

Southampton to London Pipeline Project

Deadline 3

Written Summary of Oral Submissions at Compulsory
Acquisition Hearing 27 November 2019

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Southampton to London Pipeline Project EN070005

Applicant's Written Summary of Case at the Compulsory Acquisition Hearing held at the Holiday Inn Farnborough on the afternoon of Wednesday 27 November 2019

1 Introduction

- 1.1 This document summarises the case put forward orally by Esso Petroleum Company, Limited ("**the Applicant**") at the compulsory acquisition hearing which took place at the Holiday Inn Farnborough, Lynchford Road, Farnborough GU14 6AZ from 2pm on Wednesday 27 November 2019 ("**the CA Hearing**").
- 1.2 The Applicant was represented at the CA Hearing by:
 - 1.2.1 Alexander Booth QC of Francis Taylor Building;
 - 1.2.2 Angus Walker of BDB Pitmans LLP;
 - 1.2.3 Jonathan Anstee De Mas of the Applicant; and
 - 1.2.4 Adrian Webb of Fisher German LLP.
- 1.3 This written summary of case follows the order in which items were address by the Examining Authority ("**ExA**") at the CA Hearing. Where relevant, the Applicant has answered or clarified points following the CA Hearing by inserting "post-hearing notes" throughout this written summary of case. Where a modification to the draft DCO has been made in response to matters arising at the CA Hearing, reference should be made to the revised draft DCO submitted at Deadline 3 (**Document Reference 3.1(4)**).
- 1.4 Appended to this written summary of case are the following:
 - 1.4.1 a table setting out where in this written summary of case the ExA's action points arising from the CA Hearing have been addressed (Appendix 1 to this written summary of case);
 - 1.4.2 a letter dated 16 August 2017 from Burges Salmon submitted to the Planning Inspectorate by Highways England in respect of the A19 Testo's Junction Improvement Scheme regarding land subject to escheat (Appendix 2 to this written summary of case); and
 - 1.4.3 the Applicant's summary analysis setting out how the figure for compulsory acquisition set out in response to the ExA's written question CA.1.4 was arrived at (Appendix 3 to this written summary of case).
- 1.5 The ExA confirmed that the purpose of the CA Hearing was for the Applicant to provide an update on the status of any compulsory acquisition issues relating to the application in order to assist the ExA in determining whether the legal and policy thresholds for compulsory acquisition will be met.

2 **Agenda Item 2: sections 122 and 123 of the Planning Act 2008 (“PA2008”)**

The Applicant’s case for compulsory acquisition and temporary possession

- 2.1 The ExA invited the Applicant to briefly outline the case for Compulsory Acquisition and Temporary Possession against the tests in PA2008.
- 2.2 Mr Booth explained that section 122 of the PA2008 provided that Compulsory Acquisition can only be authorised if two conditions are met:
 - 2.2.1 the first was that the land sought for Compulsory Acquisition was actually required for the development; and
 - 2.2.2 the second was that there was a compelling case in the public interest to authorise the compulsory acquisition of land.
- 2.3 In relation to the first test, Mr Booth confirmed that all of the rights and land sought to be compulsorily acquired by the Applicant were required for the development. The rights were required pursuant either to section 122(2)(a) of PA2008, that was to say they are required for the development itself, or section 122(2)(b) of PA2008, that was to say to facilitate or because it is incidental to that development.
- 2.4 Mr Booth explained that the outright CA of land for this application related to only a few very small plots of land. These were for the pigging station, pressure transducer and valve compounds. The remainder of the CA related to the acquisition of rights over land in order to lay down and access the replacement pipeline.
- 2.5 Mr Booth confirmed that, as regards the second test, it was the Applicant’s position that the compelling case was demonstrably made out in the application. The basis for that compelling case was set out in the Statement of Reasons (**Application Document 4.1(2)**).
- 2.6 Mr Booth stated that there were three chief headings underpinning the compelling case in this instance:
 - 2.6.1 the first of these headings was need. The compelling case for compulsory acquisition in terms of need was grounded in national policy, in the relevant National Policy Statement (“**NPS**”) documents, in particular NPS EN-1. In this regard, Mr Booth referred to section 3 of NPS EN-1. Section 3 of NPS EN-1 provided, in terms, firstly, that the application should be assessed on the basis that the government had demonstrated that there was a need for the types of infrastructure covered by that policy statement, such as the pipeline that was the subject of the application. Secondly, the policy statement recognised that demand for aviation fuel was expected to continue to rise. Thirdly, NPS EN-1 indicated that the UK needed to ensure that it had safe and secure supplies of the oil products it required. This highlighted the need for reliable infrastructure, including pipelines. Mr Booth noted that NPS EN-1 then went on to say that there was a significant need for oil pipelines and that given the level and urgency of that need, there was a presumption in favour of granting consent. In this context, Mr Booth stated that it was also the Applicant’s case that the role which the replacement pipeline would fulfil was significant. The volume of aviation fuel that would be transported by the replacement pipeline was itself significant. It equated to what 100 fuel tankers could transport every day. That

was 200 vehicular movements every day which the pipeline was replacing. The existing pipeline was old and needs to be replaced, and it was on that basis that there was an overwhelming case for the provision of the replacement pipeline. Mr Booth noted that this was a long, linear scheme. It could not be provided without compulsory acquisition powers;

