f	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline. Grouting works under land.	Work Nos. 6a and 19
4/9b, 4/10	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline.	Work No. 6b
4/12b, 4/13b, 4/13d	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Rights to construct and retain grouting works under land.	Work No.18
4/14b	Required to carry out the	Work No.18

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 5 5/3b, 5/4b, 5/4d	demolition and construction of the replacement North Dene Footbridge and rights to construct and retain grouting works under land.	Work Nos. 6a and 8a
5/5a	Required for access and construction of main highway works and junction 65 (Birtley) off slip. Rights to construct and retain grouting works under land.	Work No. 8a
5/6, 5/7, 5/8, 5/9, 5/11	Required to construct the proposed highway works and associated access. Rights to construct and retain grouting works under land.	Work No. 8a

Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land, subject to the modifications set out in this Schedule.

2.—(1) Without limiting paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2).

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

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable.”

3.—(1) Without limiting paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

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

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) to the A1 Birtley to Coal House Development Consent Order 201[] to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

Application of the 1965 Act

4.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed to be imposed; or
- (b) (the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(2) Without limiting sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the

(a) 1973 c. 26

imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

5. For section 7 (measure of compensation) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) (paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(d) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

10. For Schedule 2A of the 1965 Act substitute—

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.
 - (b) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c.23).
 - (c) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c.15).
 - (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 26 of the A1 Birtley to Coal House Development Consent Order 20 [] in respect of the land to which the notice to treat relates.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,

- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 8

Article 32

Land of which temporary possession may be taken

<i>(1)</i> Plot Reference Number shown on Land Plan	<i>(2)</i> Purpose for which rights over land may be acquired	<i>(3)</i> Relevant part of the authorised development
Land Plans - Sheet 3		
3/3b, 3/3d	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road.	Work Nos. 1b and 3d
3/3c	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road.	Work Nos. 1b, 2 and 3d
3/3e	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road. Grouting works under land.	Work Nos. 1b and 3d
3/3f	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road. Grouting works under land.	Work Nos. 2 and 3d
3/3i	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Grouting works under land.	Work Nos. 2 and 3a
3/3k, 3/3n	Required for works within and around junction 67 (Coal House) Roundabout including	Work Nos. 2, 3a and 3b

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	works to River Team.	
3/3p	Temporary working space for the widening, alteration and realignment of the existing highway and the widening of Kingsway Viaduct. The realignment of southbound off slip and northbound on slip (junction 67) with construction of new pavements, embankments, retaining walls, ground improvements.	Work Nos. 2, 3c and 3d
3/3q, 3/3r	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3a and 3b
3/3s	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team	Work Nos. 2, 3c and 3d
3/3v	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3a and 3b
3/3w, 3/3x, 3/3y	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3c and 3d
3/3z	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Grouting works under land	Work Nos. 2, 3c and 3d
3/3aa	Required for access to construct works to junction 67 (Coal House) southbound on slip road.	Work No. 3b
3/3bb	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 1b, 2, 3c and 3d
3/3cc	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works	Work Nos. 1b, 2, 3c and 3d

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/3dd	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 1b, 2, 3c and 3d
3/3ee	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land. Widening to Junction 67 Southbound on slip road.	Work Nos. 1a and 3b
3/3gg	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land.	Work Nos. 2 and 3b
3/3jj	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway.	Work Nos. 9, 10, 13 and 14
3/3mm	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 3c, 13 and 14
3/3oo	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land. Widening to junction 67 southbound on slip road.	Work Nos. 1a and 3b
3/3pp, 3/3qq, 3/3tt	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land.	Work Nos. 1a and 3b
3/3ss	Required for access to the works within junction 67 (Coal House) Roundabout.	Work Nos. 12 and 16
3/3uu, 3/10b, 3/10c, 3/11	Required to access and carry out the demolition of the	Work No. 5a, 5b and 23

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for grouting works on the land underneath the proposed new structure.	
3/3ww	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for grouting works on the land underneath the proposed new structure	Work No. 5a, 5b and 23
3/3xx	Required for the working compound and associated access.	N/A
3/3aaa	Required for proposed Northumbrian Water pipeline diversion. Grouting works under land.	Work Nos. 4b, 5a, and 22
3/3bbb	Required for proposed Northumbrian Water pipeline diversion.	Work No. 22
3/3ccc	Required to access, maintain and alter existing drainage outlet and ditch.	Work No. 6b
3/3eee	Required for the working compound and associated access. Demolition of Existing Allerdene Bridge.	Work No. 21
3/3fff	Temporary working space for the widening, alteration and realignment of the existing highway with construction of new pavements, embankments, retaining walls, ground improvements and directional gantry signs. Diversion of Northumbrian Water main under the A1 carriageway.	Work No. 6a and 22
3/3ggg	Required for the working compound and associated access. Northumbrian Water pipeline diversion.	Work No. 22
3/3jjj	Required to access, maintain and alter existing drainage outlets.	Work No. 6a
3/3kkk	Required for access and to construct proposed highway	Work Nos. 6a and 7a

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	and associated embankment. Grouting works under land.	
3/3nnn	Required for access and to construct proposed highway and associated embankment. Required to alter existing drainage outlets. Grouting works under land.	Work Nos. 6a and 7a
3/4e, 3/4f	Required for access and to construct proposed highway and associated embankment. Required to access, maintain and alter existing drainage outlet and ditch.	Work No. 6b
3/4h, 3/4r	Required to access, maintain and alter existing drainage outlet and ditch.	Work No. 6b
3/4j, 3/4k	Required for access and to construct proposed highway and associated embankment.	Work No. 6b
3/4q	Required to access, maintain and alter existing drainage outlet and ditch. Grouting works under land.	Work No. 6b
3/4t	Required for proposed Northumbrian Water pipeline diversion.	Work No. 22
3/5	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway.	Work Nos. 9, 10, 13, 14 and 15
3/6a	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway.	Work Nos. 9, 10, 13, 14 and 15
3/6c	Required for the construction compound for Allerdene Bridge and associated access.	N/A
3/6d	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 9, 13, 14 and 15
3/6f	Required for diversion of	Work Nos. 10, 14 and 15

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway. Grouting works under land.	
3/6g, 3/6h	Required for access to the works within junction 67 (Coal House) Roundabout.	Work Nos. 12 and 16
3/6i	Required for access to the works within junction 67 (Coal House) Roundabout.	Work Nos. 12, 15 and 16
3/6k	Required for construction compound. Grouting works under land.	N/A
3/6m, 3/7, 3/8, 3/9	Required for access to the works within junction 67 (Coal House) Roundabout.	Work No. 16,
3/10a	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment.	Work Nos. 5a, 5b and 23
3/10d	New right to demolish the existing Allerdene Bridge and construct, operate, access and maintain a replacement offline Allerdene Bridge structure and for grouting works on the land underneath the proposed new structure.	Work No. 5a, 5b and 23
3/10h	New right to construct, operate, access and maintain a replacement offline Allerdene Bridge structure, associated Overhead Line Equipment and for grouting works on the land underneath the proposed new structure.	Work Nos. 4a, 4b, 5a, 5b and 23
3/10i	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment.	Work Nos. 4a, 4b, 5a, 5b and 23
3/12b	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the	Work Nos. 4a, 4b, 5a, 5b and 23

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	replacement Allerdene Bridge and associated Overhead Line Equipment, and for grouting works on the land underneath the proposed new structure.	
3/13a	Required for the construction compound for Allerdene Bridge and associated access.	N/A
Land Plans – Sheet 4		
4/1m	Realignment of junction 66 southbound on slip road.	Work No. 7b
4/1p	Required for the construction compound at junction 66 (Eighton Lodge) and associated access.	N/A
4/2a, 4/2b	Required for the temporary stopping up of footpath that runs parallel to A167 Durham Road from Angel of the North to junction 66 (Eighton Lodge).	N/A
4/2d	New right to extend the Longbank Bridleway Underpass and operate, access and maintain the structure and associated equipment.	Work Nos. 6a and 19
4/2e	Required to construct the extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure.	Work Nos. 6a and 19
4/3a	Required for utility diversions and associated works within junction 66 (Eighton Lodge) Roundabout.	Work No. 6a
4/3b	Required for utility diversions and associated works within junction 66 (Eighton Lodge) Roundabout. Grouting works under land.	Work No. 6a
4/3i, 4/3j, 4/3m, 4/3n, 4/3p, 4/4a, 4/4c, 4/4d, 4/4e, 4/4f, 4/5	Required for the construction compound at junction 66 (Eighton Lodge) and associated access.	N/A
4/3q, 4/4b	Required for the construction compound at junction 66 (Eighton Lodge) and associated access. Grouting works under land.	N/A
4/6a	Required to construct the	Work Nos. 6a and 19

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure.	
4/6b	Required to construct the extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure. Grouting works under land.	Work Nos. 6a and 19
4/7b, 4/7e	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Grouting works under land.	Work No. 18
4/7c	Required to carry out the Longbank Underpass and for temporary diversion of pedestrians during closure of the Footbridge.	Work No. 19
4/8	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge.	Work No. 18
4/9a	Required to construct the proposed highway widening works and for construction access.	Work Nos. 6a and 6b
4/12a	Required for access, alteration and maintenance of existing discharge outlet pipelines.	Work No. 6b
4/12b, 4/13b, 4/13d	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Grouting works under land.	Work No.18
4/13e, 4/13f, 4/14c	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge.	Work No. 18
4/14b	Required to carry out the	Work No.18

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	demolition and construction of the replacement North Dene Footbridge and for grouting works under land.	
4/15, 5/1a, 5/1b	Required to construct the proposed highway works and for utility diversions	Work No. 6b
Land Plans – Sheet 5		
5/3b, 5/4b, 5/4d	Required for access and construction of main highway works and junction 65 (Birtley) off slip. Grouting works under land.	Work Nos. 6a and 8a
5/5a	Required to construct the proposed highway works and associated access. Grouting works under land.	Work No. 8a
5/5c, 5/5e, 5/10b	Required for access and construction of junction 65 (Birtley) northbound on-slip road works.	Work Nos. 6b and 8b
5/6, 5/7, 5/8, 5/9, 5/11	Required for construction of junction 65 (Birtley) southbound off slip road works and temporary footpath diversion. Grouting works under land.	Work No. 8a

SCHEDULE 9

Article 38

Trees subject to tree preservation order

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
TPO area No. 21 located adjacent to Banesley Lane (multiple species).	Potential removal of trees to the north of Banesley Lane to enable the Junction 67 (Coal House) northbound on slip road works.	Work No 3d

SCHEDULE 10

Article 39

Scheduled monuments

<i>(1)</i> <i>Type of monument</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Bowes Railway Scheduled Monument (1003723), a partly preserved standard gauge rope haulage railway with associated structures and apparatus. Included within the monument are the colliery and railway workshops which comprised the former Springwell Colliery.	The extension of the north side of the underpass requiring the extension of the corrugated metal structure and the demolition of stone retaining walls (up to a maximum of 17 metres in length) on either side of the former trackbed of the Bowes Railway. Works will include the excavation of two foundation trenches, each 15-17m in length, the insertion of piles at approximately every 1m within the trenches, construction of the tunnel, repairs to the scheduled monument equal to the length of the retaining walls to be removed, insertion of drainage, access on to the monument during construction from site compounds, access after construction for public right of way and bridleway access and the location and fixing of an interpretation board.	Work No. 19

Protective provisions

PART 1

For the protection of electricity, gas, water and sewage undertakers

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and

(a) 1989 c. 29.

(b) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995(c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(c) 1991 c.56.

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 24 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable

and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any

requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

For the protection of operators of electronic communications code networks

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(b) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

(a) 2003 c.21.

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003 (2003 c. 21).

(c) See section 106.

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 34 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker’s works) to the Telecommunication Act 1984.(a)

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

For the protection of railway interests

18. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 32, any other person on whom rights or obligations are conferred by that paragraph.

19. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 (licences) of the Railways Act 1993(b) ;

(a) 1984 c.12.

(b) 1993 c.46

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006(a)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“protective works” means any works specified by the engineer under paragraph 22;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for or connected with the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is, or is to be, situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and includes any authorised development carried out within parcels 3/10c, 3/10d, 3/10e, 3/10f, 3/10g, 3/10h, 3/10i, 3/12a, 3/12b, 3/12c, 3/12d, 3/12e and 3/12f.

20.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

21.—(1) The undertaker must not exercise the powers conferred by articles 20 (discharge of water), 22 (authority to survey and investigate land), 23 (compulsory acquisition of land), 26 (compulsory acquisition of rights and restrictive covenants), 27 (private rights over land), 30 (acquisition of subsoil or air-space only), 31 (rights under or over streets), 32 (temporary use of land for carrying out the authorised development), 33 (temporary use of land for maintaining the authorised development), 34 (statutory undertakers), 37 (felling or lopping of trees and removal of hedgerows) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or by section 203 (power to override easements and rights) of the Housing and Planning Act 2016(b) in respect of any railway property and leasehold interests forming part of parcels 3/10c, 3/10d, 3/10e, 3/10f, 3/10g, 3/10i, 3/12a, 3/12b, 3/12c, 3/12d, 3/12e and 3/12f unless the exercise of such powers is with the consent of Network Rail.

(a) 2006 c.46

(b) 2016 c.22

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, or article 34 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use, or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

22.—(1) The undertaker must, before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 46 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

23.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 22(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 22;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

- (c) in such manner as to cause as little damage as is possible to railway property; and (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents, or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or the undertaker's employees, contractors or agents.

24. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or protective work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or protective work or the method of constructing it.

25. Network Rail must at all reasonable times afford reasonable facilities to the undertaker and the undertaker's agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as the undertaker may reasonably require with regard to such works or the method of constructing them.

26.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any such approval of a specified work or protective work under paragraph 22(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to Network Rail under this paragraph.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 27(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

27. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 22(3) or in constructing any protective works under the provisions of paragraph 22(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

28.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus;

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 22(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 22(1) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution may be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 22(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised

development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under subparagraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 23.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 32(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 27(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to a single arbitrator to be agreed between the parties is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology to be agreed.

29. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as to not adversely affect railway property.

30. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless the undertaker has first consulted Network Rail and the undertaker must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

31. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

32.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in the undertaker's employ or of the undertaker's contractors or others whilst engaged upon a specified work or a protective work, and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this subparagraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub-paragraph (5).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

33. Network Rail must, on receipt of a request from the undertaker, at a frequency to be agreed between the undertaker and Network Rail, provide the undertaker free of charge with written estimates of the costs, charges, expenses, future cost forecasts and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 32) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

34. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

35. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property;
- (c) and any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

36. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

37. The undertaker must give written notice to Network Rail where any application is required and is proposed to be made for the Secretary of State's consent under article 9 (consent to transfer benefit of the Order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the decision-maker to whom the application is to be made.

38. The undertaker must no later than 28 days from the date that the documents referred to in article 44(1) (certification of plans, etc.) are submitted to and certified by the Secretary of State in accordance with article 44, provide a set of those documents to Network Rail a format to be agreed between the undertaker and Network Rail's engineers.

PART 4

For the protection of Northumbrian Water Limited

39.—(1) For the protection of Northumbrian Water Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northumbrian Water Limited.

40. In this part of this schedule:-

“alternative apparatus” means any temporary or permanent alternative apparatus adequate to enable Northumbrian Water to fulfil its statutory function in a manner no less efficient than previously;

“apparatus” means the following items within the Order limits (except where paragraph 47(7) applies)-

- (a) in the case of Northumbrian Water's water undertaking –
 - (i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or accessories (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by Northumbrian Water for the purposes of water supply; and
 - (ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and
- (b) in the case of Northumbrian Water's sewerage undertaking –
 - (i) any sewer, drain or disposal works vested in Northumbrian Water under the Water Industry Act 1991;
 - (ii) any sewer, drain or disposal works which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such

sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“emergency” means a situation which-

- (a) is unexpected, in that there is little or no prior warning, or aspects of the event could not have reasonably been predicted in advance;
- (b) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“Northumbrian Water” means Northumbrian Water Limited, a company incorporated and registered in England and Wales with registered company number 2366703 whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham DH1 5FJ;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

On street apparatus

41.—(1) This part of this schedule does not apply to apparatus in respect of which the relations between the undertaker and Northumbrian Water are regulated by the provision of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

42.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), if Northumbrian Water has any apparatus in the street, Northumbrian Water is entitled to the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Northumbrian Water legal easements reasonably satisfactory to Northumbrian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Northumbrian Water to require the removal of that apparatus under paragraph 44 or the power of the undertaker to carry out works under paragraph 46.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), Northumbrian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

43.—(1) The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

44.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

45.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northumbrian Water’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this schedule, and any right of Northumbrian Water to

maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Northumbrian Water in accordance with sub-paragraphs 45.2 to 45.8.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northumbrian Water 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northumbrian Water reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph 45.3, afford to Northumbrian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for access to and the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker, after using all reasonable endeavours is unable to afford such facilities and rights as are mentioned in sub-paragraph 45.2 in the land in which the alternative apparatus or part of such apparatus is to be constructed Northumbrian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this schedule must be constructed in such manner and in such line or situation as may be agreed between Northumbrian Water and the undertaker both acting reasonably with a view to securing the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by both parties of their service obligations, which in the case of Northumbrian Water shall be to a standard no less than that achieved prior to the removal of the apparatus which the alternative apparatus replaces, or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Northumbrian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to Northumbrian Water of any such facilities and rights as are referred to in sub-paragraphs 45.2 or 45.3, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this schedule.

(6) Regardless of anything in sub-paragraph 45.5, if the undertaker gives notice in writing to Northumbrian Water that the undertaker intends to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by Northumbrian Water, may, subject to the written consent of Northumbrian Water, which shall not be unreasonably withheld, and in accordance with Northumbrian Water's requirements and specifications, be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northumbrian Water.

(7) Nothing in sub-paragraph 45.6 authorises the undertaker to execute the placing, installation bedding, packing, removal, connection or disconnection of any apparatus, or execute the filling around the apparatus (where apparatus is laid in a trench) within 300 millimetres of apparatus.

(8) When alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use all reasonable endeavours to comply with Northumbrian Water's reasonable requests for a reasonable period of time to enable Northumbrian Water to:

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

46.—(1) Where, in accordance with the provisions of this part of this schedule, the undertaker affords to Northumbrian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such reasonable terms and conditions as may be agreed between the undertaker and Northumbrian Water or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must:

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted and have regard to Northumbrian Water's statutory obligations.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northumbrian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northumbrian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(4) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2016 or other legislation.

Retained apparatus

47.—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 45.2, the undertaker must submit to Northumbrian Water a plan, section and description of the works to be executed, together with an assessment of the impact of the works and proposed measures for the protection of Northumbrian Water's apparatus.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph 47.1 and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 47.3 by Northumbrian Water for the alteration or otherwise for the protection of the apparatus and of its operation, or for securing access to it, and Northumbrian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northumbrian Water under sub-paragraph 47.2 must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph 47.1 is submitted to it.

(4) If Northumbrian Water in accordance with sub-paragraph 47.3 and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 39 to 41 and 44 to 46 apply as if the removal of the apparatus had been required by the undertaker under paragraph 45.2.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph 47.1 in a case of emergency but in that case must give, to Northumbrian Water, notice as soon as is reasonably practicable and a

plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph 47.2 in so far as is reasonably practicable in the circumstances.

(7) For the purposes of sub-paragraph 47.1, works are deemed to be in land near Northumbrian Water's apparatus (where it is a relevant pipe, as defined in Section 158(7) of the Water Industry Act 1991) if those works fall within the following distances measured from the edge of such apparatus:

- (a) where it is a water main
 - (i) 3 metres where the diameter of the water main is up to and including 300 millimetres;
 - (ii) 4.5 metres where the diameter of the water main is greater than 300 millimetres, up to and including 600 millimetres;
 - (iii) 6 metres where the diameter of the water main is greater than 600 millimetres; and
- (b) Where it is a sewer, 6.5 metres.

Expenses and costs

48.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northumbrian Water all costs, charges and expenses which Northumbrian Water may reasonably incur or have to pay or which it may sustain in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 45.2, including any costs reasonably incurred in connection with the acquisition of rights under paragraph 45.3 and in watching and inspecting the execution of works under paragraph 47.2 and in making reasonable requirements under paragraph 47.3.

(2) The value of any apparatus removed under the provisions of this part of this schedule is to be deducted from any sum payable under sub-paragraph 48.1, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this schedule:

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated except where the placing of apparatus at a different depth is required solely to achieve an equivalent capability and function to the existing apparatus,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northumbrian Water in question by virtue of sub-paragraph 48.1 is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph 48.3:

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;
- (b) the provision of additional manholes, valves or wash-out pipes, where required to comply with design standards, must not be treated as a placing of apparatus of better type, of greater capacity or of greater dimensions than those of the existing apparatus; and
- (c) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northumbrian Water in respect of works by virtue of sub-paragraph 48.1, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Northumbrian Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(6) Subject to sub-paragraphs 48.7 and 48.8, if by reason or in consequence of the construction, maintenance or failure of any of the authorised development by or on behalf of the undertaker or any such works referred to in paragraphs 43, 45.2 or 47.1, or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northumbrian Water, or there is any interruption in any service provided or of any access to any apparatus, or in the supply of any goods or services, by Northumbrian Water or the performance of Northumbrian Water's functions, or any disruption to the normal operation of Northumbrian Water's apparatus resulting in an increase in the costs incurred by Northumbrian Water in performing its functions or in any loss, damages or penalty or fines, or Northumbrian Water becoming liable to pay any amount to any third party, the undertaker must:

- (a) bear and pay on demand the cost reasonably incurred by Northumbrian Water in making good such damage or restoring the supply or service;
- (b) make reasonable compensation for any loss sustained by Northumbrian Water; and
- (c) indemnify Northumbrian Water against claims, demands, proceedings, damages, penalty or costs incurred by or recovered from Northumbrian Water,

by reason or in consequence of any such damage or interruption or disruption or Northumbrian Water becoming liable to any third party as aforesaid.

(7) The fact that any act or thing may have been done by Northumbrian Water on behalf of the undertaker or in accordance with a plan approved by Northumbrian Water or in accordance with any requirement of Northumbrian Water or under its supervision does not, subject to sub-paragraph 47.8, excuse the undertaker from liability under the provisions of sub-paragraph 47.6.

(8) Nothing in sub-paragraph 47.6 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northumbrian Water, its officers, servants, contractors or agents.

(9) Northumbrian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(10) Any difference arising between the undertaker and Northumbrian Water under this part of this schedule must be referred to and settled by arbitration under article 42 (arbitration).

Access

49.—(1) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus or land owned by Northumbrian Water and used by it for the purpose of its statutory functions is materially obstructed, the undertaker must provide such alternative means of access to that apparatus or land as will enable Northumbrian Water to maintain or use the apparatus or use the land for the purpose of its statutory functions no less effectively than was possible before the obstruction.

Co-operation

50.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northumbrian Water requires the removal of apparatus under paragraph 45.2 or Northumbrian Water makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation

of Northumbrian Water's undertaking and Northumbrian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus which may belong to or be maintainable by Northumbrian Water but which does not appear on any statutory map kept for the purpose by Northumbrian Water, it shall inform Northumbrian Water of the existence and location of the apparatus as soon as reasonably practicable.

(3) Nothing in this part of this schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northumbrian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

SCHEDULE 12

Article 45

Documents to be certified

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Plans, Drawings and Sections		
Location Plan – Regulation 5(2)(o)	TR010031/APP/2.1	Revision 2 – Examination Deadline 4 Update
Land Plans – Regulation 5(4) and 5(2)(i)	TR010031/APP/2.2	Revision 3 – Examination Deadline 4 Update
Works Plans – Regulation 5(4) and 5(2)(j)	TR010031/APP/2.3	Revision 3 – Examination Deadline 4 Update
Streets, Rights of Way and Access Plans – Regulation 5(4) and 5(2)(k)	TR010031/APP/2.4	Revision 2 - Examination Deadline 4 update
Engineering Drawings and Sections – Regulations 5(4), 5(2)(o) and 6(2)	TR010031/APP/2.5	Revision 2 – Examination Deadline 4 Update
General Arrangement Drawings – Regulation 5(4) and 5(2)(o)	TR010031/APP/2.6	Revision 2 – Examination Deadline 4 Update
Structures Engineering Drawings and Sections - Regulation 5(4) and 5(2)(o)	TR010031/APP/2.7	Revision 2a – Examination Deadline 4 Update
Special Category Land Plans – Regulation 5(4) and 5(2)(i)	TR010031/APP/2.8	Revision 3 – Examination Deadline 4 Update
Northern Gas Networks Land Ownership Plan	EXA/D9/010	Revision 0 – Examination Deadline 9 Issue
Southern Green Options Report	EXA/D10/011	Revision 0 – Deadline 9 Issue
Compulsory Acquisition Information		
Book of Reference	TR010031/APP/4.3	Revision 4 - Deadline 11 Update
Reports and Statements		
Statement of Statutory Nuisance	TR010031/APP/5.2	Revision 0 – Application Issue
Environmental Impact Assessment (EIA) Information		
Environmental Statement – Volume 1: Chapters	TR010031/APP/6.1	Revision 0 – Application Issue
Environmental Statement – Volume 2: The Figures	TR010031/APP/6.2	Revision 0 – Application Issue
Environmental Masterplan – Regulation 5(2)(a) - Figure 2.4	TR010031/APP/6.2	Revision 0 – Application Issue
Environmental Statement – Volume 3: Appendices	TR010031/APP/6.3	Revision 0 – Application Issue
Scoping Opinion and Scoping Opinion Response Table – Appendix 4.1 of the ES	TR010031/APP/6.3	Revision 0 – Application Issue

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Flood Risk Assessment – Appendix 13.1	TR010031/APP/6.3	Revision 0 – Application Issue
Habitat Regulation Assessment – Appendix 8.2	TR010031/APP/6.3	Revision 0 – Application Issue
Environmental Statement – Volume 4: Non-Technical Summary	TR010031/APP/6.4	Revision 0 – Application Issue
Plan and Assessment of Nature Conservation – Figures 8.1, 8.2, 13.8; Chapter 7, 8 and 13 of the ES; Appendix 13.2 of the ES.	TR010031/APP/6.2; TR010031/APP/6.1; and TR010031/APP/6.3	Revision 0 – Application Issue
Plan and Assessment of Historic Environmental Effects -Figures 6.1 and 6.2; and Chapter 6 of the ES	TR010031/APP/6.2 and TR010031/APP/6.1	Revision 0 – Application Issue
Environmental Statement Addendum (including updates to Figure 8.1)	TR010031/APP/6.1	Revision 0 – Section 51 Issue
Environmental Statement Addendum 1 to Volume 1 of the Environmental Statement	TR010031/TBC	Revision 1 – Issue for Preliminary Meeting
Environmental Statement Addendum – Additional Land	EXA/D4/009	Revision 0 – Examination Deadline 4 Issue
Environmental Statement Addendum – Additional Land – Appendix C: Update to Preliminary Ecological Appraisal: Updated to incorporate Preliminary Bat Roost Assessment	EXA/D6/004	Revision 0 – Examination Deadline 6 Issue
Environmental Statement Addendum (Non-Technical Summary) – Additional Land	EXA/D4/010	Revision 1 – Examination Deadline 5 Issue
Environmental Statement Addendum – 3 span viaduct	EXA/D4/011	Revision 0 – Examination Deadline 4 Issue
Environmental Statement Addendum (Non-Technical Summary) – 3 span viaduct	EXA/D4/012	Revision 0 – Examination Deadline 4 Issue
Other Documents		
Outline Construction Environmental Management Plan (CEMP)	TR010031/APP/7.4	Revision 6 – Examination Deadline 11 Update

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to alter the A1 between land north of junction 67 (Coal House) and junction 65 (Birtley) near Gateshead in Tyne and Wear and carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, the book of reference, the environmental statement and the outline CEMP mentioned in this Order and certified in accordance with article 45 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, Lateral, 8 City Walk, Leeds, West Yorkshire, LS11 9AT.

