



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

M20 Junction 10a

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Transport**

Examining Authority

Dr Mike Ebert C Eng, MICE, FIC, CMC

1 September 2017

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ERRATA SHEET – M20 Junction 10a - Ref TR010006

**Examining Authority's Report of Findings and Conclusions and
Recommendation to the Secretary of State for Transport, dated
1 September 2017**

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

Page No.	Paragraph	Error	Correction
14	2.3.6	in 4th line: "Lane6"	"Lane ⁶ " (footnote reference)
23	3.5.11	in 1st line: "proscribes"	"pre <u>scribes</u> "
30	4.3.2	in 4th-5th line "the Applicant" (second occurrence); and in 5th line "of the" (second occurrence)	delete duplicate words.
33	4.4.4	in 3rd line: "Advise"	"Ad <u>vice</u> "
54	5.4.25	in 4th line: "Propose"	"Propo <u>sed</u> "
76	5.7.68	in 6th line and 8th line: "/M3"	"/M ³ " (in both cases)
80	5.8.3	in 5th line "greater"	"greater <u>er</u> "
133	5.16.33	in 5th line: "Propose"	"Propo <u>sed</u> "
142	7.3.16	in 3rd line: "local highway authority, KCC,"	"local planning authority, ABC ,".
167	8.6.3	in 7th line: "protection National"	"protection of National"
168	8.6.7	in 4th line: "formally"	"form <u>erly</u> "
172	8.8 heading	"EUROPEAN CONVENTION OF HUMAN RIGHTS"	"EUROPEAN CONVENTION ON HUMAN RIGHTS"

Examining Authority's findings and conclusions and recommendation in respect of the application by Highways England for an order granting development consent for the M20 Junction 10a

File reference TR010006

The application, dated 19 July 2016, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 19 July 2016.

The Applicant is Highways England.

The application was accepted for examination on 11 August 2016.

The examination of the application began on 3 December 2016 and was completed on 2 June 2017.

The Proposed Development comprises the creation of a new interchange Junction 10a on the M20 in Kent, east of the existing Junction 10. It would incorporate a new two-lane dual carriageway link road running south to join the existing A2070 Southern Orbital Road (Bad Munstereifel Road); a new pedestrian/ cycle bridge over the M20 to the east of the new Junction 10a providing a link between Kingsford Street on the south side of the motorway to the A20 on the north side; a new footbridge to replace the existing footbridge over the A2070 at Church Road; and a new retaining wall at Kingsford Street.

The application also includes an 'Alternative Scheme' which, in addition to the above, includes the provision of new access in the form of a roundabout from the proposed A2070 link road to the proposed Stour Park Development site, located immediately south of the proposed A2070 link road.

Summary of recommendation:

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

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ORDER**

1 INTRODUCTION

1.1 INTRODUCTION

- 1.1.1 The Proposed Development is for the creation of a new interchange Junction 10a on the M20 in Kent east of the existing Junction 10. It would incorporate a new two-lane dual carriageway link road running south to join the existing A2070 Southern Orbital Road (Bad Munstereifel Road). It would include a new pedestrian/ cycle bridge over the M20 to the east of the new Junction 10a providing a link between Kingsford Street on the south side of the motorway to the A20 on the north side; a new footbridge to replace the existing footbridge over the A2070 at Church Road; and a new retaining wall at Kingsford Street [APP-001].
- 1.1.2 The application also includes an 'Alternative Scheme' which, in addition to the above, includes the provision of new access in the form of a roundabout from the proposed A2070 link road to the proposed Stour Park Development site, located immediately south of the proposed A2070 link road [APP-003].
- 1.1.3 Throughout the application the Proposed Development is stated to be an alteration of a highway. The Applicant states that the Proposed Development comprises a Nationally Significant Infrastructure Project (NSIP) as defined by sections 14(1)(h) and 22(1)(b), (3) and (4)¹ of the Planning Act 2008 (PA2008), because:
- the highway will be wholly in England;
 - the Secretary of State (SoS) will be the highway authority for the highway; and
 - for the alteration element of the Proposed Development the area of the development is greater than 15 hectares [APP-003].
- 1.1.4 The Proposed Development lies within the administrative boundaries of Ashford Borough Council (ABC) and Kent County Council (KCC) [APP-003].
- 1.1.5 The Applicant is Highways England (HE). HE is the body responsible for the operation, maintenance and enhancement of the strategic road network (SRN) in England. It is an executive non-departmental public body, sponsored by the Department for Transport (DfT) [APP-001].
- 1.1.6 The M20 in Kent is the main strategic highway route between the M25, Channel Tunnel, and the Port of Dover. It is part of the European Route E15². The M20 provides road access from south-east London to Dover. Major towns on the route of the M20 are Maidstone, Ashford and Folkestone [REP7-008].