- 2.6.2 Mr Booth confirmed that the second heading in the context of compelling case related to alternatives. Mr Booth explained that, in considering a compelling case, it was appropriate to consider whether an applicant had sought alternatives to compulsory acquisition. In the context of this scheme, Mr Booth explained that it was correct to say that compulsory acquisition powers were included in the draft DCO from the outset, but that this was entirely appropriate in terms of a long linear scheme and indeed was expressly envisaged in the DCLG guidance, which spoke to long linear schemes such as this one. In any event, Mr Booth confirmed that the Applicant was engaged with affected landowners seeking to acquire interests before the DCO application was submitted. Offers were sent out between January and March that year seeking to reach voluntary agreements, and the application was not submitted until May. Since then, the Applicant's team of agents at Fisher German had been engaging with all these affected parties. Each landowner had been dealing with a specific case officer working to reach agreement, and very significant progress had been made. The Applicant had also held briefing meetings with the NFU and the CLA to enable them to assist and provide appropriate advice to their members. In fact, the CLA had facilitated discussions between the Applicant and a group of landowners. Against that backdrop, Mr Booth stated that it was correct to say that alternatives to compulsory acquisition had been explored by the Applicant; and
- 2.6.3 Mr Booth confirmed that the third and final heading in the context of the compelling case was proportionality. Mr Booth confirmed that the Applicant had kept the compulsory acquisition rights and indeed powers of temporary possession to a minimum. It was for that reason and on that basis that the Applicant was not seeking to compulsorily acquire the land for the pipeline but instead only an easement, a right in land. As regards land outside the limits of deviation, Mr Booth explained that the Applicant was not generally seeking to acquire land or rights at all but just seeking powers of temporary possession for construction and access purposes. In relation to land within the Limits of Deviation ("**LoD**"), the Applicant was only seeking to acquire the right to lay and maintain the pipeline within a narrow section of land, which was generally a 6.3 metre wide strip of land within an LoD ranging broadly to some 30 metres.

- 2.7 Mr Booth therefore summarised that, in terms of the need, alternatives to compulsory acquisition and the proportionality of the interests and rights sought, the Applicant considered that there was a compelling case for compulsory acquisition in the present context.

Update on the progress of negotiations and deadlines for their conclusion

- 2.8 The ExA confirmed that it was aware that the Applicant was actively in discussion with parties to secure rights through voluntary agreements and requested a general update from the Applicant on the status of those negotiations, when they were expected to be agreed and whether any problems with securing agreement were expected.

2.9 Mr Booth confirmed that, in terms of the parties with whom the Applicant was engaging for the acquisition of interests and rights in land, there were 242 parties in total. As regards these 242 parties, Mr Booth confirmed that:

- 2.9.1 in the first category, which comprised 80 of the 242 parties, an option agreement had now been signed;
- 2.9.2 in the second category, which comprised a further 65 of the 242 parties, there had been discussions and those discussions had concluded with a positive agreement and all that remained was for the option agreement to be formally executed;
- 2.9.3 in the third category, which comprised 45 of the 242 parties, the Applicant was at an advanced stage in discussions. Mr Booth confirmed that, in relation to that category, whilst an agreement had not yet been reached, there was no indication that agreement would not be reached in the short term;
- 2.9.4 in the fourth category, which comprised 29 of the 242 parties, the Applicant was at an early stage of discussions. Mr Booth explained that this was for a variety of reasons, such as interests which were in probate and so on. However, Mr Booth confirmed that there was no indication that there would be any difficulty in ultimately concluding an agreement; and
- 2.9.5 finally, in the fifth category, which comprised the remaining 23 of the 242 parties, the Applicant was in discussion with those parties and was negotiating heads of terms, but there was no agreement as yet in relation to those heads of terms.

Post-hearing note: the Applicant confirmed that it would provide an update / breakdown at Deadline 3 in terms of the progress of negotiations with the 242 parties which the Applicant was negotiating with based on the five categories that were used to update the ExA at the CA Hearing (this is provided as Document Reference 8.9(2)). As requested by the ExA, the Applicant has also provided an update in respect of each of the parties to confirm whether an agreement is, in the Applicant's view, likely to be reached by the end of the examination,

2.10 As regards the fifth category, the Applicant provided a summary update on the position in relation to a number of these.

Abbey Rangers Football Club and Surrey County Council

2.11 Mr Webb confirmed that there had been long standing discussions between the Applicant and the Football Club (as tenant of the land owned by Surrey County Council) and there were some outstanding points between the parties relating to construction commitments. Mr Webb stated that a meeting has been arranged between the Applicant and the football club for 28 November 2019 to explore the details of these construction commitments. Mr Webb confirmed that the Applicant was optimistic that an acceptable agreement could be reached with the Football Club before the close of the examination.

Post-hearing note: the Applicant met with the Club on 28 November 2019 to continue discussions regarding the method of working through the Club's facilities, the timing of works and the interface with training activities and Club fixtures. The Applicant will

continue to progress these discussions and remains optimistic of reaching an agreement before the close of the examination.

Cove Cricket Club

- 2.12 Mr Anstee De Mas explained that the Applicant had recently held a site meeting with representatives of the Cricket Club. Mr Anstee De Mas confirmed that those discussions were principally around site access, the timing of works (particularly in relation to the summer season versus the winter season), and the project's interaction with the various activities which took place at the Club. Mr Anstee De Mas confirmed that the club's concerns regarding the loss of parking and cricket nets were also being discussed.
- 2.13 Mr Anstee De Mas confirmed that the Applicant was seeking to reach an agreement with the Club and to mitigate as much as possible the impacts of the project on the Club, particularly as regards the timing of the works and access to the site. However, Mr Anstee De Mas did note that there were constraints on either side of the Cricket Club in terms of when and where the Applicant would be able to work.
- 2.14 Notwithstanding that there were a number of issues subject to ongoing discussion, Mr Anstee De Mas confirmed that the Applicant was very hopeful that an agreement to suitably mitigate the impacts of the project on the Club would be reached by the end of the examination.