2021 No. 000

INFRASTRUCTURE PLANNING

The A1 Birtley to Coal House Development Consent Order 2021

Made - - - - *19th January 2021*

Coming into force - - *9th February 2021*

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- SCHEDULE 12 — DOCUMENTS TO BE CERTIFIED

An application has been made to the Secretary of State under sections 37 of the Planning Act 2008^(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(b) for an Order granting development consent.

The application was initially examined by a single appointed person and subsequently by a Panel of two members (“the Panel”) (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010^(c).

The Panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 74 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
 (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378, and S.I. 2019/734.
 (c) S.I. 2010/103, amended by S.I. 2012/635.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115(a), 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5(b) to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the A1 Birtley to Coal House Development Consent Order 2021 and comes into force on 9th February 2021.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(c);

“the 1965 Act” means the Compulsory Purchase Act 1965(d);

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

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

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

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

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

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

“address” includes any number or address for the purposes of electronic transmission;

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

“authorised development” means the development described in Schedule 1 (authorised development) or any part of it and any other development authorised by this Order or part of it, which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document of that description certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act;

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

“carriageway” has the same meaning as in the 1980 Act;

(a) Section 115 was amended by section 160 of the Housing and Planning Act 2016 (c. 22).

(b) Schedule 5 was amended by paragraph 71 of Schedule 13 of the Localism Act and sections 112(1) and 321 of, and paragraph 4 of Schedule 8 and Part 2 of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23).

(c) 1961 c. 33.

(d) 1965 c. 56.

(e) 1980 c. 66.

(f) 1981 c. 66.

(g) 1984 c. 27.

(h) 1990 c. 8.

(i) 1991 c. 22.

(j) 2008 c. 29.

“CEMP” means the construction environmental management plan to be prepared and approved pursuant to requirement 4 (construction and handover environmental management plans) of Schedule 2 (requirements);

“commence” means beginning to carry out any material operation (as defined in section 56(4)(a) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly;

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

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form,

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003(c);

“engineering drawings and sections” means the documents of that description certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“environmental statement” means the document of that description submitted with the application for this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footway” and “footpath” have the same meaning as in the 1980 Act and include part of a footway or footpath;

“general arrangement drawings” means the documents of that description certified as the general arrangement drawings by the Secretary of State for the purposes of this Order;

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

“land plans” means the documents of that description certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“maintain” in relation to the authorised development includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, improve, remove, reconstruct, refurbish or replace and any derivative of “maintain” is to be construed accordingly;

“Northern Gas Networks Land Ownership Plan” means the document of that description certified as the Northern Gas Networks Land Ownership Plan by the Secretary of State for the purposes of this Order;

“Northern Gas Networks Limited” means the company registered in England and Wales, company number 05167070, whose registered address is 1100 Century Way, Thorpe Park Business Park, Colton, Leeds LS15 8TU;

“Northumbrian Water Limited” means the company registered in England and Wales, company number 02366703, whose registered office address is Northumbria House, Abbey Road, Pity Me, Durham DH1 5FJ;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

(a) Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34).

(b) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(c) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

“Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“outline CEMP” means the document of that description submitted with the application for this Order and certified as the outline CEMP by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates;

“Southern Green Options Report” means the document entitled “options Appraisal for Managing and Enhancing the Angel” prepared by Southern Green and certified as Southern Green Options Report by the Secretary of State for the purposes of this Order;

“special category land plans” means the documents of that description certified by the Secretary of State for the purposes of this Order,

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land), of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“streets, rights of way and access plans” means the documents of that description certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order;

“structures engineering drawings and sections” means the documents of that description certified as the structures engineering drawings and sections by the Secretary of State for the purposes of this Order;

“traffic authority” has the same meaning as in section 121A(b) (traffic authorities) of the 1984 Act;

“trunk road” means a highway which is a trunk road by virtue of—

- (c) section 10(c) (general provision as to trunk roads) or 19(1)(d) (certain special roads and other highways to become trunk roads) of the 1980 Act;
- (d) an order or direction under section 10 of that Act; or
- (e) an order granting development consent; or
- (f) any other enactment;

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

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works plans” means the documents of that description certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this

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

(b) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 of Schedule 8, to the 1991 Act, and amended by section 1(6) of, and paragraph 95(2) and (3) of Schedule 1 to, the Infrastructure Act 2015 (c. 7 and S.I. 2001/1400).

(c) Section 10 was amended by section 22(2) of the 1991 Act, paragraph 22 of Schedule 2 to the Planning Act 2008, and by section 1(6) of, and paragraph 10 of Schedule 1 to, the Infrastructure Act 2015.

(d) Section 19(1) was amended by section 1(6) of, and paragraph 15 of Schedule 1 to, the Infrastructure Act 2015.

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

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the streets, rights of way and access plans.

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

(7) The provisions of the Neighbourhood Planning Act 2017(a), insofar as they relate to temporary possession of land under articles 32 (temporary use of land for carrying out the authorised development) and 33 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 33(11), any maintenance of any part of the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out and operated within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Maintenance of drainage works

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72(b) (interpretation) of the Land Drainage Act 1991.

(a) 2017 c. 20.

(b) 1991 c. 59. The definition of “drainage” was substituted by section 100(2) of the Environment Act 1995 (c. 25).

Planning permission

6. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the authorised development,

the carrying out of such development, under the terms of the planning permission does not breach the terms of this Order.

Limits of deviation

7. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 1 metres upwards or 1 metres downwards,

except that these maximum limits of lateral and vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Benefit of the Order

8.—(1) Subject to paragraph (2) and article 9 (consent to transfer benefit of the Order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of the Order

9.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), includes references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) Northumbrian Water Limited for the purposes of undertaking Work No. 22; and

- (b) Northern Gas Networks Limited for the purposes of undertaking Work Nos. 9, 10, 12, 13, 14, 15 and 16.

PART 3 STREETS

Application of the 1991 Act

10.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of Part 3 the 1991 Act do not apply in relation to any works executed under the powers of this Order—

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

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 15 (temporary stopping up and

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- (a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the 1991 Act.
 - (b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the 1991 Act.
 - (c) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
 - (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
 - (e) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004.
 - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
 - (g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
 - (h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
 - (i) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 - (j) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
 - (k) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.

restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

- (5) The provisions of the 1991 Act(a) referred to in paragraph (4) are—
- section 54(b) (advance notice of certain works), subject to paragraph (6);
 - section 55(c) (notice of starting date of works), subject to paragraph (6);
 - section 57(d) (notice of emergency works);
 - section 59(e) (general duty of street authority to co-ordinate works);
 - section 60 (general duty of undertakers to co-operate);
 - section 68 (facilities to be afforded to street authority);
 - section 69 (works likely to affect other apparatus in the street);
 - section 75 (inspection fees);
 - section 76 (liability for cost of temporary traffic regulation); and
 - section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

- (7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets)—
- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
 - (b) means that the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
 - (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

Power to alter layout etc. of streets

11.—(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1)—

- (a) are exercisable on the giving of not less than 42 days' notice to the street authority; and

(a) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.

(b) Section 54 was amended by section 49(1) of the Traffic Management Act 2004 (c. 18).

(c) Section 55 was amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(d) Section 57 was amended by section 52(3) of the Traffic Management Act 2004.

(e) section 59 was amended by section 42 of the Traffic Management Act 2004.

(b) are not to be exercised without the consent of the street authority where that authority is a public authority.

(4) If a street authority which received an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of 6 weeks beginning with the date on which the application is made, it is deemed to have gained consent.

(5) Paragraphs (2), (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are to be carried out.

Street works

12.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel up or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new, altered or diverted streets

13.—(1) Any street (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed in writing with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority in whose area the street lies and, unless otherwise agreed in writing with the local street authority, be maintained by and at the expense of the local street authority from its completion.

(3) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;

- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Classification of roads etc.

14.—(1) On the date on which the roads described in Part 1 (trunk roads) of Schedule 3 (classification of roads etc.) are complete and open for traffic, they will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) On the date that the public rights of way described in Part 2 (other public rights of way) of Schedule 3 are completed and open to for use they will be of the types described in column (1) to the extent described in column (2).

(3) The application of paragraphs (1) to (2) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Temporary stopping up and restriction of use of streets

15.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article and which is within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in column (1) of Schedule 5 (public rights of way to be temporarily stopped up and for which a substitute is to be provided) to the extent specified in column (2) of that Schedule.

(5) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Permanent stopping up and restriction of use of streets, public rights of way and private means of access

16.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets, public rights of way and private means of access specified in column (1) of Parts 1, 2, and 3 of Schedule 4 (permanent stopping up of streets, public rights of way and private means of access) to the extent specified and described in column (2) of that Schedule.

(2) No street, public right of way or private means of access specified in column (1) of Parts 1, 2 and 3 of Schedule 4 is to be wholly or partly stopped up under this article unless—

- (a) the new street, public right of way or private means of access to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street, public right of way or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street, public right of way or private means of access until the completion and opening of the new street, public right of way or private means of access in accordance with subparagraph (a).

(3) Where a street, public right of way or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street, public right of way or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street, public right of way or private means of access as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 35 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

17. The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Modification of Road Traffic Regulation Orders

18.—(1) On the date on which the roads described in Part 1 of Schedule 3 (classification of roads etc.) are open for traffic—

- (a) article 2 of the A1 Trunk Road (Birtley Interchange to Scottish Border) (24-Hour Clearway) Order 2004(a) is amended so that the definition of “the trunk road” includes the length of the A1 Trunk Road as realigned by this Order in terms of Work Nos. 1a, 1b, 6a and 6b;
- (b) article 2 of the A1 Trunk Road (Gateshead/Newcastle Western Bypass) (Width Restriction) Order 2016(b) is amended as follows—

(a) S.I. 2004/197.

(b) S.I. 2016/1013.

- (i) the definition of “the A1” includes the length of the A1 Trunk Road as realigned by this Order comprised in Work Nos. 1a, 1b, 6a and 6b;
 - (ii) the definition of “the northbound carriageway” includes the A1 northbound carriageway as realigned by this Order comprised in Work Nos. 1b and 6b; and
 - (iii) the definition of “the southbound carriageway” includes the A1 southbound carriageway as realigned by this Order comprised in Work Nos. 1a and 6a;
- (c) article 2 of the A1 Trunk Road (Birtley to North Brunton) (Prohibition of Slow Moving Vehicles) Order 2001(a) is amended as follows—
- (i) the definition of “the trunk road” includes the length of the A1 Trunk Road as realigned by this Order comprised in Work Nos. 1a, 1b, 6a and 6b;
 - (ii) the definition of “the northbound carriageway” includes the A1 northbound carriageway as realigned by this Order comprised in Work Nos. 1b and 6b; and
 - (iii) the definition of “the southbound carriageway” includes the A1 southbound carriageway as realigned by this Order comprised in Work Nos. 1a and 6a; and
- (d) the Schedule to the A1 Trunk Road (Gateshead/Newcastle Western Bypass) (Birtley Interchange to Blaydon Viaduct) (50 Miles Per Hour Speed Restriction) Order 2010(b) is amended as follows—
- (i) paragraph (i) includes the A1 northbound carriageway as realigned by this Order in terms of Work Nos. 1b and 6b; and
 - (ii) paragraph (xiii) includes the A1 southbound carriageway as realigned by this Order in terms of Work Nos. 1a and 6a.

(2) Paragraph (1) has effect so as to give effect to the orders named in that paragraph as if the same had been imposed upon the works listed in that provision by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(3) On the date on which the roads described in Part 1 of Schedule 3 (classification of roads etc.) are open for traffic, they cease to be restricted roads for the purpose of section 81 (general speed limit for restricted roads) of the 1984 Act.

(4) Paragraph (3) has effect as if made by direction under section 82(c) (what roads are restricted roads) of the 1984 Act.

Traffic regulation

19.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(a) S.I. 2001/2230.

(b) S.I. 2010/2820 as amended by S.I. 2016/1015.

(c) Section 82 was amended by section 168(1) of, and paragraph 59 of Schedule 8 to, the 1991 Act.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (4) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32(a) (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.

(8) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

(a) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c. 18.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

20.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

Protective work to buildings

21.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8), 43(2) and 56(7) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and section 32 of, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154.

(c) 1991 c. 57.

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 46 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and

(a) Section 152 was amended by S.I. 2009/1307.

- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation to the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

- (a) in land located within a highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

PART 5

POWERS OF ACQUISITION AND POSSESSION

Compulsory acquisition of land

23.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (2) of article 26 (compulsory acquisition of rights and restrictive covenants) and paragraph (8) of article 32 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

24. Part 2 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) is incorporated in this Order subject to the modifications, that—

- (a) for “the acquiring authority” substitute “the undertaker”; and
- (b) for the “undertaking” substitute “authorised development”.

Time limit for exercise of authority to acquire land compulsorily

25.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 28 (modification of Part 1 of the 1965 Act) of this Order; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 29 (application of the 1981 Act).

(2) The authority conferred by article 32 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and restrictive covenants

26.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 6 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 6.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Private rights over land

27.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(a) 1981 c. 67.

- (b) on the date of entry on the land by the undertaker under section 11(1)(a) (powers of entry) of the 1965 Act,

whichever is the earlier.

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

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 34 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights over or the imposition of the restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

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

Modification of Part 1 of the 1965 Act

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

- (2) In section 4A(1)(b) (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A1 Birtley to Coal House Development Consent Order 2021”.
- (3) In section 11A(c) (powers of entry: further notices of entry)—
- (a) in subsection (1)(a), after “land” insert “under that provision”;
 - (b) in subsection (2), after “land” insert “under that provision”.
- (4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 25 (time limit for exercise of authority to acquire land compulsorily) of the A1 Birtley to Coal House Development Consent Order 2021”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 21 (protective work to buildings), 32 (temporary use of land for carrying out the authorised development) or 33 (temporary use of land for maintaining the authorised development) of the A1 Birtley to Coal House Development Consent Order 2021.”.