¹ As amended by the Highway and Railway (Nationally Significant Infrastructure Projects) Order 2013

² <https://www.unece.org/fileadmin/DAM/trans/conventn/ECE-TRANS-SC1-384e.pdf>

- 1.1.7 Ashford was identified as a major growth area for the south-east in the Government's Sustainable Communities Plan³. The provision of 31,000 additional homes and 28,000 new jobs in the area is anticipated by 2031 [APP-210].
- 1.1.8 The Applicant reports that the existing M20 Junction 10, south of Ashford, suffers from congestion and delays, especially in peak periods. This is caused mainly by conflict between strategic and local traffic. The Applicant predicts that the existing M20 Junction 10 will suffer from increased congestion and long delays in the future, if additional capacity is not provided. The M20 Junction 10a 'Main Scheme' and 'Alternative Scheme' is therefore a key transport requirement that is essential to the future development of South Ashford [APP-210].
- 1.1.9 The stated objectives of the Proposed Development are to:
- **increase capacity:** increasing the capacity of the road network to support the Proposed Development areas in Ashford;
 - **combat congestion:** alleviating congestion around the existing Junction 10 and improving safety, whilst creating the opportunity to enhance local transport facilities for non-motorised users;
 - **connect people:** providing a new route for traffic into Ashford by way of the new junction and dual carriageway link road;
 - **minimise environmental impact:** designing the Scheme to ensure impact to the environment is minimised, and where possible allow enhancements to be made;
 - **improve reliability:** improve journey time reliability on the strategic road network [APP-210].
- 1.1.10 The application is accompanied by an Environmental Statement (ES) in accordance with the definition in Regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regs) [APP-029 to APP-208]. The environmental information is supplemented through further submissions during the Examination and all the environmental information defined in Regulation 2(1) of the EIA Regs has been taken into account.

1.2 STRUCTURE OF REPORT

- 1.2.1 This introduction comprises Chapter 1. Chapter 2 summarises the main features of the Proposed Development and Chapter 3 summarises the legislative and policy context. Chapter 4 identifies the various issues which arose in submissions from local authorities and Interested Parties (IPs) from the outset of the Examination. Matters which require further and more detailed consideration are addressed

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<http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/communities/pdf/146289.pdf>

in Chapter 5 which deals with the impacts of the Proposed Development. Chapter 6 then sets out my conclusions in relation to Habitats Regulations matters and Chapter 7 sets out my conclusions on the case for development consent. Chapter 8 considers Compulsory Acquisition and other land matters and Chapter 9 deals with the recommended Development Consent Order (DCO). Chapter 10 sets out my overall conclusions and recommendation.

- 1.2.2 The report has four appendices. The main events taking place throughout the Examination and the main procedural decisions are listed chronologically at Appendix A. All documents submitted to the Examination of the application are recorded in the Examination Library at Appendix B. A list of abbreviations used in the report is provided at Appendix C. The recommended draft Development Consent Order (dDCO) forms Appendix D to this report.

1.3 APPOINTMENT OF EXAMINING AUTHORITY

- 1.3.1 On 9 September 2016 I was appointed by the SoS for Communities and Local Government as the single appointed person to be the Examining Authority (ExA) for this application. My appointment was confirmed to IPs and others on 28 October 2016 [PD-006].