Post-hearing note: the Applicant continues to progress discussions with the Club and a further meeting was held on 16 December 2019 at the Club in this regard.

MHA Fleet Limited

- 2.15 Mr Webb provided an update to the effect that the Applicant had met with MHA Fleet's representative on 11 November 2019 to discuss some of the detailed drafting of the voluntary agreement and these terms were currently being considered by the Applicant with the aim of responding shortly. Mr Webb added that there has also been some initial discussion regarding the commercial aspects of the arrangements, but that the parties were not yet agreed on the quantum of the compensation that would be payable.
- 2.16 Notwithstanding that matters of disagreement remained outstanding between the parties, Mr Webb confirmed that the Applicant was confident that an agreement would be reached before the end of the examination.

Mr and Mrs Hammond

- 2.17 Mr Webb confirmed that the Applicant had held some early negotiations with Mr and Mrs Hammond. Following the issue of an offer of terms in January of this year, the Applicant met with them in March. Mr Webb explained that Mr and Mrs Hammond had raised concerns following the meeting regarding diminution of property values. At the time of those discussions, the Applicant had responded to the Hammonds to confirm its position regarding the potential for diminution in property values.
- 2.18 Mr Webb also confirmed that, at the time of these early discussions, Mr and Mrs Hammond were not represented by a valuation surveyor. However, Mr Webb noted that Fisher German had recently received a communication from Mrs Lawson that they had instructed an agent to

act on their behalf, and that Fisher German (on behalf of the Applicant) were now in initial contact with that agent with a view to progressing discussions.

- 2.19 As regards the decision not to route through the woodland to the west of Mr and Mrs Hammond's property, Mr Anstee De Mas confirmed that the decision to route away from this woodland was informed by the fact that, since the existing pipeline was constructed, the woodland had been designated as Ancient Woodland.
- 2.20 In response to concerns about loss of storage buildings, Mr Anstee De Mas confirmed that the proposed method of construction in this location was a trenchless underground directional drill, which would pass underneath Mr and Mrs Hammonds' property. Mr Anstee De Mas clarified that there was sufficient flexibility in the LoD to enable the Applicant to ensure that the replacement pipeline would not affect any existing structures above the pipeline through the property.
- 2.21 Notwithstanding these concerns, Mr Anstee De Mas confirmed that the Applicant was hopeful that an agreement would be reached with Mr and Mrs Hammond by the end of the examination. Mr Booth added that it was relevant to note in this context that a valuer had now been instructed, which gave the Applicant reason to be optimistic about an agreement being reached.
- 2.22 Mr Booth explained that, if an agreement were not reached and the Applicant were required to exercise its powers of compulsory acquisition instead, then the parties would continue to negotiate in relation to any financial claim advanced by Mr and Mrs Hammond. In the event that, ultimately, it was not possible to reach agreement, Mr Booth explained that the dispute was referred to the Lands Tribunal and an independent arbiter would decide whether or not there was in fact a liability and a payment to be made.
- 2.23 Mr Booth confirmed that the Applicant was of course hopeful that matters would not go that far. However, insofar as it was simply an issue of value and there was a difference of opinion in relation to that value, then that was not in fact a matter that goes to whether or not the DCO should be made and the powers should be authorised, because those disputes as to value did not go to the merits of the case as to compulsory acquisition.

Mrs Ralls

- 2.24 Mr Anstee De Mas confirmed that the Applicant had been in discussions with Mrs Ralls regarding the impacts of construction on her property, particularly in relation to a planning application which has been submitted for new equestrian facilities at the property. Mr Anstee De Mas confirmed that discussions had focussed upon the timing and location of these proposals, so that the Applicant could take account of this as part of its ongoing design refinement and construction phase planning.
- 2.25 Mr Anstee De Mas confirmed that the Applicant was confident that a way forward could be found with regard to the layout of the planning application. By way of further context, Mr Anstee De Mas also noted that there was a tight pinch point on the Applicant's Limits of Deviation ("LoD") to the north of the property which impacted on access to the property, but that ultimately there was confidence on the part of the Applicant that there was enough room to enable construction activities to be carried out whilst maintaining access to the property.

Surrey Heath and Runnymede Borough Councils

- 2.26 Mr Webb explained that Surrey Heath had expressed concerns regarding construction impacts on St Catherine's Road SANG. Mr Webb indicated that Surrey Heath had made a proposal to the Applicant regarding compensation in this respect, but that the Applicant was unable to agree to it.
- 2.27 In respect of Runnymede Borough Council, Mr Webb confirmed that he did not understand there to be significant issues to resolve between the parties. Mr Webb confirmed that Runnymede had put forward proposals for environmental mitigation works, which the Applicant was considering.
- 2.28 Whilst there were issues which remained subject to ongoing discussion between the parties, Mr Webb confirmed that the Applicant remained hopeful that an agreement regarding the acquisition of rights and interests over the Councils' land could be reached by the end of the examination. In this regard, Mr Booth provided a point of clarification to the effect that, whilst the Applicant was seeking to reach voluntary agreements with, if not all, as many of the parties concerned as possible, that was not to say that, in the event voluntary agreements were reached with all parties, the Applicant would be taking compulsory acquisition and temporary possession powers out of the DCO. Mr Booth confirmed that, as is common in such cases, the Applicant would be taking a belt and braces approach by retaining those compulsory acquisition and temporary possession powers in the DCO.