Application of the 1981 Act

- 29.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection 2 substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) Omit section 5(d) (earliest date for execution of declaration).
- (5) Omit section 5A(e) (time limit for general vesting declaration).
- (6) In section 5B(1)(f) (extension of time limit during challenge)—

-
- (a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c.22).
 - (b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.
 - (c) Section 11A was inserted by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).
 - (d) Section 5 was amended by paragraphs 4 and 6 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).
 - (e) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.
 - (f) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A1 Birtley to Coal House Development Consent Order 2021”.
- (7) In section 6(a) (notices after execution of declaration) for subsection (1)(b) substitute—
- “(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008.”.
- (8) In section 7(b) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(c) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 28 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 28 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(d) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Rights under or over streets

31.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(a) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.

(b) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016.

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

(d) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

32.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 25(2) (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land as are mentioned in Schedule 1 (authorised development), or any mitigation works in connection with the authorised development.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 8, or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 30 (acquisition of subsoil or airspace only).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act.

(12) The undertaker shall be prohibited from exercising the power of temporary possession over that part of plot 3/6c shown delineated and hatched purple on the Northern Gas Networks Land Ownership Plan.

Temporary use of land for maintaining the authorised development

33.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

34.—(1) Subject to the provisions of Schedule 11 (protective provisions), article 26 (compulsory acquisition of rights and restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, or remove or reposition apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 of the 1991 Act; and
- (b) article 35 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

35.—(1) Where a street is stopped up under article 16 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 16 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

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

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(a).

Recovery of costs of new connections

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 35 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

- “public communications provider” has the same meaning as in section 151(1); and
- “public utility undertaker” means a gas, water, electricity or sewerage undertaker.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

37.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), and with the consent of local authority in whose area the hedgerow is located, remove any hedgerow within the Order limits that is required to be removed.

(5) The grant of consent by a local authority under paragraph (4) must not be unreasonably withheld.

(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

(6) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4) the local authority is deemed to have granted consent.

(7) In this article “hedgerow” includes a hedgerow to which the Hedgerow Regulations 1997(a) apply and includes important hedgerows.

Trees subject to tree preservation orders

38.—(1) The undertaker may fell or lop any tree described in Schedule 9 (trees subject to tree preservation order), cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1)(b) (replacement of trees) of the 1990 Act does not apply.

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

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

Scheduled Monuments

39. The undertaker is authorised to carry out the works specified in column (2) of Schedule 10 (scheduled monuments) in relation to the scheduled monuments specified in column (1) of that Schedule.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

40.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(a) S.I. 1997/1160.

(b) Section 206(1) was amended by paragraph 11 of Schedule 8 to the 2008 Act.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

41. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as not being operational land for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(c); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

43. Schedule 11 (protective provisions) to the Order has effect.

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

(b) Subsection (2) of section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to this subsection which are not relevant to this Order.

(c) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990. There are other amendments to section 61 which are not relevant to this Order.

Certification of documents, etc.

44.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 12 (documents to be certified) to the Secretary of State for certification that they are true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 12 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

45.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of

(a) 1978 c. 30.

that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

46. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the Lands Chamber of the Upper Tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport

19th January 2021

SCHEDULES

SCHEDULE 1

Articles 2 and 32

AUTHORISED DEVELOPMENT

In the Metropolitan Borough of Gateshead

A nationally significant infrastructure project as defined in section 22(a) (highways) of the 2008 Act, and associated development as defined in section 115(2)(b) (development for which development consent may be granted) of the 2008 Act, comprising:

Work No. 1a – The widening, alteration and realignment of the southbound carriageway of the A1 dual carriageway on the approach to Junction 67 (Coal House) commencing at 424371E; 558644N and terminating at grid reference 425284E; 558511N;

Work No. 1b – The widening, alteration and realignment of the northbound carriageway of the A1 dual carriageway on the approach to Junction 67 (Coal House) commencing at grid reference 424366E; 558629N and terminating at grid reference 425277E; 558492N with Work Nos. 1a and 1b including—

- (i) the widening, alteration and realignment of the existing highway with construction of new pavements, embankments, retaining walls, ground improvements (to increase bearing capacity of proposed retaining walls) and landscaping to create 3 no. lanes in each direction;
- (ii) the provision of a hardened central reserve with a rigid concrete barrier or steel step barrier dividing the southbound and northbound carriageways;
- (iii) removal of existing road lighting and installation of new lighting columns within the highway verge of each carriageway;
- (iv) associated drainage works and underground storage drainage facilities within the Coal House roundabout to collect and store water and works to associated existing outfalls to the River Team;
- (v) treatment of underground historical mine workings to reduce the risk of ground instability to include drilling and grouting, mine shaft stabilisation and/or installation of other protection measures;
- (vi) the construction of advanced directional gantry signs, including sign foundations and sign structures;
- (vii) installation of road signs including sign foundations, sign structure, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (viii) associated utility works and diversions within the highway verge of each carriageway;
- (ix) removal of Vehicle Activated Sign and motorway signals; and
- (x) installation of CCTV, MIDAS and traffic counting equipment with associated ducting.

(a) Section 22 was substituted by S.I. 2013/1883 and amended by section 1(6) of, and paragraph 153 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

(b) Section 115(2) was amended by section 160(1) and (3) of the Housing and Planning Act 2016 (c. 22). There are other amendments to section 115(2) which are not relevant to this Order.

Work No. 2 - The widening of the existing Kingsway Viaduct bridge over Coal House Roundabout at Junction 67 (Coal House) to accommodate the widened highway associated with Work No. 1b including substructure and superstructure elements and removal of existing road lighting and installation of new lighting columns on the bridge deck;

Work No. 3a - The widening, alteration and realignment of the southbound off slip with associated embankment, retaining walls, ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions and landscaping, commencing at grid reference 424691E; 558594N and terminating at grid reference 424877E; 558582N;

Work No. 3b - The widening, alteration and realignment of the southbound on slip with associated embankment, retaining walls, ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions and landscaping, commencing at grid reference 425012E; 558584N and terminating at grid reference 425255E; 558533N;

Work No. 3c - The widening, alteration and realignment of the northbound off slip with associated embankment, retaining walls, ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions and landscaping, commencing at grid reference 425232E; 558497N and terminating at grid reference 425009E; 558512N;

Work No. 3d - The widening, alteration and realignment of the northbound on slip with associated embankments, cuttings, retaining walls and associated ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions, realignment of existing noise barrier and landscaping commencing at grid reference 424895E; 558519N and terminating at grid reference 424636E; 558569N;

Work No. 4a – The construction of a new offline section of the A1 southbound carriageway between Junction 67 (Coal House) and Smithy Lane Overbridge commencing at grid reference 425284E; 558511N and terminating at grid reference 425772E; 558281N;

Work No. 4b – The construction of a new offline section of the A1 dual carriageway to create 4 no. lanes northbound between Junction 67 (Coal House) and Smithy Lane Overbridge commencing at grid reference 425277E; 558492N and terminating at grid reference 425755E; 558265N;

With Work Nos. 4a and 4b including—

- (i) construction of new highway with associated embankments, ground improvements, drainage facilities and roadside furniture;
- (ii) the provision of a hardened central reserve with a rigid concrete barrier or steel step barrier dividing the southbound and northbound carriageways;
- (iii) installation of lighting columns in the verge;
- (iv) the construction of advanced directional gantry signs, including sign foundations and sign structures;
- (v) demolition of existing verge mounted road signs and installation of replacement new road signs including sign foundations, sign structure, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (vi) treatment of underground historical mine workings to reduce the risk of ground instability to include drilling and grouting and/or installation of other protection measures;
- (vii) landscaping;
- (viii) relocation of existing internally illuminated tactical variable message sign within verge with associated ducting and reinstallation of existing CCTV in its current position; and

- (ix) associated utility works and diversions within the highway verge of each carriageway;

Work No. 5a – Construction of a new offline structure to cross the East Coast Main Line, accommodating the widened highway comprised in Works No. 4a and 4b including substructure and superstructure elements and removal of existing/installation of new road lighting, safety barriers, drainage, pavement and advance directional sign gantries comprising one of—

- (i) a single span bridge structure supported by embankments with ground improvements in the form of rigid inclusions extending into subsoil beneath the embankments;
- (ii) a viaduct structure with three spans supported on rigid piled foundations and associated superstructure, substructure and earthwork elements;
- (iii) a viaduct structure with six spans supported on rigid piled foundations and associated superstructure, substructure and earthwork elements; or
- (iv) a viaduct structure with seven spans supported on rigid piled foundations and associated superstructure, substructure and earthwork elements;

Work No. 5b - The demolition of the existing Allerdene Railway bridge and its associated embankments in the area shown on the works plans;

Work No. 6a – The widening, alteration and realignment of the southbound carriageway of the A1 dual carriageway between Smithy Lane Overbridge and Junction 65 (Birtley) commencing at grid reference 425772E; 558281N and terminating at grid reference 428181E; 556704N;

Work No. 6b – The widening, alteration and realignment of the northbound carriageway of the A1 dual carriageway between Smithy Lane Overbridge and Junction 65 (Birtley) commencing at grid reference 425755E; 558265N and terminating at grid reference 428196E; 556627N with Work Nos.6a and 6b including—

- (i) the widening, alteration and realignment of the existing highway with construction of new pavements, embankments, retaining walls, ground improvements (to increase bearing capacity), drainage and landscaping to create 4 no. lanes in each direction, except through Junction 66 (Eighton Lodge) on the northbound carriageway, which will comprise of 3 no. lanes;
- (ii) the provision of a hardened central reserve with a rigid concrete barrier or steel step barrier dividing the southbound and northbound carriageways;
- (iii) removal of existing lighting and installation of new lighting columns within the highway verge of each carriageway;
- (iv) widening of the existing Eighton Lodge Slip Road Underbridge highway structure with associated embankment, substructure and superstructure elements;
- (v) widening of the existing Eighton Lodge North Underbridge highway structure with associated embankment, substructure and superstructure elements;
- (vi) widening of the existing Eighton Lodge South Underbridge highway structure with associated embankment, substructure and superstructure elements;
- (vii) treatment of underground historical mine workings to reduce the risk of ground instability to include drilling and grouting, mine shaft stabilisation and/or installation of other protection measures;
- (viii) the construction of advanced directional gantry signs, including sign foundations and sign structures;
- (ix) installation of road signs including sign foundations, sign structure, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (x) removal of Vehicle Activated Sign and motorway signals;
- (xi) installation of CCTV, MIDAS and traffic counting equipment with associated ducting;
- (xii) associated drainage works and works to associated existing outfalls; and

(xiii) associated utility works and diversions within the highway verge;

Work No. 7a - The widening, alteration and realignment of the southbound off slip at Junction 66 (Eighton Lodge) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road signs, communications ducting, road lighting, drainage, utility diversions and landscaping commencing at grid reference 426300E; 557750N and terminating at grid reference 426436E; 557693N;

Work No. 7b - The widening, alteration and realignment of the southbound on slip at Junction 66 (Eighton Lodge) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road signs, communications ducting, road lighting, drainage, utility diversions and landscaping commencing at grid reference 426846E; 557487N and terminating at grid reference 427105E; 557361N;

Work No. 7c - The widening, alteration and realignment of the northbound off slip at Junction 66 (Eighton Lodge) with associated embankment, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road lighting and landscaping commencing at grid reference 427092E; 557322N and terminating at grid reference 426817E; 557418N;

Work No. 7d - The widening, alteration and realignment of the northbound on slip at Junction 66 (Eighton Lodge) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road lighting and landscaping commencing at grid reference 426518E; 557514N and terminating at grid reference 426329E; 557677N;

Work No. 8a - The widening, alteration and realignment of the southbound off slip at Junction 65 (Birtley) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), verge ducting, road signs, communications ducting, road lighting, drainage, and landscaping commencing at grid reference 427878E; 556918N and terminating at grid reference 428173E; 556883N;

Work No. 8b - The widening, alteration and realignment of the northbound on slip at Junction 65 (Birtley) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), drainage, underground storage drainage facility, verge ducting, road signs, communications ducting, road lighting, and landscaping commencing at grid reference 428076E; 556499N with local access from the B1288 at grid reference 428151E; 556456N and terminating at grid reference 428150E; 556684N;

Work No. 9 – Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Lamesley Road that runs to the south of Work No. 10 commencing at grid reference 425100E, 558405N and terminating at grid reference 425176E, 558400N;

Work No. 10 – Construction of a gas transfer station building for the benefit of Northern Gas Networks Ltd with associated connections to Work Nos. 9, 13, 14 and 15;

Work No. 11 - Construction of a private maintenance access road from Lamesley Road for maintenance of gas, rail and highway structures;

Work No. 12 - Construction of a replacement gas transfer station building for the benefit of Northern Gas Networks Ltd with associated connections to Work Nos. 15 and 16;

Work No. 13 – Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Lamesley Road commencing at grid reference 425104E; 558478N and terminating at grid reference 425122E; 558409N;

Work No. 14 - Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Lamesley Road commencing at grid reference 425110E; 558482N and terminating at grid reference 425161E; 558455N;

Work No. 15 - Diversion of existing Northern Gas Networks Gas Pipeline extending under A1 highway between land adjacent to Lamesley Road and land adjacent to Chowdene Bank commencing at grid reference 425183E; 558448N and terminating at grid reference 425311E; 558568N;

Work No. 16 - Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Chowdene Bank commencing at grid reference 425315E; 558601N and terminating at grid reference 425393E; 558655N;

Work No. 17 – Construction of an access road from the main A1 southbound carriageway that connects to a drainage attenuation pond and pipe outfall to Allerdene Culvert referred to in Work No. 20;

Work No. 18 – Demolition of existing North Dene Footbridge and construction of a new foot/cycle bridge in place of the existing with associated approach ramps over the A1 carriageway at a point 900m south of Junction 66 (Eighton Lodge) and grid reference 427468E; 557101N including associated substructure and superstructure elements, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), embankments, retaining walls, utility diversions and hardstanding;