1.4 THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.4.1 The application was submitted to the Planning Inspectorate on 19 July 2016 and was accepted for examination under s55 of the PA2008 on 11 August 2016 since at least one of the s22 definitions were satisfied [PD-001 and PD-002]. The Planning Inspectorate issued s51 advice to the Applicant to be read in conjunction with the published s55 Acceptance of Applications Checklist [PD-001]. The Applicant responded to this advice on 2 November 2016 [OD-005 to OD-011].
- 1.4.2 The acceptance of the application was advertised by the Applicant and 45 Relevant Representations (RR) were received [RR-001 to RR-045]. I subsequently accepted one submission from Royal Mail [OD-003] which purported to be a RR but could not be treated as such as it was received late and was not completed in the prescribed form. I took account of all RRs in my preparation of the Initial Assessment of Principal Issues [PD-006, Appendix B].
- 1.4.3 The Preliminary Meeting (PM) was held on 2 December 2016 where IPs (including Affected Persons (APs)) and others were able to make representations about how the application would be examined [EV-001 and EV-003]. An Open Floor Hearing (OFH) was held in the afternoon of 2 December 2016 [EV-002]. The Examination commenced on 3 December 2016 and the procedural decisions about the timetabling and form of the Examination were communicated to IPs and others on 9 December 2016 [PD-007]. Written Representations (WRs) were received on 16 January 2017.
- 1.4.4 I undertook an Accompanied Site Inspection (ASI) with IPs on 21 February 2017 [EV-004], and a first round of hearings was held

between 22 and 24 February 2017. This round included an Issue Specific Hearing (ISH) dealing with matters relating to the environment [EV-008 to EV-011], an ISH dealing with the dDCO [EV-013 and EV-014], a Compulsory Acquisition Hearing (CAH) [EV-012], and a second OFH [EV-015].

- 1.4.5 A second round of hearings was held on 17 and 18 May 2017. This round included a second ISH dealing with matters relating to the environment [EV-017 to EV-019], a second ISH dealing with matters relating to the dDCO [EV-022], and a second CAH [EV-020 and EV-021].
- 1.4.6 A joint Local Impact Report (LIR) was submitted by ABC and KCC [REP3-005].
- 1.4.7 I requested a number of Statements of Common Ground (SoCGs) to be submitted early in the Examination [PD-006, Annex F and PD-007, Annex C] and three signed bilateral SoCGs were produced to Deadline 3 in the Examination Timetable, comprising those between the Applicant and:
- Natural England (NE) [REP3-013];
 - Public Health England [REP3-014]; and
 - South Ashford Developers [REP3-015].
- 1.4.8 Further signed SoCGs were received during the Examination, between the Applicant and:
- Historic England [REP4-005];
 - ABC [OD-017];
 - KCC [OD-018; REP9-006];
 - The Environment Agency (EA) [REP9-007]; and
 - Southern Gas Networks [REP6-020].
- 1.4.9 Two rounds of written questions were published on 9 December 2016 and 20 March 2017 [PD-008 and PD-012]. Additional questions were also issued by means of a request for further information under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) on 18 April 2017 [PD-013].
- 1.4.10 The application together with RRs, WRs, other written submissions, procedural decisions, the ExA's questions, responses and comments thereon were all made and remain available on the Planning Inspectorate's website⁴.
- 1.4.11 The Examination closed on 2 June 2017 and the notification of its closure was communicated to all those who participated in the Examination on 5 June 2017 [PD-015].

⁴ <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m20-junction-10a/?ipcsection=docs>

1.5 OTHER CONSENTS REQUIRED

1.5.1 Other consents would be required to implement the Proposed Development and these are identified in the Applicant's Statement of Reasons [REP7-008]. A Consents and Agreements Position Statement was also provided with the application [APP-020]. The Applicant identifies seven consents that may be required prior to commencement:

- (a) Protected Species Licence(s) from NE under the Conservation of Habitats and Species Regulations 2010 and the Protection of Badgers Act 1992, including:
 - Badger Licence.
 - Dormice Licence.
 - Great Crested Newt Licence.
- (b) A permit from the EA for the disposal of Japanese Knotweed contaminated material on site under Part II of the Environmental Protection Act 1990;
- (c) Abnormal road licence(s) relating to construction vehicles and access routes under the Road Vehicles (Authorisation of Special Types) Order 2003;
- (d) Consent for the erection of hoardings located on or over a public highway in relation to construction works pursuant to the Highways Act 1980;
- (e) Licence(s) for the use of cranes which oversail the public highway pursuant to the Highways Act 1980.