Mr and Mrs Ziv

- 2.29 Mr Anstee De Mas confirmed that discussions were ongoing between the parties, principally around the impacts of construction on Mr and Mrs Ziv's property. Specifically, Mr Anstee De Mas explained that the Applicant had been seeking to understand the location of a ground-source heat pump on the property and the potential impact of construction works on trees located within the boundary of the property.
- 2.30 Mr Anstee De Mas indicated that the Applicant was hopeful that it would be able to provide appropriate commitments that the ground-source heat pump could be managed / avoided during construction and that specific trees could also be avoided, so that an agreement regarding the acquisition of rights could be reached. Mr Anstee De Mas also noted that the Applicant had the ability, using the lateral LoD in this location, to lay the pipeline towards the north of the Order limits, which would serve to avoid a number of trees within the property and also to avoid impacts on the ground-source heat pump. The Applicant is in the process of considering whether, at this stage, it is able to commit to using this route through the property as part of the land agreement,
- 2.31 Mr Anstee De Mas was therefore confident that an agreement on voluntary terms for the acquisition of rights could be reached with Mr and Mrs Ziv by the end of the examination.

Mr Simpson and the owners of the garages at Stake Lane

- 2.32 Mr Webb confirmed that the Applicant had held detailed discussions with the agent and solicitor acting on behalf of all nine garage owners on Stake Lane. Mr Webb explained that the Applicant had provided the form of a voluntary agreement that applied to all of the owners of the garages together with a compensation package. Whilst it was understood that those terms were considered broadly to be acceptable by the agent and solicitor, Mr Webb confirmed that there

were some residual concerns regarding construction related impacts, which the Applicant was progressing. However, the Applicant was hopeful that an agreement on voluntary terms would be reached with each of the owners by the end of the examination.

Post-hearing note: the Applicant's team met with Mr Simpson immediately after the CA Hearing and was able to provide a number of clarifications regarding concerns raised during the CA Hearing. A further meeting with a number of the owners of the garages on Stake Lane was held on 16 December 2019 in order to progress these discussions.

Thames Water

- 2.33 Mr Webb explained that very positive discussions had taken place between the Applicant and Thames Water regarding the acquisition of some land from Thames Water for a valve location and for a section of the easement for the pipeline. Mr Webb confirmed that the Applicant did not anticipate any significant impediment to securing agreement with Thames Water by the end of the examination period.

The Book of Reference

- 2.34 The ExA asked the Applicant to confirm whether all affected parties had been captured in the Book of Reference (**Application Document 4.3(2)**).
- 2.35 Mr Booth confirmed that the Applicant was confident that the Book of Reference captured all of the relevant interests and that the Applicant had contacted everybody which it needs to.
- 2.36 As regards the suggestion made by Taylor Wimpey at Deadline 2 that it had affected land interests along the route but had not been contacted, Mr Webb clarified that there had been a slight misunderstanding and that heads of terms were in fact agreed and had been signed by Taylor Wimpey. Mr Webb confirmed that the Applicant had spoken with Taylor Wimpey, and it was understood that Taylor Wimpey was therefore content to withdraw its representation on that basis.
- 2.37 It was also noted at the CA Hearing by representatives on behalf of MHA Limited that:
- 2.37.1 Aldi, who have the benefit of an agreement for lease over the MHA site, were consulted about the proposed application under section 42 of PA2008, but had not been included in the Book of Reference; and
- 2.37.2 Home Bargains had recently signed an agreement for lease for that site as well, so should now be contacted by the Applicant.
- 2.38 The Applicant confirmed that it would look into those matters and provide an update at Deadline 3.

Post-hearing note: the Applicant is continuing its enquiries regarding these interests and will ensure that any relevant additions are made to the next iteration of the Book of Reference.

3 Agenda item 3: section 135 of PA2008 – Crown Land

- 3.1 The ExA asked the Applicant to confirm the position in respect of the land which had been identified in Part 4 of the Book of Reference as being within the ownership of the Crown Estate Commissioners, that is to say plot numbers 1036, 1053, 1069, 1139, 1140, 1253, 1254, 1314 and 1317.
- 3.2 Mr Booth explained that those particular plots were in fact escheat land, that is to say land which had reverted to the Crown, and which the Applicant had included in Part 4 of the Book of Reference out of an abundance of caution.
- 3.3 Mr Booth confirmed that the issue of escheat land has been considered previously in the context of PA2008. In this regard, Mr Booth noted that solicitors for the Crown Estate had previously confirmed that they did not regard such land as Crown land for the purposes of PA2008. Burges Salmon, who frequently acted for the Crown Estate in this context, had formally confirmed this position at least once in connection with the A19 Junction Improvement Scheme. Mr Booth confirmed that the Applicant could provide the correspondence relating to that project at Deadline 3, which set out Burges Salmon's definitive position that escheat land did not comprise Crown land for the purposes of PA2008.
- 3.4 Mr Booth also confirmed that the Applicant was content to seek confirmation from the Crown Estate, in the context of this particular examination, that it did not consider this land in particular to be Crown land for the purposes of PA2008 and that the land could therefore be subject to compulsory acquisition without the need for the consent of the relevant Crown body.

Post-hearing note: the Applicant has included at Appendix 2 to this written summary of case the Burges Salmon correspondence dated 16 August 2017 which was referred to at the CA Hearing in the context of the A19 Testo's Junction Improvement Scheme. The Applicant can also confirm that, following the CA Hearing, contact has been made with Burges Salmon regarding the escheat land set out in Part 4 of the Book of Reference. A further update will be provided at Deadline 4.

Ministry of Justice ("MoJ")

- 3.5 The ExA asked the Applicant to provide an update on negotiations with the MoJ.
- 3.6 Mr Webb confirmed that the Applicant first approached the MoJ in January 2019. Mr Webb noted that the Ministry had recently appointed Carter Jonas as land agent and that there had been a site meeting with Carter Jonas on 4 November. Mr Webb confirmed that the Applicant would be engaging in further dialogue with the MoJ, through Carter Jonas, regarding concerns raised around the effect of the project on the access to HMP Bronzefield.
- 3.7 At the CA Hearing, Mr Mole of Carter Jonas confirmed that he was confident that any issues outstanding between the parties would be resolved and an agreement reached by the end of the examination. The Applicant confirmed that it shared that view.