Work No. 19 – Extension of the north side of the Longbank Bridleway Underpass and its associated embankments and other substructure and superstructure elements and provision of lighting, in order to accommodate the highway widening above proposed under Work Nos. 6a and 7b and associated fencing, drainage and footpath improvements on approach to Underpass adjacent to the northbound and southbound carriageways at grid reference 427184E; 557331N; with realignment of the existing footpath and associated improvements commencing west of the Underpass at grid reference 427102E; 557500N and terminating east of the Underpass at grid reference 427364E; 557402N;

Work No. 20 – Alteration and realignment of existing culverted watercourse under the A1 carriageway in the vicinity of Allerdene Bridge, such works including—

- (i) removal of existing culvert and creation of new culverted sections; and/or
- (ii) removal of existing culvert structure and creation of an open ditch with associated substructures, embankments, and landscaping;

Work No. 21 – Temporary construction access required between Woodford and Allerdene Bridge to carry out the demolition of the existing Allerdene Bridge;

Work No. 22 – Diversion of Northumbrian Water main under the A1 carriageway between Junction 67 (Coal House) and Smithy Lane Overbridge associated with Work Nos. 4a and 4b, commencing at grid reference 425672E; 558288N and terminating at grid reference 425983E; 558273N;

Work No. 23 – Removal of existing Overhead Line Equipment structures on the East Coast Main Line, including those attached to the underside of the existing Allerdene Bridge structure, and installation of replacement Overhead Line Equipment (with associated foundations and utility diversions) and drainage, signalling and power supply works to tie in with existing rail infrastructure commencing at grid reference 425620E; 558165N and terminating at grid reference 425435E; 558638N;

and in connection with the construction of any of those works, and to the extent that they do not otherwise form part of any such work, and whether or not shown on the plans referred to in the requirements further development within the order limits consisting of—

- (a) the provision of up to two construction compounds and two working compounds in the areas shown on the works plans;

- (b) alteration of the layout of any street permanently or temporarily, including but not limited to realignment of carriageways and increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (c) ramps, means of access, footpaths, bridleways, cycle tracks, embankments, aprons, abutments, shafts, foundations, retaining walls, wing walls, bunds, embankment swales, fencing, boundary treatments and highway lighting and culverts;
- (d) street works including breaking up or opening a street, or any sewer, drain or tunnel under it, tunnelling or boring under a street, work to place or maintain apparatus in a street, works to alter the position of apparatus, including mains, sewers, drains and cables;
- (e) the provision of thin surface course and carriageway markings;
- (f) temporary and permanent diversion of utilities apparatus, including gas and water pipelines and electric and telecommunication cables;
- (g) earthworks, including the extension of earthworks;
- (h) retaining structures;
- (i) barriers, including safety barriers;
- (j) fencing;
- (k) refurbishment works to any existing bridge or gantry;
- (l) works to alter the course of, or otherwise interfere with a watercourse, including without limitation works to the River Team including temporary culverting;
- (m) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (n) works for the benefit or protection of land affected by the authorised development;
- (o) works to place, alter, remove or maintain road furniture;
- (p) signage and road marking;
- (q) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping, storage, and site levelling);
- (r) the felling of trees and hedgerows;
- (s) the establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery apparatus, works and conveniences;
- (t) the provision of other works including pavements works, kerbing and paved areas works, signing, signals gantries, road markings, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development;
- (u) the provision of drainage works including attenuation ponds, outfalls, ditches, culverts; and
- (v) such other works, working sites storage areas, works of demolition or works of whatever nature as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development which do not give rise to any materially new or materially different environment effects in comparison with those reported in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990(a);

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(b);

“HEMP” means the handover environmental management plan, to be developed and completed by the end of the construction, commissioning and handover stage of the authorised development which is to contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authorities for England, Scotland, Wales and Northern Ireland, or any equivalent replacement published for that document;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(c);

“outline CEMP” means the document of that description submitted with the application for this order and certified as the outline CEMP by the Secretary of State for the purposes of this Order; and

“REAC” means the register of environmental actions and commitments contained in the Outline CEMP.

Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

(a) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 (c. 37).
(b) S.I. 2017/1012.
(c) 1981 c. 69.

Detailed design – general design requirements

3.—(1) The authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Design of gas transfer buildings

(3) Except where carried out in accordance with the approved details submitted to comply with a condition issued by Gateshead Council on 4 March 2020 under reference DC/20/00059/N1 no part of Work No. 10 or 12 may commence until the details of the layout, scale and external appearance (including materials which are proposed to be used and proposed finishes) of the above ground structures comprised in Work Nos. 10 and 12 have been submitted to and approved by the Secretary of State in consultation with the relevant planning authority. The approved details must not give rise to any materially new or materially different environmental effects in comparison to the approved details submitted to comply with a condition issued by Gateshead Council on 4 March 2020 under reference DC/20/00059/N1.

(4) Work Nos. 10 and 12 shall be constructed in accordance with the approved details submitted to comply with a condition issued by Gateshead Council on 4 March 2020 under reference DC/20/00059/N1 or otherwise in accordance with the details approved under sub-paragraph (3).

(5) No part of Work No. 12 may be commenced by the undertaker until a scheme for the demolition of the existing gas transfer building (including the timescale for such demolition) has been submitted to and approved by the Secretary of State in consultation with the relevant planning authority. The demolition of the existing gas transfer building shall be carried out in accordance with the approved scheme.

(6) Without prejudice to article 6 (planning permission), nothing in sub-paragraphs (3) to (5) shall restrict Northern Gas Networks Limited from undertaking works authorised by a separate grant of planning permission or authorised in terms of the Town and Country Planning (General Permitted Development) (England) Order 2015^(a).

Design of gantries

(7) No gantries shall be erected within the areas identified on the works plans as proposed new gantry areas until a signage strategy for the provision of signage in those areas (including the design and height of supporting gantries) has been submitted to and approved by the Secretary of State, in consultation with the relevant planning authority. The signage strategy shall consider or take account of—

- (a) any replacement of the Design Manual for Roads and Bridges Interim Advice Note 144/16 Directional Signs on Motorway and All-Purpose Trunk Roads: Grade Separated Junctions and the need to relocate signs in the verge in place of super span gantries;
- (b) the use of single span gantries or cantilever gantries in substitution for super span gantries.
- (c) the potential impact of the gantries on the setting of the Angel of the North; and
- (d) the safety of road users, public safety in general, the need for directional signage and the safety of maintenance operatives.

(a) S.I. 2015/596.

(8) The authorised development shall be constructed in accordance with the approved signage strategy.

(9) Notwithstanding the terms of sub-paragraph (7), once the gantries have been erected in accordance with the approved signage strategy, the maintenance and, if necessary, replacement of the gantries shall be undertaken by the undertaker in accordance with the powers and duties of the 1980 Act. The carrying out of such maintenance and replacement in accordance with the 1980 Act shall not constitute a breach of this Order provided that such maintenance or replacement does not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Design of structures

(10) No part of Work No. 5a other than ground treatment, piling, abutments and supporting piers is to be constructed until a scheme for the following elements of the design of the bridge deck forming part of that work have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, in relation to—

- (a) the colour scheme for the bridge beams;
- (b) the use of sustainable materials;
- (c) the parapet systems compliant with operational highway and railway requirements; and
- (d) soffits other than the design as shown on the engineering drawings and sections or which mirrors the existing Allerdene Bridge.

(11) Work No. 5a shall be constructed in accordance with the approved details.

(12) In this requirement—

“cantilever gantry” means a gantry which spans a single carriageway with the support located in the verge of the carriageway only;

“single span gantry” means a portal gantry which spans a single carriageway of a dual carriageway with one support located in the central reserve and the other support in the verge of the carriageway which it crosses; and

“super span gantry” means a portal gantry which spans both carriageways of a dual carriageway with the supports located in the verges of each respective carriageway.

Construction and handover environmental management plans

4.—(1) Other than site clearance works carried out in terms of paragraph 16 (advance site clearance works), no part of the authorised development is to commence until a CEMP, substantially in accordance with the outline CEMP, for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, the Environment Agency and Historic England to the extent that it relates to matters relevant to its function.

(2) The CEMP must be written in accordance with ISO14001 and must—

- (a) be substantially in accordance with the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to working hours of 07:00–19:00 Mondays to Fridays and 07:30–13:00 on Saturday except for—
 - (i) night-time closures for bridge demolition and installation;
 - (ii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
- (iii) junction tie-in works;
- (iv) works required in relation to the East Coast Main Line;
- (v) overnight traffic management measures;
- (vi) cases of emergency; and

- (vii) as otherwise agreed by the local authority in advance;
- (d) include the following management plans—
 - (i) Communications Plan;
 - (ii) Construction Traffic Management Plan;
 - (iii) Landscape Management Plan;
 - (iv) Ecological Management Plan including the Invasive Non-Native Species Management Plan, Riparian Protection Management Plan;
 - (v) Soil Handling Strategy;
 - (vi) Materials Management Plan;
 - (vii) Site Waste Management Plan; Water Management Plan including the Temporary Surface Water Drainage Strategy; and
 - (viii) Any other specific management plans identified during subsequent stages of the authorised development.

(3) The construction of the authorised development must be carried out in accordance with the approved CEMP or such amendments to that CEMP as may be approved in writing by the Secretary of State following consultation with the relevant planning authority, the Environment Agency and Historic England to the extent that it relates to matters relevant to its function.

(4) A HEMP must be developed and completed by the end of the construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(5) The HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development, and must contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

(6) The authorised development must be operated and maintained in accordance with the HEMP.

Landscaping

5.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until a landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The landscaping scheme must be substantially in accordance with the mitigation measures set out in the REAC and must be based on either—

- (a) the illustrative environmental masterplan and landscape mitigation design annexed to the environmental statement; and
- (b) to the extent not consistent with sub-paragraph (a)—
 - (i) subject to sub-paragraph (3), Option 1 as set out on page 27 of the Southern Green Options Report;
 - (ii) subject to sub-paragraph (4), Option 2 as set out on page 29 of the Southern Green Options Report; or

(iii) subject to sub-paragraph (4), Option 3 as set out on page 31 of the Southern Green Options Report.

(3) Nothing shall require the landscaping scheme to be based on Option 1 of the Southern Green Options Report unless the relevant planning authority has entered into an agreement providing for any cost associated with Option 1 that is above the cost of the illustrative environmental masterplan and landscape mitigation design annexed to the environmental statement is to be paid or otherwise secured by the relevant planning authority.

(4) Nothing shall require the landscaping scheme to be based on Option 2 or Option 3 of the Southern Green Options Report unless the relevant planning authority has—

- (a) made provision for sufficient land for the installation and maintenance of replacement woodland planting to mitigate the effects of the implementation of Option 2 or Option 3; and
- (b) entered into an agreement providing for any cost of Option 2 or Option 3 that is above the cost of the illustrative masterplan and landscape design annexed to the environmental statement is to be paid or otherwise secured by the relevant planning authority.

(5) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels;
- (e) implementation timetables for all landscaping works; and
- (f) how the landscaping scheme addresses the guidance in paragraph 4.29 of the National Policy Statement for National Networks for the appearance of national network projects to demonstrate good aesthetics as far as possible.

(6) All landscaping works must be carried out in accordance with the scheme referred to in sub-paragraph (1) to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(7) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

(8) Planting will be undertaken at Longacre Wood to replace any trees that were intended to be retained which are felled or die as a result of construction works. The size, species and location of replacement trees will be included in the landscaping scheme required by sub-paragraph (1).

Contaminated land and groundwater

6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.

(3) A suitable capping layer, comprising either 400mm layer of “clean” soil or a shallow thickness with a geotextile marker layer, will be constructed in any areas of soft landscape planting located over areas of made ground contaminated with asbestos. The details of any such capping layers shall be included within any remedial measures required in terms of sub-paragraph (2).

(4) Remediation must be carried out in accordance with the approved scheme.

Protected species

7.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to confirm whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph, the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation with Natural England, and under any necessary licences.

Surface and foul water drainage

8.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, in substantial accordance with the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.

(2) The written details required by sub-paragraph (1) shall include culvert design. Where possible, culverts will be designed to include natural beds (between 100mm and 200mm) to maintain and assist fish passage. To mitigate for potential downstream impacts and maintain passage along watercourses, baffles or similar structures shall be included within existing culverts.

(3) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Archaeological remains

9.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until for that part a final written scheme of investigation (FWSI) of areas of archaeological interest has been submitted to and approved in writing by the Secretary of State, in consultation with the relevant planning authority and Historic England on matters related to its function. The FWSI shall be substantially in accordance with the mitigation measures included in the REAC and the outline written scheme of investigation and shall include a programme of archaeological reporting, post excavation and publication including a timescale for such reporting and publication.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

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

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority, and to Historic England in the case of the scheduled monument area, as soon as reasonably practicable from the date they are identified.

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

(6) If the relevant planning authority or, in the case of a scheduled monument, Historic England determines in writing that the archaeological remains referred to in sub-paragraph (4) require further investigation or mitigation, no construction operations are to take place within 10 metres of the remains until provision has been made for such mitigation or the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority or, in the case of a scheduled monument, Historic England.

Traffic management

10.—(1) Other than site clearance works carried out in terms of paragraph 16, no part of the authorised development is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation with Sunderland City Council and the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the traffic management plan referred to in sub-paragraph (1).

(3) The formation of a construction compound or working compound may not commence until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent or temporary means of access between that compound and the public highway to be used by vehicular traffic during construction, and the means of reinstating any temporary means of access after construction (where reinstatement is to take place) has been submitted to and approved by the Secretary of State, in consultation with the local highway authority. The access to the construction and working compounds must be constructed in accordance with the approved details.

Amendments to approved details

11. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing.

Design of North Dene Footbridge

12.—(1) The North Dene Footbridge shall be replaced in terms of Work No.18 in its current location with a new footbridge which will have a single drawstring truss.