1.5.2 A Letter of No Impediment has been issued by NE in respect of the protected species licences listed at (a) in paragraph 1.5.1 of this report [REP3-013, Appendix B].

1.6 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102ZA)

1.6.1 In the Pre-examination period I received two applications from persons requesting to become an IP under s102A of the PA2008. In order to assist my decision in this regard, I responded to both persons requesting official copies of the title register and title plan detailing their interest(s) in the land which they believed qualified them to be persons within one or more of the categories in s102B of the PA2008 [OD-004 and OD-013].

1.6.2 Neither of these persons responded to my request for further information. I therefore wrote to both persons again to explain that if a response was not received enclosing the documentary evidence requested, I would remain unable to make a decision in respect of their applications [PD-010 and PD-011].

1.6.3 Again, neither of the persons responded to my letter. I was therefore unable to give any further consideration to their applications.

1.7 CHANGES TO THE APPLICATION

- 1.7.1 During the course of the Examination, I requested a number of supplementary documents to clarify matters arising from the representations received, and some original application documents were superseded by submissions from the Applicant to reflect ongoing negotiations with IPs.
- 1.7.2 I have considered these changes and am satisfied that they do not constitute a material change to the application in accordance with the Guidance for the Examination of Nationally Significant Infrastructure Projects issued by the SoS for Communities and Local Government in March 2015.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE PROPOSED DEVELOPMENT

2.1.1 The main elements of the Proposed Development comprise the following:

- the creation of a new interchange (Junction 10a) on the M20, east of Junction 10, which will incorporate a new 2-lane dual carriageway link road to the existing A2070 Southern Orbital Road (Bad Munstereifel Road);
- a new pedestrian and cycle bridge over the M20 to the east of the new Junction 10a, providing a link between Kingsford Street on the south side of the motorway to the A20 on the north side;
- a new footbridge to replace the existing footbridge over the A2070 at Church Road;
- a new retaining wall at Kingsford Street [APP-001].

2.1.2 The existing A2070 runs to Junction 10 and the proposed new link road from Junction 10A would join the existing A2070 at a new roundabout. The old link to Junction 10 will continue to operate with the new one to Junction 10a in place. The east facing slip roads from Junction 10 to the M20 would be closed.

2.1.3 The Proposed Development also includes an 'Alternative Scheme'⁵ which, in addition to the above, includes the provision of a new access in the form of a roundabout midway along the proposed A2070 link road to the proposed Stour Park Development site, located immediately south of the proposed A2070 link road [APP-001].

2.1.4 A full description of the proposed works is provided in Chapter 2 of the Environmental Statement (ES) [APP-030]. These works are also listed in Schedule 1 of the recommended draft Development Consent Order (dDCO) at Appendix D to this report. I am satisfied that, save for Work No. 7 in the recommended DCO, all of the works listed would comprise part of the Nationally Significant Infrastructure Project or would be integral to its operation. Work No. 7 would be associated development within the meaning of s115 of the Planning Act 2008. The Proposed Development is illustrated in the Works Plans [OD-011; REP6-034 to REP6-038] and ES Non-Technical Summary [APP-207].

2.1.5 The recommended dDCO includes principal powers that relate to the Compulsory Acquisition (CA) of land, the creation of new rights in land and the interference with or extinguishment of existing rights in land. Temporary Possession of land is also proposed. The Statement of Reasons (SoR) [REP7-008] and the Compulsory Acquisition Negotiations Status Report [REP9-008] explain the need for the

⁵ Work No. 2B in the recommended dDCO

Proposed Development, with the former offering a public interest case for the land to be acquired compulsorily.