Ministry of Defence ("MoD")

- 3.8 Mr Anstee De Mas explained that the Applicant had been in extensive discussions with the MoD throughout the project so far. Mr Anstee De Mas confirmed that a meeting had taken place with representatives of the MoD in recent weeks and, whilst very conscious that there

were unique issues regarding the MoD's land, was confident that voluntary agreement with the MoD would be reached by the end of the examination period. **Post-hearing note: the Applicant and the MoD's land agent are currently in the process of seeking to agree a timetable with a view to facilitating the conclusion of voluntary agreements by the end of January 2020.**

- 3.9 Mr Anstee De Mas emphasised that this confidence was underscored by the fact that the Applicant currently operated existing lines through the MoD estate, both here and on other MoD estates throughout the country. In those instances, Mr Anstee De Mas noted that the terms of the voluntary agreements had been drafted to reflect the specific nature and use of the land, so that a pipeline was capable of operating safely through MoD land.
- 3.10 In response to the ExA's question whether an agreement was likely to be secured by the end of the examination, it was also confirmed by Mr Bower of Womble Bond Dickinson LLP on behalf of the MoD that, whilst it was unlikely that an agreement would now be in place before Christmas, he was optimistic that matters would be agreed by the end of January, such that any need for a closed issue specific hearing would be dispensed with.
- 3.11 The ExA also sought to understand what the implications would be if the relevant Crown land consents were not forthcoming by the close of the examination, noting that a significant amount of the land required for this project was in the ownership of the Crown. In that regard, the ExA confirmed that it would, in the event that Crown consent was not secured by Deadline 6 in the examination timetable, be seeking an explanation at that deadline from the Applicant as to how the project could proceed if some or all Crown land had to be removed from the Order land.
- 3.12 It was also noted by the ExA that the Book of Reference only appeared to include those plots of land which were owned by the Crown. The Applicant therefore agreed that it would check the position and confirm at Deadline 4 whether the Book of Reference also included or should include those plots where the Crown had the benefit of rights.
- 3.13 Finally, the ExA stated its view that the draft DCO should be explicitly clear, in articles 20 and 22, that it excluded all interests held by or on behalf of the Crown from the scope of the Applicant's power to compulsorily acquire interests and rights over land held by or on behalf of the Crown. In the ExA's view, the Crown rights article did not currently do that. That article stated only that the permission of the Crown was required.
- 3.14 In response, Mr Walker confirmed that there was only ever one plot of Crown land in the Book of Reference where outright acquisition was sought by the Applicant, namely plot 917. The Applicant confirmed in response to written question CA. 1.7 at Deadline 2 that this plot would be removed from the next version of the Book of Reference which was submitted to the examination. Mr Walker also confirmed that the Applicant would reflect further upon the drafting of articles 20 and 22 of the draft DCO and confirm its position at Deadline 3.

Post-hearing note: the Applicant has considered the ExA's request and can confirm that a new article 20(3) has been inserted to the revised draft DCO submitted at Deadline 3 (Document Reference 3.1(4)) to make clear that the power to acquire land outright does not apply to the acquisition of an interest which is for the time being held by or on behalf of the Crown. Article 20(2)(d) has been removed, as the Applicant considers that this would create unnecessary duplication, and potential confusion, in relation to the application of the newly inserted article 20(3).

As regards the acquisition of rights under article 22, the Applicant refers the ExA to article 22(6) of the draft DCO, which already makes the position in respect of Crown land clear in this regard.

4 Agenda item 4: sections 130 and 132 of PA2008

- 4.1 The ExA asked the Applicant to set out the case for compulsory acquisition and temporary possession with regards to sections 130 (National Trust Land) and 132 (Commons, Open Space or Fuel or Field Garden Allotment) of PA2008.

Section 130 and National Trust land

- 4.2 As regards section 130 of PA2008, Mr Booth confirmed that the Applicant had entered into a voluntary agreement with the National Trust as regards its land at Hinton Ampner. Mr Booth added that in light of the protected status of land held inalienably by the National Trust and the agreement reached, the Applicant was no longer seeking compulsorily acquisition powers in relation to that land and would remove it from the Book of Reference in the next update. Mr Booth therefore confirmed that, on that basis, there was nothing further to be said in relation to section 130 of PA2008.

Section 132 and Commons, open space and fuel or field allotments

- 4.3 As regards section 132 of PA2008, Mr Booth confirmed that the Applicant was seeking to acquire rights in open space and also in a limited area of common land, for example at Chobham Common. Mr Booth explained that the Applicant's position regarding the tests in section 132 of PA2008 was largely set out in chapter 17 of the Planning Statement (**Application Document 7.1**).
- 4.4 In terms of the relevant statutory provisions, Mr Booth clarified that, in circumstances where one was seeking to acquire rights or indeed the land itself, in the context of special category land, special parliamentary procedure would apply unless a statutory exception applied. Mr Booth confirmed that it was the Applicant's position that a statutory exception applied in this case, and the Applicant relied upon section 132(3) of PA2008, that was to say that the Order land when burdened with the Order right would, in the Applicant's view, be no less advantageous than it had been previously.
- 4.5 Mr Booth confirmed that the laying of infrastructure through open space had been considered by previous Examining Authorities. Mr Booth referred to the Richborough Connection Project in that respect, which was an example of an instance where an Examining Authority and indeed the Secretary of State considered the position vis-à-vis the laying of infrastructure in open space and concluded that section 132(3) of PA2008 did engage so as to say that the land was no less advantageous as open space thereafter.