(2) The existing North Dene Footbridge shall not be demolished and no part of the replacement bridge to be constructed in terms of Work No. 18 may commence until the details of the demolition of the existing bridge, design of the replacement bridge (including how the design addresses the guidance in paragraph 4.29 of the National Policy Statement for National Networks for the appearance of national network projects to demonstrate good aesthetics as far as possible), together with details of the timings for the demolition and construction works have been submitted to and approved by the Secretary of State in consultation with the relevant planning authority.

(3) Work No. 18 shall be constructed in accordance with the details approved under subparagraph (2).

Fencing

13. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works except—

- (a) where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development; or
- (b) where the fencing or enclosure is an acoustic barrier which is required by an entry in the REAC.

Allerdene bridge replacement

14. The undertaker is restricted to carrying out Work No.5a as one of the works specified in paragraph (i), (ii), (iii) or (iv) of Work No. 5a as follows—

- (a) in the event that the Work No. 5a is to comprise a single span bridge structure in terms of paragraph (i) of Work No. 5a then it shall be carried out substantially in accordance with Sheet 3 of the structures engineering drawings and sections;
- (b) in the event that the Work No. 5a is to comprise a three span bridge structure in terms of paragraph (ii) of Work No. 5a then it shall be carried out substantially in accordance with Sheet 16 of the structures engineering drawings and sections;
- (c) in the event that the Work No. 5a is to comprise a six span bridge structure in terms of paragraph (iii) of Work No. 5a then it shall be carried out substantially in accordance with Sheet 4 of the structures engineering drawings and sections; or
- (d) in the event that the Work No. 5a is to comprise a seven span bridge structure in terms of paragraph (iv) of Work No. 5a then it shall be carried out substantially in accordance with Sheet 5 of the structures engineering drawings and sections.

Primary Design Mitigation

15. The Scheme shall include the following primary mitigation measures—

- (a) a retaining wall will be included to retain the access road located adjacent to junction 65 (Birtley) southbound exit slip to ensure access is maintained to properties which use Northside to the north east of the A1 serving the Bowes Incline hotel and Angel of the North fishing lakes; and

- (b) the earthworks design for the highway widening at Longacre Wood shall use a 1:2 slope at Longacre Wood so as to minimise land take at this location as illustrated on the General Arrangement Drawings.

Advance site clearance works

16.—(1) No vegetation clearance shall take place until a construction management plan for vegetation clearance to be undertaken as part of the authorised works has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, the Environment Agency and Historic England to the extent that it relates to matters relevant to the function of the relevant consulted party.

(2) The construction management plan required by sub-paragraph (1) shall include measures to address items G4, A1, A2, L1, L3, B5, B6, B7, B8, B12, B13, B15, B18, B22, B24, B25, M6 and N5 of the REAC insofar as they relate to vegetation clearance.

(3) The vegetation clearance comprised in the authorised works shall be carried out in accordance with the construction management plan approved in terms of sub-paragraph (1).

Details of construction compound

17.—(1) Subject to sub-paragraph (3), in the event that the undertaker proposes to undertake Work No. 5a as provided in paragraph (iii) or (iv) of Work No. 5a comprising a six span or seven span viaduct respectively then the undertaker may only exercise powers of temporary possession over plot 3/13a of the land plans where a plan based upon those in Appendix A to the CEMP showing the extent and layout of the construction compound to be established at Junction 67 within the land delineated by a broken blue line on the Northern Gas Networks Land Ownership Plan has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) In considering the details to be submitted in terms of sub-paragraph (1), the undertaker and the Secretary of State shall have regard to—

- (a) the construction requirements of the chosen engineering design for Work No. 5a; and
- (b) the need to minimise the temporary possession of land within plot 3/13a of the land plans so far as reasonably practical.

(3) In the event that the undertaker proposes to undertake Work No. 5a as provided in paragraph (iii) or (iv) of Work No.5a then the undertaker shall be restricted to exercising the power of temporary possession over plot 3/13a to that part of the land identified in the details approved in terms of sub-paragraph (1).

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

18.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 19 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification at the end of that period).

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

then the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

19.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 18 (applications made under requirements) and in this paragraph.

(4) In this requirement, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

Register of requirements

20.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

(a) 1971 c. 80

Anticipatory steps towards compliance with any requirement

21. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Articles 14 and 18

CLASSIFICATION OF ROADS ETC.

PART 1

TRUNK ROADS

<i>(1)</i> <i>Road</i>	<i>(1)</i> <i>Road</i>
Junction 67 (Coal House) to Smithy Lane Overbridge for Southbound and Northbound carriageways	Between point 2/1 on Sheet 2 and point 3/16 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Junction 67 (Coal House) Southbound on slip	Between point 3/1 and point 3/6 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Junction 67 (Coal House) Northbound off slip	Between point 2/2 on Sheet 2 and point 3/5 on Sheet 3 of the Streets, Rights of Way and Access Plans.

PART 2

OTHER RIGHTS OF WAY

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
Public Right of Way BI/16/1 leading to North Dene Footbridge (including crossing facilities over the A1 Southbound and Northbound carriageway)	To be substituted in part at its southern end where it meets the proposed North Dene Footbridge and continues over A1 Southbound and Northbound carriageway between point 6/4 and point 6/5 on Sheet 6 of the Streets, Rights of Way and Access Plans.

SCHEDULE 4

Article 16

PERMANENT STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND PRIVATE MEANS OF ACCESS

PART 1

STREETS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
The permanent stopping up and removal of the existing A1 carriageway and its embankments and associated structures. between junction 67 (Coal House) and Smithy Lane Overbridge.	From point 2/1 on Sheet 2 (measuring 800m in length) and terminating at point 3/16 on Sheet 3 of the Streets, Rights of Way and Access Plans.	Highway to be removed and replaced by Work Nos. 4a, 4b and 5a.

PART 2

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

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
Permanent stopping up of existing footpath that crosses Public Right of Way LA/72a/16 (Longbank Bridleway) adjacent to southbound onslip at junction 66 (Eighton Lodge).	From point 5/3 on Sheet 5 and terminating at point 6/2 on Sheet 6 of the Streets, Rights of Way and Access Plans.	To be substituted by a new footpath that runs to the north of the existing footpath from point 5/3 on Sheet 5 and terminating at point 6/2 on Sheet 6 of the Streets, Rights of Way and Access Plans.

PART 3

PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
Private means of access from Lamesley Road to land adjacent to south side of proposed Allerdene Bridge	From point 3/3 on Sheet 3 to point 3/7 on Sheet 3 of the Streets, Rights of Way and Access Plans.	To be substituted by new access road from Lamesley Road from point 3/4 to point 3/8 on Sheet 3 of the Streets,

SCHEDULE 5

Article 15

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

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted</i>
Temporary stopping up of Public Right of Way BI/16/1 leading to North Dene Footbridge (including crossing facilities over the A1 Northbound and Southbound carriageway).	Southern end of public right of way where it connects with existing footbridge at point 6/4 to point 6/5 on Sheet 6 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily whilst the Footbridge is being demolished by a diversion route from point 6/4 to point 6/1 on Sheet 6 of the Streets, Rights of Way and Access Plans. The replacement Footbridge will be provided in the same location as the existing structure shown between point 6/4 and point 6/5 on Sheet 6 of the Streets, Rights of Way and Access Plans. A new footpath will be provided from point 6/5 to point 6/3 on Sheet 6 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way LA/72a/16 (referred to as Longbank Bridleway).	To be temporarily stopped up between point 5/4 on Sheet 5 and point 6/1 on Sheet 6 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route that runs between point 6/1 on Sheet 6 and point 5/2 and point 5/5 on Sheet 5 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way GA/7/1 to provide construction works access with a controlled crossing point.	To be temporarily stopped up between point 3/10 and point 3/11 on Sheet 3 of the Streets, Rights of Way and Access Plans.	To include a controlled crossing point between point 3/10 and point 3/11 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way GA/6/1 to provide construction works access.	To be temporarily stopped up between point 3/12 and point 3/14 on Sheet 3 of the Streets, Rights of Way and Access Plans.	To include a controlled crossing point between point 3/12 and point 3/14 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of footpath that runs parallel to A167 Durham Road from Angel of the North to junction 66 (Eighton Lodge).	To be temporarily stopped up from point 4/1 on Sheet 4 to point 5/1 on Sheet 5 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route that runs to the north of the existing footpath from point 4/1 on Sheet 4 to point 5/1 on Sheet 5 of the Streets, Rights of Way

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted</i>
Temporary stopping up of footpath that runs adjacent to the southbound off slip at junction 65 (Birtley).	To be temporarily stopped up from point 7/1 to point 7/2 on Sheet 7 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route that runs to the north of the existing footpath from point 7/1 to point 7/2 on Sheet 7 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way LA/40/10 leading to the B1296 Longbank.	To be temporarily stopped up between point 5/6 and 5/7 on Sheet 5 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route from point 5/6 and 5/7 on Sheet 5 of the Streets, Rights of Way and Access Plans.

SCHEDULE 6

Article 26

LAND IN RESPECT OF WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 2		
2/2	Construction of retaining wall, new/relocation of existing ADS signs, upgrading of road lighting (including rights for access and maintenance).	Work Nos. 1a and 3a
Land Plans – Sheet 3		
3/1	Construction of retaining wall, new/relocation of existing ADS signs, upgrading of road lighting (including rights for access and maintenance).	Work Nos. 1a and 3a
3/3e	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct and maintain works to junction 67 (Coal House) northbound on slip road. Rights to construct and retain grouting works under land and maintenance.	Work Nos. 1b and 3d
3/3f	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct and maintain works to junction 67 (Coal House) northbound on slip road. Rights to construct and retain grouting works under land.	Work Nos. 2 and 3d
3/3g	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure.	Work Nos. 2 and 3d
3/3h	New right to widen the existing Kingsway Viaduct and operate, access and	Work Nos. 2 and 3a

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	maintain the structure (including the airspace underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure.	
3/3i	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Rights to construct and retain grouting works under land.	Work Nos. 2 and 3a
3/3z	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Grouting works under land.	Work Nos. 2, 3c and 3d
3/3dd	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 1b, 2, 3c and 3d
3/3ff	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 2 and 3c
3/3gg	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Rights to construct and retain grouting works under land.	Work Nos. 2 and 3b
3/3hh	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace	Work Nos. 2 and 3b

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
3/3ll	underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure. New right to construct, operate, access and maintain a private maintenance access road on land adjacent to Lamesley Road and extending to land adjacent to south side of the proposed Allerdene Bridge and the East Coast Main Line for the benefit of Network Rail, Highways England and Northern Gas Networks Ltd.	Work No. 11
3/3mm	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road.	Work Nos. 3c, 13 and 14
3/3pp, 3/3qq, 3/3tt	Grouting works under land. Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Rights to construct and retain grouting works under land.	Work Nos. 1a and 3b
3/3ww	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for installation and retention of grouting works on the land underneath the proposed new structure.	Work Nos. 5a, 5b and 23
3/3yy	New right to demolish the existing Allerdene Bridge and construct, operate, access and maintain a replacement offline Allerdene Bridge structure.	Work Nos. 5a, 5b and 21
3/3aaa	Required for proposed Northumbrian Water pipeline diversion. Rights to construct and retain grouting works under land.	Work Nos. 4b, 5a, and 22
3/3hhh	New right to access, operate, make alterations to and maintain the existing drainage	Work No. 6a

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
3/3kkk	outlet pipeline. Required for access and to construct proposed highway and associated embankment.	Work Nos. 6a and 7a
3/3lll	Rights to construct and retain grouting works under land. New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline. Rights to construct and retain grouting works under land.	Work Nos. 6a and 7a
3/3nnn	Required for access and to construct proposed highway and associated embankment. Required to alter existing drainage outlets. Rights to construct and retain grouting works under land.	Work Nos. 6a and 7a
3/4a, 3/4b	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure.	Work Nos. 1a, 1b and 2
3/4q	Required to access, maintain and alter existing drainage outlet and ditch and to access the main highway works. Rights to construct and retain grouting works under land.	Work No. 6b
3/6b	New right to construct, operate, access and maintain a private maintenance access road on land adjacent to Lamesley Road and extending to land adjacent to south side of the proposed Allerdene Bridge and the East Coast Main Line for the benefit of Network Rail, Highways England and Northern Gas Networks Ltd.	Work No. 11

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
3/6d	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 9, 13, 14 and 15
3/6f	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway. Rights to construct and retain grouting works under land.	Work Nos. 10, 14 and 15
3/6k	Required for construction compound. Rights to construct and retain grouting works under land.	N/A
3/6l	New right to access and maintain Allerdene culvert and drainage ditch.	Work No. 20
3/10d	New right to demolish the existing Allerdene Bridge and construct, operate, access and maintain a replacement offline Allerdene Bridge structure and for installation and retention of grouting works on the land.	Work Nos. 5a, 5b and 23
3/10g, 3/12d, 3/12f	New right to construct, operate, access and maintain a replacement offline Allerdene Bridge structure and for grouting works on the land underneath the proposed new structure.	Work No. 5a
3/10e, 3/10f, 3/12c, 3/12e	New right to operate, access and maintain a replacement offline Allerdene Bridge structure and for installation and retention of grouting works on the land.	Work No. 5a
3/10h	New right to construct, operate, access and maintain a replacement offline Allerdene Bridge structure, associated Overhead Line Equipment and for installation and retentions of grouting works on the land.	Work Nos. 4a, 4b, 5a, 5b and 23
3/12b	Required to access and carry out the demolition of the existing Allerdene Bridge, the	Work Nos. 4a, 4b, 5a, 5b and 23

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 4	construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for installation and retention of grouting works on the land.	
4/2d	New right to extend the Longbank Bridleway Underpass and operate, access and maintain the structure and associated equipment.	Work Nos. 6a and 19
4/3b	Grouting works under land. Required for utility diversions and associated works within junction 66 (Eighton Lodge) Roundabout. Rights to construct and retain grouting works under land.	Work No. 6a
4/3q, 4/4b	Required for the construction compound at junction 66 (Eighton Lodge) and associated access. Rights to construct and retain grouting works under land.	N/A
4/6b	Required to construct the extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure. Rights to construct and retain grouting works under land.	Work Nos. 6a and 19
4/7b, 4/7e	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Rights to construct and retain grouting works under land.	Work No. 18
4/7f	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline. Grouting works under land.	Work Nos. 6a and 19
4/9b, 4/10	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline.	Work No. 6b
4/12b, 4/13b, 4/13d	Required to carry out the demolition and construction of	Work No. 18

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
4/14b	the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Rights to construct and retain grouting works under land. Required to carry out the demolition and construction of the replacement North Dene Footbridge and rights to construct and retain grouting works under land.	Work No. 18
Land Plans – Sheet 5		
5/3b, 5/4b, 5/4d	Required for access and construction of main highway works and junction 65 (Birtley) off slip. Rights to construct and retain grouting works under land.	Work Nos. 6a and 8a
5/5a	Required to construct the proposed highway works and associated access. Rights to construct and retain grouting works under land.	Work No. 8a
5/6, 5/7, 5/8, 5/9, 5/11	Required for construction of junction 65 (Birtley) southbound off slip road works and temporary footpath diversion. Rights to construct and retain grouting works under land.	Work No. 8a

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND IMPOSITION OF RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) to the A1 Birtley to Coal House Development Consent Order 2021);
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the A1 Birtley to Coal House Development Consent Order 2021 to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2).