- 2.1.6 The Order land includes lands in which Statutory Undertakers have rights or other interests. These include electricity, gas, water and sewerage undertakers, operators of electronic communications code networks, and the Environment Agency. Powers within the recommended dDCO make provision for CA powers associated with these, subject to Schedule 9 Parts 1 to 3 which deal with the protection of their interests.
- 2.1.7 Powers within the recommended dDCO also make provision for the CA of special category land, specifically interests in land forming open space. In this respect, in accordance with s131 and s132 of the PA2008, the recommended dDCO makes provision for replacement land to be given in exchange. Special parliamentary procedure would be triggered except where the tests in s131 and s132 could be satisfied by the dDCO. I deal with this matter in detail in Chapter 8.

2.2 THE SITE

- 2.2.1 The site, which extends to approximately 58.7 hectares, is contained by the Order limits and is illustrated in the updated Land Plans [OD-010; REP6-039 to REP6-041]. The site is also described in detail in the SoR [REP7-008] and in Chapter 2 of the ES [APP-030].
- 2.2.2 The majority of the site currently comprises land in agricultural use, which is predominantly managed grassland or land used for crops (about 66%). A significant part of the site also comprises land forming part of the existing highway network (about 34%) [REP7-008].
- 2.2.3 The remainder of land within the site is currently in a number of uses, including the following:
- land forming part of the Wyevale Garden Centre;
 - four other commercial properties (Sweatman Mowers, Kent Leisure Buildings, RCL Pools and FS Partnership);
 - one residential property, known as Highfield Bungalow;
 - a plot owned and occupied by Pilgrims Hospice [REP7-008].
- 2.2.4 The site does not include any areas of common land and none of the land is designated as green belt land [REP7-008, paragraph 4.11].
- 2.2.5 The Proposed Development would result in the permanent closure of seven Public Rights of Way (PRoW) [REP7-008 and APP-008]. The closure of these routes and the PRoW strategy agreed with Kent County Council (KCC) are dealt with in Section 5.2 of this report.

2.3 THE SURROUNDINGS

- 2.3.1 Transport corridors form dominant features within the area, including the M20 (and Junction 10), A2070, A20, and the Channel Tunnel Rail

Link (HS1), which in the vicinity of the application site runs in cutting to the south of the motorway [REP7-008].

- 2.3.2 Other land use within the area is varied. Most of the area is set to agriculture comprising large scale open agricultural fields with interspersed blocks of woodland and isolated groups of houses. Historic villages such as Mersham are found amongst the more rural agricultural scene, whilst to the north of Sevington, the A2070 forms the southern urban fringe of Ashford to the north [REP7-008].
- 2.3.3 The largest settlement within the vicinity of the Proposed Development is Ashford to the north, west and south-west. The village of Mersham, a Conservation Area, lies to the south-east at a distance of approximately 2.8 miles from Junction 10 and approximately 4.8 miles from Ashford. The village of Willesborough has become adjoined with Ashford to the north [REP7-008].
- 2.3.4 To the east of Ashford, built development has extended beyond the M20, characterised by a mixed land use of Willesborough Lees, the village of Lacton Green (also a Conservation Area), and the William Harvey Hospital which is situated on slightly elevated ground to the north of Lacton Green. A large Tesco superstore lies between the M20 and A20 [REP7-008].
- 2.3.5 The following designated and non-statutory designated sites are either within, or located in the vicinity of, the lands that are required to deliver the Proposed Development. I consider whether there is any impact from the Proposed Development on these sites in Chapters 4 and 5 of this report. The sites are:
- Wye and Crundale Downs Special Area of Conservation (SAC) (located approximately 4.5 km north-west of the Order limits);
 - Stodmarsh Ramsar, Special Protection Area (SPA) and SAC (located approximately 22.9 km north-west of the Order limits);
 - Thanet Coast SAC, Sandwich Bay SAC and Thanet Coast and Sandwich Bay SPA and Ramsar sites (located approximately 32.2 km north-west of the Order limits);
 - The Hatch Park/ Bockhanger Wood Site of Special Scientific Interest (SSSI) (located approximately 40 m east of the Order limits);
 - Ashford Green Corridor Local Nature Reserve (LNR) (partially within the Order limits);
 - Willesborough Lees and Flowergarden Wood Site of Nature Conservation Importance (SNCI) (located approximately 600 m north of the Order limits);
 - Great Stour Ashford to Fordwich SNCI (located approximately 2 km west of the Order limits);
 - South Willesborough Dykes SNCI (located approximately 2 km south of the Order limits);
 - Woods near Brabourne SNCI (located approximately 2 km north of the Order limits); and