Temporary Possession

- 4.6 The ExA asked the Applicant to examine and clarify the position with regard to article 29(9) of the draft DCO.
- 4.7 Mr Walker explained that article 29(9) was unnecessary in this instance and would be removed from the revised draft DCO which is submitted at Deadline 3 (**Document Reference 3.1(4)**).

- 4.8 Mr Walker explained that the history of this provision was that, in many DCOs, there was one schedule that listed plots in which new rights were to be created and there was another schedule which listed plots of land in which temporary possession was authorised only. In those instances, article 29(9) served to clarify that both powers were capable of existing in respect of plots which were listed in both schedules. Mr Walker confirmed that this was not the case with this application. The “yellow land” was land in respect of which only temporary possession could be taken and none of it was subject to the compulsory acquisition of rights. For that reason, article 29(9) was not in fact applicable in this case.

Post-hearing note: the Applicant has removed article 29(9) from the revised draft DCO submitted at Deadline 3 (Document Reference 3.1(4)).

- 4.9 The ExA then asked the Applicant to confirm the time period during which the powers of temporary possession would apply in respect of the “yellow land” under article 29 of the draft DCO. **Post-hearing note: the Applicant was also asked to consider the timing implications for the temporary possession powers following the service of relevant notices, which is addressed in the following paragraphs.**
- 4.10 Mr Walker explained that, as regards the parcels of “yellow land” in Schedule 7 of the draft DCO, following service of a temporary possession notice under article 29(2), the power of temporary possession would last for one year after the completion of the relevant work referred to in relation to that land in Schedule 7. That was secured by article 29(3)(a) of the draft DCO. Mr Walker confirmed that “completion of the works” here referred to the completion of the particular works on the land of which temporary possession had been taken and not the completion of the whole project. There could not, as Mr Booth pointed out, be a situation where the one-year clock had not started run in one location along the route simply because works are outstanding at another, potentially distant, location.
- 4.11 Mr Walker also clarified that the Applicant was seeking powers to take temporary possession of the whole of the Order land, not simply the land referred to in Schedule 7 of the draft DCO. This was provided for in article 29(a)(ii) of the draft DCO. This enabled the Applicant to initially take temporary possession of land before the permanent rights over that land were required, thus deferring (and ultimately reducing) the permanent land take to a point in time when the actual location of the pipeline would be known.
- 4.12 As regards land which the Applicant was subsequently going to acquire or impose rights on, Mr Walker explained that, following service of a notice requiring temporary possession under article 29(2) of the draft DCO, the ability to remain in temporary possession of that land was also time limited to the period of one year following completion of the works on the land, in accordance with article 29(3)(b) of the draft DCO. That was unless the Applicant had taken steps to compulsorily acquire an interest or right in respect of the land, which it had to do within five years beginning on the day on which the Order was made in accordance with article 23 of the draft DCO.
- 4.13 **Post-hearing note: it is also relevant to note in this context that the power to take and remain in possession of land must necessarily be connected to the carrying out of the authorised development under article 29(1) of the draft DCO. There is no question of the Applicant taking possession of land and then simply retaining it without taking steps actively to progress and then complete works on the land. Once the works are completed, the one year period for returning possession of the land under article 29(3)**

begins to run. The Applicant would emphasise that the drafting of Article 29 is based on numerous Orders, including linear schemes such as the Thorpe Marsh Gas Pipeline Replacement Order 2016 and the Richborough Connection Order 2017, and is therefore well precedented and well known.

- 4.14 As regards land which was set aside for environmental mitigation, the ExA noted that there were numerous parcels of land which were identified as environmental mitigation areas and asked the Applicant how the temporary possession of those parcels of land met the legislative tests in PA2008.
- 4.15 Mr Walker confirmed that, as regards the temporary possession of those parcels of land which were required for the purposes of providing mitigation areas, the Applicant relied upon section 122(2)(b) of PA2008, which confirmed that an order granting development consent could include provision authorising the compulsory acquisition of land where that land was required to facilitate or was incidental to that development. In terms of the draft DCO, however, Mr Walker confirmed that article 29 of the draft DCO was the provision which would enable the Applicant to take temporary possession of that land for the purposes of providing environmental mitigation.
- 4.16 In terms of how the sites which had been identified in the draft DCO for environmental mitigation were selected, Mr Anstee De Mas explained that the Applicant individually identified the plots of land to be used for the installation of mitigation measures, which would include tree and hedgerow planting, the provision of bat boxes and so on, working with the relevant agencies and landowners. Mr Anstee De Mas confirmed that these measures also formed part of the land agreements which the Applicant was seeking to enter into,

Section 127 Statutory Undertakers with particular reference to Protective Provisions

- 4.17 The ExA asked the Applicant to provide an update on the progress of protective provisions negotiations in light of the submissions made by interested parties at Deadline 2.
- 4.18 Mr Booth explained that the Applicant's update on progress was substantially contained within its response to written question CA.1.3 at Deadline 2. Mr Booth noted however that the position had moved on a little since then and that, by way of example, the Applicant had in recent days reached agreement with Southern Water and South East Water. Mr Booth confirmed that constructive discussions were continuing with the remaining statutory undertakers.
- 4.19 Mr Booth noted specifically that the discussions with Network Rail were more complicated as it was not simply seeking a bespoke set of protective provisions but was also seeking an arrangement which was entirely outside the DCO. Mr Booth confirmed that there were concerns in that regard, but that discussions were progressing nevertheless.
- 4.20 As regards Thames Water, Mr Booth explained that the Applicant provided the draft protective provisions to Thames Water earlier that year and whilst constructive discussions were progressing as regards technical matters, the Applicant awaited Thames Water's suggested form of protective provisions so that negotiations on legal matters could progress.
- 4.21 It was noted on behalf of Thames Water at the CA Hearing that a technical meeting was required in order to progress discussions. **Post-hearing note: the Applicant can confirm that this meeting has now been arranged for 16 January 2020.**

- 4.22 As regards protective provisions more generally, Mr Booth acknowledged the need to progress discussions with affected bodies as much as possible and the Applicant confirmed that it was working hard to close out remaining areas of disagreement with those bodies.