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

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 28 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 26(1) (compulsory acquisition of rights and restrictive covenants)—

- (a) with the modification specified in paragraph 5; and

(a) 1973 c. 26

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

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

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) (paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 23), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.

(d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) 1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 29 (application of the 1981 Act) of the A1 Birtley to Coal House Development Consent Order 2021 in respect of the land to which the notice to treat relates.

(2) But see article 30(3) (acquisition of subsoil or airspace only) of the A1 Birtley to Coal House Development Consent Order 2021 which excludes the application of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 8

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans - Sheet 3		
3/3b, 3/3d	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road.	Work Nos. 1b and 3d
3/3c	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road.	Work Nos. 1b, 2 and 3d
3/3e	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road. Grouting works under land.	Work Nos. 1b and 3d
3/3f	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road. Grouting works under land.	Work Nos. 2 and 3d
3/3i	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Grouting works under land.	Work Nos. 2 and 3a
3/3k, 3/3n	Required for works within and around junction 67 (Coal House) Roundabout including	Work Nos. 2, 3a and 3b

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	works to River Team.	
3/3p	Temporary working space for the widening, alteration and realignment of the existing highway and the widening of Kingsway Viaduct. The realignment of southbound off slip and northbound on slip (junction 67) with construction of new pavements, embankments, retaining walls, ground improvements.	Work Nos. 2, 3c and 3d
3/3q, 3/3r	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3a and 3b
3/3s	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3c and 3d
3/3v	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3a and 3b
3/3w, 3/3x, 3/3y	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3c and 3d
3/3z	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Grouting works under land.	Work Nos. 2, 3c and 3d
3/3aa	Required for access to construct works to junction 67 (Coal House) southbound on slip road.	Work No. 3b
3/3bb	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 1b, 2, 3c and 3d
3/3cc	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works	Work Nos. 1b, 2, 3c and 3d

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	under land.	
3/3dd	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 1b, 2, 3c and 3d
3/3ee	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land. Widening to Junction 67 Southbound on slip road.	Work Nos. 1a and 3b
3/3gg	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land.	Work Nos. 2 and 3b
3/3jj	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway.	Work Nos. 9, 10, 13 and 14
3/3mm	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 3c, 13 and 14
3/3oo	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land. Widening to junction 67 southbound on slip road.	Work Nos. 1a and 3b
3/3pp, 3/3qq, 3/3tt	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land.	Work Nos. 1a and 3b
3/3ss	Required for access to the works within junction 67 (Coal House) Roundabout.	Work Nos. 12 and 16
3/3uu, 3/10b, 3/10c, 3/11	Required to access and carry out the demolition of the	Work No. 5a, 5b and 23

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
	existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for grouting works on the land underneath the proposed new structure.	
3/3ww	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for grouting works on the land underneath the proposed new structure.	Work Nos. 5a, 5b and 23
3/3xx	Required for the working compound and associated access.	N/A
3/3aaa	Required for proposed Northumbrian Water pipeline diversion. Grouting works under land.	Work Nos. 4b, 5a, and 22
3/3bbb	Required for proposed Northumbrian Water pipeline diversion.	Work No. 22
3/3ccc	Required to access, maintain and alter existing drainage outlet and ditch.	Work No. 6b
3/3eee	Required for the working compound and associated access. Demolition of Existing Allerdene Bridge.	Work No. 21
3/3fff	Temporary working space for the widening, alteration and realignment of the existing highway with construction of new pavements, embankments, retaining walls, ground improvements and directional gantry signs. Diversion of Northumbrian Water main under the A1 carriageway.	Work Nos. 6a and 22
3/3ggg	Required for the working compound and associated access. Northumbrian Water pipeline diversion.	Work No. 22
3/3jjj	Required to access, maintain and alter existing drainage outlets.	Work No. 6a
3/3kkk	Required for access and to construct proposed highway	Work Nos. 6a and 7a

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	and associated embankment. Grouting works under land.	
3/3nnn	Required for access and to construct proposed highway and associated embankment. Required to alter existing drainage outlets. Grouting works under land.	Work Nos. 6a and 7a
3/4e, 3/4f	Required for access and to construct proposed highway and associated embankment. Required to access, maintain and alter existing drainage outlet and ditch.	Work No. 6b
3/4h, 3/4r	Required to access, maintain and alter existing drainage outlet and ditch.	Work No. 6b
3/4j, 3/4k	Required for access and to construct proposed highway and associated embankment.	Work No. 6b
3/4q	Required to access, maintain and alter existing drainage outlet and ditch. Grouting works under land.	Work No. 6b
3/4t	Required for proposed Northumbrian Water pipeline diversion.	Work No. 22
3/5	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway.	Work Nos. 9, 10, 13, 14 and 15
3/6a	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway.	Work Nos. 9, 10, 13, 14 and 15
3/6c	Required for the construction compound for Allerdene Bridge and associated access.	N/A
3/6d	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 9, 13, 14 and 15
3/6f	Required for diversion of	Work Nos. 10, 14 and 15

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway. Grouting works under land.	
3/6g, 3/6h	Required for access to the works within junction 67 (Coal House) Roundabout.	Work Nos. 12 and 16
3/6i	Required for access to the works within junction 67 (Coal House) Roundabout.	Work Nos. 12, 15 and 16
3/6k	Required for construction compound. Grouting works under land.	N/A
3/6m, 3/7, 3/8, 3/9	Required for access to the works within junction 67 (Coal House) Roundabout.	Work No. 16
3/10a	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment.	Work Nos. 5a, 5b and 23
3/10d	New right to demolish the existing Allerdene Bridge and construct, operate, access and maintain a replacement offline Allerdene Bridge structure and for grouting works on the land underneath the proposed new structure.	Work Nos. 5a, 5b and 23
3/10h	New right to construct, operate, access and maintain a replacement offline Allerdene Bridge structure, associated Overhead Line Equipment and for grouting works on the land underneath the proposed new structure.	Work Nos. 4a, 4b, 5a, 5b and 23
3/10i	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment.	Work Nos. 4a, 4b, 5a, 5b and 23
3/12b	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the	Work Nos. 4a, 4b, 5a, 5b and 23

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	replacement Allerdene Bridge and associated Overhead Line Equipment, and for grouting works on the land underneath the proposed new structure.	
3/13a	Required for the construction compound for Allerdene Bridge and associated access.	N/A
Land Plans – Sheet 4		
4/1m	Realignment of junction 66 southbound on slip road.	Work No. 7b
4/1p	Required for the construction compound at junction 66 (Eighton Lodge) and associated access.	N/A
4/2a, 4/2b	Required for the temporary stopping up of footpath that runs parallel to A167 Durham Road from Angel of the North to junction 66 (Eighton Lodge).	N/A
4/2d	New right to extend the Longbank Bridleway Underpass and operate, access and maintain the structure and associated equipment.	Work Nos. 6a and 19
4/2e	Required to construct the extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure.	Work Nos. 6a and 19
4/3a	Required for utility diversions and associated works within junction 66 (Eighton Lodge) Roundabout.	Work No. 6a
4/3b	Required for utility diversions and associated works within junction 66 (Eighton Lodge) Roundabout. Grouting works under land.	Work No. 6a
4/3i, 4/3j, 4/3m, 4/3n, 4/3p, 4/4a, 4/4c, 4/4d, 4/4e, 4/4f, 4/5	Required for the construction compound at junction 66 (Eighton Lodge) and associated access.	N/A
4/3q, 4/4b	Required for the construction compound at junction 66 (Eighton Lodge) and associated access. Grouting works under land.	N/A
4/6a	Required to construct the	Work Nos. 6a and 19

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure.	
4/6b	Required to construct the extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure. Grouting works under land.	Work Nos. 6a and 19
4/7b, 4/7e	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Grouting works under land.	Work No. 18
4/7c	Required to carry out the Longbank Underpass and for temporary diversion of pedestrians during closure of the Footbridge.	Work No. 19
4/8	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge.	Work No. 18
4/9a	Required to construct the proposed highway widening works and for construction access.	Work Nos. 6a and 6b
4/12a	Required for access, alteration and maintenance of existing discharge outlet pipelines.	Work No. 6b
4/12b, 4/13b, 4/13d	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Grouting works under land.	Work No.18
4/13e, 4/13f, 4/14c	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge.	Work No. 18
4/14b	Required to carry out the	Work No.18

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	demolition and construction of the replacement North Dene Footbridge and for grouting works under land.	
4/15, 5/1a, 5/1b	Required to construct the proposed highway works and for utility diversions.	Work No. 6b
Land Plans – Sheet 5		
5/3b, 5/4b, 5/4d	Required for access and construction of main highway works and junction 65 (Birtley) off slip. Grouting works under land.	Work Nos. 6a and 8a
5/5a	Required to construct the proposed highway works and associated access. Grouting works under land.	Work No. 8a
5/5c, 5/5e, 5/10b	Required for access and construction of junction 65 (Birtley) northbound on-slip road works.	Work Nos. 6b and 8b
5/6, 5/7, 5/8, 5/9, 5/11	Required for construction of junction 65 (Birtley) southbound off slip road works and temporary footpath diversion. Grouting works under land.	Work No. 8a

SCHEDULE 9

Article 38

TREES SUBJECT TO TREE PRESERVATION ORDER

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
TPO area No. 21 located adjacent to Banesley Lane (multiple species).	Potential removal of trees to the north of Banesley Lane to enable the Junction 67 (Coal House) northbound on slip road works.	Work No 3d

SCHEDULE 10

Article 39

SCHEDULED MONUMENTS

<i>(1)</i> <i>Type of monument</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
<p>Bowes Railway Scheduled Monument (1003723), a partly preserved standard gauge rope haulage railway with associated structures and apparatus. Included within the monument are the colliery and railway workshops which comprised the former Springwell Colliery.</p>	<p>The extension of the north side of the underpass requiring the extension of the corrugated metal structure and the demolition of stone retaining walls (up to a maximum of 17 metres in length) on either side of the former trackbed of the Bowes Railway. Works will include the excavation of two foundation trenches, each 15-17m in length, the insertion of piles at every 1m within the trenches, construction of the tunnel, repairs to the scheduled monument equal to the length of the retaining walls to be removed, insertion of drainage, access on to the monument during construction from site compounds, access after construction for public right of way and bridleway access and the location and fixing of an interpretation board.</p>	<p>Work No. 19</p>

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104(e) (agreements to adopt sewers, drains or sewage disposal works at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

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- (a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).
 - (b) 1986 c. 44. A new section 7 was substituted by section 3 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000.
 - (c) 1991 c. 56.
 - (d) Section 102(4) was amended by sections 96(1)(c) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37).
 - (e) Section 104 was amended by sections 96(4) of, and Part 3 of Schedule 9 to, the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c. 21).

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
 - (g) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days’ written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the

exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker’s undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

(a) 2003 c. 21.

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“electronic communications network” has the same meaning as in section 32(1) of the Communications Act 2003;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 34 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF RAILWAY INTERESTS

18. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 32, any other person on whom rights or obligations are conferred by that paragraph.

19. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 (licences) of the Railways Act 1993^(a).

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006^(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“protective works” means any works specified by the engineer under paragraph 22;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for or connected with the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is, or is to be, situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and includes any authorised development carried out within parcels 3/10c, 3/10d, 3/10e, 3/10f, 3/10g, 3/10h, 3/10i, 3/12a, 3/12b, 3/12c, 3/12d, 3/12e and 3/12f.

20.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(a) 1993 c. 43.

(b) 2006 c. 46.

- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

21.—(1) The undertaker must not exercise the powers conferred by articles 20 (discharge of water), 22 (authority to survey and investigate land), 23 (compulsory acquisition of land), 26 (compulsory acquisition of rights and restrictive covenants), 27 (private rights over land), 30 (acquisition of subsoil or air-space only), 31 (rights under or over streets), 32 (temporary use of land for carrying out the authorised development), 33 (temporary use of land for maintaining the authorised development), 34 (statutory undertakers), 37 (felling or lopping of trees and removal of hedgerows) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or by section 203 (power to override easements and rights) of the Housing and Planning Act 2016(a) in respect of any railway property and leasehold interests forming part of parcels 3/10c, 3/10d, 3/10e, 3/10f, 3/10g, 3/10i, 3/12a, 3/12b, 3/12c, 3/12d, 3/12e and 3/12f unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, or article 34 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use, or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

22.—(1) The undertaker must, before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 46 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before

(a) 2016 c. 22.

the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

23.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 22(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 22;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents, or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or the undertaker's employees, contractors or agents.

24. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or protective work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or protective work or the method of constructing it.

25. Network Rail must at all reasonable times afford reasonable facilities to the undertaker and the undertaker's agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as the undertaker may reasonably require with regard to such works or the method of constructing them.

26.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part

of the specified work or protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any such approval of a specified work or protective work under paragraph 22(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to Network Rail under this paragraph.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 27(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

27. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 22(3) or in constructing any protective works under the provisions of paragraph 22(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

28.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus;

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 22(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 22(1) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution may be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 22(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under subparagraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 23.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 32(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 27(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to a single arbitrator to be agreed between the parties is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology to be agreed.

29. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely

affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as to not adversely affect railway property.

30. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless the undertaker has first consulted Network Rail and the undertaker must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

31. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

32.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in the undertaker's employ or of the undertaker's contractors or others whilst engaged upon a specified work or a protective work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this subparagraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

33. Network Rail must, on receipt of a request from the undertaker, at a frequency to be agreed between the undertaker and Network Rail, provide the undertaker free of charge with written estimates of the costs, charges, expenses, future cost forecasts and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 32) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

34. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

35. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property;
- (c) and any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

36. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

37. The undertaker must give written notice to Network Rail where any application is required and is proposed to be made for the Secretary of State's consent under article 9 (consent to transfer benefit of the Order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the decision-maker to whom the application is to be made.

38. The undertaker must no later than 28 days from the date that the documents referred to in article 44(1) (certification of plans, etc.) are submitted to and certified by the Secretary of State in accordance with article 44, provide a set of those documents to Network Rail a format to be agreed between the undertaker and Network Rail's engineers.

PART 4

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

39.—(1) For the protection of Northumbrian Water Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northumbrian Water Limited.

40. In this part of this schedule—

“alternative apparatus” means any temporary or permanent alternative apparatus adequate to enable Northumbrian Water to fulfil its statutory function in a manner no less efficient than previously;

“apparatus” means the following items within the Order limits (except where paragraph 47(7) applies)—

- (a) in the case of Northumbrian Water's water undertaking—

- (i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or accessories (as defined in section 219(1) (general interpretation) of the Water Industry Act 1991) belonging to or maintained or used by Northumbrian Water for the purposes of water supply; and
 - (ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A(a) (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991; and
- (b) in the case of Northumbrian Water’s sewerage undertaking—
- (i) any sewer, drain or disposal works vested in Northumbrian Water under the Water Industry Act 1991;
 - (ii) any sewer, drain or disposal works which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“emergency” means a situation which—

- (c) is unexpected, in that there is little or no prior warning, or aspects of the event could not have reasonably been predicted in advance;
- (d) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (e) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“Northumbrian Water” means Northumbrian Water Limited, a company incorporated and registered in England and Wales with registered company number 02366703 whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham DH1 5FJ;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

On street apparatus

41. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northumbrian Water are regulated by the provision of Part 3 of the 1991 Act.

Apparatus in stopped up streets

42.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), if Northumbrian Water has any apparatus in the street, Northumbrian Water is entitled to the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Northumbrian Water legal easements reasonably satisfactory to Northumbrian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or

(a) Section 51A was inserted by section 9291) of the Water Act 2003 (c. 37).

of Northumbrian Water to require the removal of that apparatus under paragraph 44 or the power of the undertaker to carry out works under paragraph 46.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), Northumbrian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

43. The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

44. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

45.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northumbrian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northumbrian Water to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Northumbrian Water in accordance with sub-paragraphs (2) to (8).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northumbrian Water 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northumbrian Water reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northumbrian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for access to and the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker, after using all reasonable endeavours is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Northumbrian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northumbrian Water and the undertaker both acting reasonably with a view to securing the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by both parties of their service obligations, which in the case of Northumbrian Water shall be to a standard no less than that achieved prior to the removal of the apparatus which the alternative apparatus replaces, or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) Northumbrian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant

to Northumbrian Water of any such facilities and rights as are referred to in sub-paragraphs 45(2) or 45(3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this schedule.

(6) Regardless of anything in sub-paragraph 45(5), if the undertaker gives notice in writing to Northumbrian Water that the undertaker intends to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by Northumbrian Water, may, subject to the written consent of Northumbrian Water, which shall not be unreasonably withheld, and in accordance with Northumbrian Water's requirements and specifications, be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northumbrian Water.

(7) Nothing in sub-paragraph 45(6) authorises the undertaker to execute the placing, installation bedding, packing, removal, connection or disconnection of any apparatus, or execute the filling around the apparatus (where apparatus is laid in a trench) within 300 millimetres of apparatus.

(8) When alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use all reasonable endeavours to comply with Northumbrian Water's reasonable requests for a reasonable period of time to enable Northumbrian Water to:

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

46.—(1) Where, in accordance with the provisions of this part of this schedule, the undertaker affords to Northumbrian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such reasonable terms and conditions as may be agreed between the undertaker and Northumbrian Water or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must:

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted and have regard to Northumbrian Water's statutory obligations.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northumbrian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northumbrian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(4) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016(a) or other legislation.

(a) S.I. 2016/1154 as amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428 and S.I. 2018/757.

Retained apparatus

47.—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 45(2), the undertaker must submit to Northumbrian Water a plan, section and description of the works to be executed, together with an assessment of the impact of the works and proposed measures for the protection of Northumbrian Water's apparatus.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northumbrian Water for the alteration or otherwise for the protection of the apparatus and of its operation, or for securing access to it, and Northumbrian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northumbrian Water under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) is submitted to it.

(4) If Northumbrian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 39 to 41 and 44 to 46 apply as if the removal of the apparatus had been required by the undertaker under paragraph 45(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give, to Northumbrian Water, notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) For the purposes of sub-paragraph (1), works are deemed to be in land near Northumbrian Water's apparatus (where it is a relevant pipe, as defined in section 158(7) (powers to lay pipes in streets) of the Water Industry Act 1991) if those works fall within the following distances measured from the edge of such apparatus—

- (a) where it is a water main—
 - (i) 3 metres where the diameter of the water main is up to and including 300 millimetres;
 - (ii) 4.5 metres where the diameter of the water main is greater than 300 millimetres, up to and including 600 millimetres; and
 - (iii) 6 metres where the diameter of the water main is greater than 600 millimetres; and
- (b) where it is a sewer, 6.5 metres.

Expenses and costs

48.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northumbrian Water all costs, charges and expenses which Northumbrian Water may reasonably incur or have to pay or which it may sustain in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 45(2), including any costs reasonably incurred in connection with the acquisition of rights under paragraph 45(3) and in watching and inspecting the execution of works under paragraph 47(2) and in making reasonable requirements under paragraph 47(3).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated except where the placing of apparatus at a different depth is required solely to achieve an equivalent capability and function to the existing apparatus,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northumbrian Water in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;
- (b) the provision of additional manholes, valves or wash-out pipes, where required to comply with design standards, must not be treated as a placing of apparatus of better type, of greater capacity or of greater dimensions than those of the existing apparatus; and
- (c) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northumbrian Water in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Northumbrian Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(6) Subject to sub-paragraphs (7) and (8), if by reason or in consequence of the construction, maintenance or failure of any of the authorised development by or on behalf of the undertaker or any such works referred to in paragraphs 43, 45(2) or 47(1), or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northumbrian Water, or there is any interruption in any service provided or of any access to any apparatus, or in the supply of any goods or services, by Northumbrian Water or the performance of Northumbrian Water's functions, or any disruption to the normal operation of Northumbrian Water's apparatus resulting in an increase in the costs incurred by Northumbrian Water in performing its functions or in any loss, damages or penalty or fines, or Northumbrian Water becoming liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by Northumbrian Water in making good such damage or restoring the supply or service;
- (b) make reasonable compensation for any loss sustained by Northumbrian Water; and
- (c) indemnify Northumbrian Water against claims, demands, proceedings, damages, penalty or costs incurred by or recovered from Northumbrian Water,

by reason or in consequence of any such damage or interruption or disruption or Northumbrian Water becoming liable to any third party as aforesaid.

(7) The fact that any act or thing may have been done by Northumbrian Water on behalf of the undertaker or in accordance with a plan approved by Northumbrian Water or in accordance with any requirement of Northumbrian Water or under its supervision does not, subject to paragraph 47(8), excuse the undertaker from liability under the provisions of paragraph 47(6).

(8) Nothing in paragraph 47(6) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northumbrian Water, its officers, servants, contractors or agents.

(9) Northumbrian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(10) Any difference arising between the undertaker and Northumbrian Water under this Part of this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

Access

49. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus or land owned by Northumbrian Water and used by it for the purpose of its statutory functions is materially obstructed, the undertaker must provide such alternative means of access to that apparatus or land as will enable Northumbrian Water to maintain or use the apparatus or use the land for the purpose of its statutory functions no less effectively than was possible before the obstruction.

Co-operation

50.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northumbrian Water requires the removal of apparatus under paragraph 45(2) or Northumbrian Water makes requirements for the protection or alteration of apparatus under paragraph 47(2), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Northumbrian Water's undertaking and Northumbrian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus, which may belong to or be maintainable by Northumbrian Water but which does not appear on any statutory map kept for the purpose by Northumbrian Water, it shall inform Northumbrian Water of the existence and location of the apparatus as soon as reasonably practicable.

(3) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northumbrian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

SCHEDULE 12

Article 44

DOCUMENTS TO BE CERTIFIED

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Plans, Drawings and Sections		
Location Plan – Regulation 5(2)(o)	TR010031/APP/2.1	Revision 2 – Examination Deadline 4 Update
Land Plans – Regulation 5(4) and 5(2)(i)	TR010031/APP/2.2	Revision 3 – Examination Deadline 4 Update
Works Plans – Regulation 5(4) and 5(2)(j)	TR010031/APP/2.3	Revision 3 – Examination Deadline 4 Update
Streets, Rights of Way and Access Plans – Regulation 5(4) and 5(2)(k)	TR010031/APP/2.4	Revision 2 - Examination Deadline 4 update
Engineering Drawings and Sections – Regulations 5(4), 5(2)(o) and 6(2)	TR010031/APP/2.5	Revision 2 – Examination Deadline 4 Update
General Arrangement Drawings – Regulation 5(4) and 5(2)(o)	TR010031/APP/2.6	Revision 2 – Examination Deadline 4 Update
Structures Engineering Drawings and Sections - Regulation 5(4) and 5(2)(o)	TR010031/APP/2.7	Revision 2a – Examination Deadline 4 Update
Special Category Land Plans – Regulation 5(4) and 5(2)(i)	TR010031/APP/2.8	Revision 3 – Examination Deadline 4 Update
Northern Gas Networks Land Ownership Plan	EXA/D9/010	Revision 0 – Examination Deadline 9 Issue
Southern Green Options Report	EXA/D10/011	Revision 0 – Deadline 9 Issue
Compulsory Acquisition Information		
Book of Reference	TR010031/APP/4.3	Revision 4 - Deadline 11 Update
Reports and Statements		
Statement of Statutory Nuisance	TR010031/APP/5.2	Revision 0 – Application Issue
Environmental Impact Assessment (EIA) Information		
Environmental Statement – Volume 1: Chapters	TR010031/APP/6.1	Revision 0 – Application Issue
Environmental Statement – Volume 2: The Figures	TR010031/APP/6.2	Revision 0 – Application Issue
Environmental Masterplan – Regulation 5(2)(a) - Figure 2.4	TR010031/APP/6.2	Revision 0 – Application Issue
Environmental Statement – Volume 3: Appendices	TR010031/APP/6.3	Revision 0 – Application Issue
Scoping Opinion and Scoping Opinion Response Table – Appendix 4.1 of the ES	TR010031/APP/6.3	Revision 0 – Application Issue
Flood Risk Assessment –	TR010031/APP/6.3	Revision 0 – Application Issue

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Appendix 13.1		
Habitat Regulation Assessment – Appendix 8.2	TR010031/APP/6.3	Revision 0 – Application Issue
Environmental Statement – Volume 4: Non-Technical Summary	TR010031/APP/6.4	Revision 0 – Application Issue
Plan and Assessment of Nature Conservation – Figures 8.1, 8.2, 13.8; Chapter 7, 8 and 13 of the ES; Appendix 13.2 of the ES	TR010031/APP/6.2; TR010031/APP/6.1; and TR010031/APP/6.3	Revision 0 – Application Issue
Plan and Assessment of Historic Environmental Effects -Figures 6.1 and 6.2; and Chapter 6 of the ES	TR010031/APP/6.2 and TR010031/APP/6.1	Revision 0 – Application Issue
Environmental Statement Addendum (including updates to Figure 8.1)	TR010031/APP/6.1	Revision 0 – Section 51 Issue
Environmental Statement Addendum 1 to Volume 1 of the Environmental Statement	TR010031/TBC	Revision 1 – Issue for Preliminary Meeting
Environmental Statement Addendum – Additional Land	EXA/D4/009	Revision 0 – Examination Deadline 4 Issue
Environmental Statement Addendum – Additional Land – Appendix C: Update to Preliminary Ecological Appraisal: Updated to incorporate Preliminary Bat Roost Assessment	EXA/D6/004	Revision 0 – Examination Deadline 6 Issue
Environmental Statement Addendum (Non-Technical Summary) – Additional Land	EXA/D4/010	Revision 1 – Examination Deadline 5 Issue
Environmental Statement Addendum – 3 span viaduct	EXA/D4/011	Revision 0 – Examination Deadline 4 Issue
Environmental Statement Addendum (Non-Technical Summary) – 3 span viaduct	EXA/D4/012	Revision 0 – Examination Deadline 4 Issue
Other Documents		
Outline Construction Environmental Management Plan (CEMP)	TR010031/APP/7.4	Revision 6 – Examination Deadline 11 Update

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to alter the A1 between land north of junction 67 (Coal House) and junction 65 (Birtley) near Gateshead in Type and Wear and carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, the book of reference, the environmental statement and the outline CEMP mentioned in this Order and certified in accordance with article 45 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, Lateral, 8 City Walk, Leeds, West Yorkshire, LS11 9AT.