- Highfield Lane/ Kingsford Street Junction Roadside Nature Reserve (partially within the Order limits) [APP-036].
- 2.3.6 There is one designated cultural heritage feature within the site; a Grade II Listed milestone (MM43) located in the area of the proposed new Junction 10a on the northern side of the A20, opposite Highfield Lane6. There are 52 listed buildings/ structures (including the Grade I Listed St Mary's Church at Sevington) located within 1 km of the Order limits [APP-034].
- 2.3.7 There are three Conservation Areas, one registered park and garden, and one scheduled monument (SM) in the vicinity of the application site, namely:
- Lacton Green Conservation Area located 150 m north of the application site (containing 14 Grade II Listed Buildings);
 - Mersham Conservation Area located 500 m south-east of the application site (containing two Grade II Listed Buildings within the Applicant's study area);
 - Willesborough Lees Conservation Area located about 450 m north-west of the application site;
 - Hatton Park Grade II Registered Park and Garden located 80 m to the south-east of the application site; and
 - a moated site and associated garden earthworks (the SM) 460 m south-west of the application site [APP-034].
- 2.3.8 The southern boundary of the Kent Downs Area of Outstanding Natural Beauty (AONB) is approximately 2km north-east of the application site.
- 2.4 RELEVANT PLANNING HISTORY**
- 2.4.1 The joint Local Impact Report (LIR) submitted by Ashford Borough Council (ABC) and KCC states that:
- 2.4.2 "*[...] the South of Ashford Transport Study (1999) highlighted that the limited available capacity at the existing Junction 10 would mean that some development proposals in the then emerging Ashford Borough Local Plan 2000 would be unable to be fully built out unless a new 'Junction 10a' could be provided*" [REP3-005].
- 2.4.3 In March 2010 the then Highways Agency⁷ made its preferred route announcement reflecting the Proposed Development that is the subject of this report and recommendation [REP3-005].
- 2.4.4 Chapter 15 of the ES deals with combined and cumulative effects and assesses 22 Proposed Developments in the vicinity of the application

⁶ Note however that this asset was absent during walkover studies undertaken by the Applicant for the EIA assessment

⁷ Highways England replaced the Highways Agency as the body responsible for the operation, maintenance and enhancement of the strategic road network in England through the provisions of the Infrastructure Act 2015

site, ranging from development directly adjacent to the application site, to development 4.5 km away. The assessment is informed by the likely degree of certainty attached to each development by the Applicant [APP-043].

- 2.4.5 Notably, the Alternative Scheme of the Proposed Development, Work 2B, comprises a new roundabout junction including a spur to the south for the Stour Park Development site. The full release of development at this site is dependent on the provision of the Alternative Scheme. ABC resolved to grant outline planning permission for the Stour Park Development, to be delivered in two phases, at the meeting of its Planning Committee on 18 May 2016. The scheme would comprise:

"Development to provide an employment led mixed use scheme, to include site clearance, the alteration of highways, engineering works and construction of new buildings and structures of up to 157,616 sq m comprising: up to 140,000 sq m Class B8 (storage and distribution) use; up to 23,500 sq m of B1a/B1c Business (of which a maximum of 20,000 sq m of B1a); up to 15,000 sq m of B2 (general industry); up to 250 sq m of A1 (retail shops) and 5,500 sq m of sui generis to accommodate Kent Wool Growers together with ancillary and associated development including utilities and transport infrastructure, car parking and landscaping." [REP5-024]

- 2.4.6 In the course of the Examination it was also brought to my attention that the Stour Park developer, in conjunction with KCC, had proposed to deliver a turning loop at Highfield Lane to prevent 'rat-running'. The turning loop would be constructed outside of the red line boundary for the Stour Park Development under the Town and Country Planning (General Permitted Development) (England) Order 2015, and would be facilitated through a s106 agreement [REP5-010, REP5-011 and OD-039]. I consider the issue of the turning loop in paragraphs 5.2.30 to 5.2.33 of this report.