5 Agenda Item 7: Funding

- 5.1 The ExA asked the Applicant to explain how the figure of £10.3 million, which was referenced in response to the ExA's written question CA.1.4 at Deadline 2, for total compulsory acquisition costs was arrived at and the level of confidence which the Applicant had in it.
- 5.2 Mr Booth confirmed that the Applicant had put this figure forward to the ExA because it was confident in it. However, to the extent that it would help the ExA, Mr Booth confirmed that the Applicant was happy to provide the ExA with a summary of the analysis that was undertaken in order to arrive at that figure.

Post-hearing note: the Applicant has appended at Appendix 3 to this written summary of case its summary analysis of how the total figure for CA costs was arrived at in response to the ExA's written question CA.1.4.

Application by Esso Petroleum Company, Limited for an Order granting Development Consent for the Southampton to London Pipeline Project

Hearing Action Points arising from the Compulsory Acquisition Hearing held at the Holiday Inn Farnborough on Wednesday 27 November 2019

Action	Description	Action by	When	Where this action has been addressed
1	All parties to continue to negotiate and where possible conclude voluntary agreements for the land that would be needed to enable delivery of the proposed development	All parties	By the end of the Examination	The Applicant continues to progress negotiations with a view to securing voluntary agreements wherever possible.
2	Applicant to provide an update/breakdown as to the progress on negotiations with the 242 parties that they are negotiating with based on the five categories that were used to update the Examining Authority (ExA) orally at the Hearing including where possible an indication as to whether an agreement would be reached before the end of the Examination.	Applicant	Deadline 3	See post-hearing note at paragraph 2.9.5 of the Applicant's written summary of case following the Compulsory Acquisition Hearing held on Wednesday 27 November 2019.

Action	Description	Action by	When	Where this action has been addressed
3	Applicant to confirm position with regard to Escheat land and to provide written confirmation from the Crown Estate (or its advisors) that it is not considered to be Crown land for the purposes of PA2008	Applicant	Deadline 7	See post-hearing note at paragraph 3.4 of the Applicant's written summary of case following the Compulsory Acquisition Hearing held on Wednesday 27 November 2019.
4	Applicant to review the Book of Reference (BoR) for plots where the Crown has an interest/right over (eg drainage rights) and to confirm in writing that all Crown land (including where the Crown has an interest or right) have been identified	Applicant	Deadline 4	See paragraph 3.12 of the Applicant's written summary of case following the Compulsory Acquisition Hearing held on Wednesday 27 November 2019.
5	Plot 917 to be removed from the next iteration of the BoR	Applicant	At the next update of the BoR	The Applicant will ensure that this is done at the next update of the Book of Reference.

Action	Description	Action by	When	Where this action has been addressed
6	Applicant to review the request by the ExA that, given the extent of Crown land involved and the length of the scheme, to ensure certainty that the Development Consent Order (DCO) would not authorise the Compulsory Acquisition (CA) of Crown land and that Articles 20 and 22 should be reworded to exclude all interests held by or on behalf of the Crown	Applicant	Deadline 3	See post-hearing note at paragraph 3.14 of the Applicant's written summary of case following the Compulsory Acquisition Hearing held on Wednesday 27 November 2019.
7	Should it become apparent that consent for Crown land is unlikely to be forthcoming the Applicant to provide an explanation of how the project could proceed if all Crown land were to be removed from the Order	Applicant	Deadline 6	The Applicant will provide this explanation at Deadline 6, if required.
8	Applicant to amend draft DCO to remove Article 29(9)	Applicant	Deadline 3	See post-hearing note at paragraph 4.8 of the Applicant's written summary of case following the Compulsory Acquisition Hearing held on Wednesday 27 November 2019.

Action	Description	Action by	When	Where this action has been addressed
9	Applicant to consider the time period implication of Temporary Possession powers following the serving of relevant notices	Applicant	Deadline 3	See paragraphs 4.10 to 4.13 (inclusive) of the Applicant's written summary of case following the Compulsory Acquisition Hearing held on Wednesday 27 November 2019.
10	Applicant to continue to engage with Statutory Undertakers to seek to agree the wording for Protective Provisions before the end of the Examination	Applicant and Statutory Undertakers	By the end of the Examination	The Applicant continues to progress discussions with statutory undertakers in this regard.
11	Applicant to provide a further information on how the proposed funding for CA has been established	Applicant	Deadline 3	See post-hearing note at paragraph 5.2 and Appendix 3 of the Applicant's written summary of case following the Compulsory Acquisition Hearing held on Wednesday 27 November 2019.

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16 August 2017

When telephoning please ask for: Tristan Williams

Dear Sirs

A19 Testos Junction Improvement Scheme (the "Scheme")
Land subject to escheat

We write further to recent correspondence passing between us in relation to the Scheme.

BACKGROUND

You act for Highways England, and have applied for a Development Consent Order (a "**DCO**") in relation to the Scheme pursuant to the Planning Act 2008 (the "**2008 Act**"). We act for the Crown Estate Commissioners.

This response is based on your query relating to whether the Scheme involves compulsory acquisition of interests in "Crown land" as defined by the 2008 Act.

As will be apparent from this letter, the land in the Scheme (outlined below) does not form part of The Crown Estate, but may instead be subject to escheat. On this basis it is not Crown land under the 2008 Act.

This letter will first explain our client's approach to land subject to escheat, and then we will comment on the application of the 2008 Act to such land.

LAND SUBJECT TO ESCHATEAT

Where property is subject to escheat to the Crown at common law, it falls by longstanding convention to be dealt with by The Crown Estate.

In those circumstances, and in accordance with legal advice given on previous occasions, The Crown Estate would not propose to take any action which might be construed as an act of management, possession or ownership in relation to such property, since to do so might incur upon it liabilities with which the property is, or may become, encumbered. Please note that neither this letter, nor any other dealings between us, should be construed as such an act.

The reasoning behind this approach is that The Crown Estate does not accept that it should be, in effect, a guarantor of last resort for companies and individuals who have failed financially, leaving onerous property in their wake. To do so would not be an appropriate application of The Crown Estate's revenues, nor is it a function envisaged for The Crown Estate by Parliament. Properties that may be subject to escheat are not infrequently onerous in nature, and many have little or no monetary value. The total cost of all potential past, present and future liabilities connected to such properties, of which there are many, would be enormous. As

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The Crown Estate accounts to the Treasury for its operating surplus, such a cost would end up as a burden on the public purse.

APPLICATION OF THE 2008 ACT TO LAND SUBJECT TO ESCHEAT

You have written to us in relation to 3 parcels of land (the "**Property**") which are proposed to be covered by the DCO. These areas of land may now be subject to escheat, by virtue of having formerly been owned by Tyne River Properties Plc.

We can confirm that no act of management has been undertaken by The Crown Estate in relation to the Property. Accordingly, the Property does not form part of The Crown Estate.

It follows that the Property cannot be Crown land (as part of The Crown Estate) for the purposes of the 2008 Act, nor do the Crown Estate Commissioners have remit under the 2008 Act to consent to the acquisition of any interest in such land within the DCO.

However, although this is a matter for the Examining Authority, we are not aware of any reason why the DCO cannot be granted over land that is subject to escheat.

CONCLUSION

We trust you will appreciate that the events which have led to the current situation are not of The Crown Estate's making. The law relating to escheat is archaic and complex, and imposes constraints on The Crown Estate's freedom of action.

Against that background though, we hope that this letter has been helpful to explain The Crown Estate's position in relation to the Scheme and the DCO.

Yours faithfully


BURGES SALMON LLP

Hearing Action Points arising from the Compulsory Acquisition Hearing held at the Holiday Inn Farnborough on Wednesday 27 November 2019

Appendix 3

CA.1.4 "Applicant to provide further information on how the proposed funding for CA has been established"

Applicants Approach to Compensation forecasts and Methodology

Land acquisition £0.2m and Easement rights £4.6m

The Applicant has taken expert advice on the likely costs of the funding of the acquisition of the interests identified in land described in the Book of Reference.

The Applicant has identified that it requires the outright acquisition of land identified at 14 sites including the above ground valves and Pigging station and in addition it requires easement rights for the pipeline where that is likely to be located in private land. Where the pipeline is located in adopted Public highway which is a length of about 8.3km of the overall route no permanent rights in land are sought and no compensation would therefore be payable.

A detailed analysis of all of the privately owned land and individual properties affected within the order limits for the project was undertaken to assess estimates for the costs of acquiring land or rights in land. The analysis included a detailed assessment of total areas to be affected by outright acquisition or easement rights within the order limits and a further analysis of its current use, for example agricultural, commercial, residential, public open space, etc.

Property consultants engaged by the Applicant used national, regional and local data to compile the land or land rights acquisition cost estimate whilst also making reference to statute and case law precedents, and well established valuation principles. Valuation data was further cross checked against completed and current DCO projects to ensure greater overall accuracy. It is possible that some local factors may emerge after the initial estimates have been prepared. Experience across similar projects indicates that a 10% contingency is sufficient to contain such costs. The figures quoted in the Funding Statement contain such contingency.

The Applicants assessment of compensation payable for easement rights includes a detailed assessment of a payment for the right required and an assessment of any possible injurious affect. In addition the Applicants assessment of easement payments also included an incentive payment offered to property owners entering into Voluntary agreements which would not otherwise be available under the compensation code.

Disturbance Compensation £2.82m

The Applicants property consultants have carefully assessed potential disturbance and business loss compensation based on its knowledge of current land and business use within the order limits. The estimate includes an assessment of potential losses from agriculture or

farming related businesses over all of the order limits including an estimate of losses during the year of construction and possible future losses likely to be incurred during a reinstatement period whilst the land occupied recovers to full productive capacity. The assessment also includes an estimate of potential business losses arising at all other property types affected which include commercial retail and industrial property, golf clubs, equestrian enterprises, school premises, sports facilities, infrastructure owners land and Local Authority land with public access.

Injurious affection £1.18m

The Applicants estimate of the costs of injurious affection which includes blight provision have been based on the Applicants assessment of impacts on specific current land or property use, costs associated with temporary possession of land for logistics hubs, compounds and other temporary possession uses, potential for residential property blight, which has included specific individual property assessments such as the residential properties with garages at Stake Lane.

Professional Fees £1.5m

The Applicant has published a surveyors fee scale which has been provided to all agents acting on behalf of affected landowners which sets out the basis on which fees will be calculated and reimbursed and the estimate of surveyors fees included in this estimate has been assessed based on all property owners being represented by an agent with fees paid based on that fee scale. Other Professional costs such as legal fees properly payable have been assessed by Esso's legal advisors and are also factored into this assessment.