3 LEGAL AND POLICY CONTEXT

3.1 INTRODUCTION

3.1.1 This chapter sets out the legal and policy context in which the application was prepared and examined. The legal and policy context, as interpreted by the Applicant, is also set out in The Case for the Scheme [OD-007].

3.2 PLANNING ACT 2008 AND NATIONAL POLICY STATEMENTS

3.2.1 The application includes development that falls within the definitions for highway-related development set out in s22 of the Planning Act 2008 (the PA2008).

3.2.2 In my First Written Questions (FWQs) I ask the Applicant to explain why works described as Associated Development (Work No. 7) in its draft Development Consent Order do not in their own right constitute an improvement Nationally Significant Infrastructure Project (NSIP) under s22(5) of the PA2008 [PD-008, Q20.15; APP-018]. The Applicant responds by stating that:

- *"the works are not an NSIP in their own right"*; and that
- *"nothing of substance turns on this issue"* [REP3-020].

3.2.3 I have considered whether Work No. 7 could be considered as requiring development consent in its own right under s22(5) of the PA2008, but concluded that, as is it will not have a significant effect on the environment, then it is properly categorised as Associated Development to the Proposed Development, and is not an NSIP in its own right.

3.2.4 Since s22 of the PA2008 is engaged, the National Policy Statement for National Networks⁸ (NPSNN) has effect. Pursuant to s104 of the PA2008 the application must therefore be decided in accordance with the NPSNN, whilst being mindful of the exceptions in s104(4) to s104(8) as summarised in paragraphs 3.2.6 and 3.2.7 below.

3.2.5 In deciding the application s104(2) of the PA2008 requires the SoS to have regard to:

(a) any national policy statement which has effect in relation to development of the description to which the application relates (a 'relevant national policy statement'),

(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009,

⁸ Designated in January 2015

(b) any local impact report (within the meaning given by section 60(3) submitted to the SoS before the deadline specified in a notice under section 60(2),

(c) any matters prescribed in relation to development of the description to which the application relates, and

(d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

3.2.6 While the SoS must take the above into account, he must be satisfied that the decision made on the application would not:

- lead to the United Kingdom being in breach of any of its international obligations; or
- lead to the SoS being in breach of any duty imposed on him by or under any enactment; or
- be unlawful by virtue of any enactment.

3.2.7 The SoS must also consider whether the adverse impacts of the Proposed Development outweigh its benefits, and whether any condition prescribed for deciding an application otherwise than in accordance with a National Policy Statement is met.

3.2.8 The M20 forms part of the national road network. Section 2 of the NPSNN sets out, among other things, the Government's vision and strategic objectives for the national road and rail networks. These are:

- networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs;
- networks which support and improve journey quality, reliability and safety;
- networks which support the delivery of environmental goals and the move to a low carbon economy; and
- networks which join up our communities and link effectively to each other.

3.2.9 A critical need is identified (NPSNN paragraph 2.2) to address road congestion to provide safe, expeditious and resilient networks that better support social and economic activity, and to provide a transport network that is capable of stimulating and supporting economic growth. It is estimated that on the road network around 16% of all travel time in 2010 was spent delayed in traffic⁹. In their current state the national networks act as a constraint to sustainable economic growth, quality of life and wider environmental objectives (NPSNN paragraph 2.9).

⁹ Based on forecast figures from the National Model for all England roads

- 3.2.10 Traffic congestion is identified as a constraint on the economy and has a negative impact on quality of life (NPSNN paragraph 2.16). In 2010 the direct costs of congestion on the Strategic Road Network (SRN) in England were estimated at £1.9 billion per year (NPSNN paragraph 2.17).
- 3.2.11 To address the need to relieve congestion and improve performance and resilience at junctions the NPSNN identifies enhancements of the SRN which include junction improvements, new slip roads and upgraded technology (NPSNN paragraph 2.23).
- 3.2.12 The NPSNN goes on to set out the principles by which Proposed Development of the SRN should be assessed in Section 4, and identifies the generic impacts to be considered in Section 5. I address the detailed criteria against which the impacts of the Proposed Development fall to be considered as I report on each of those impacts in Chapter 5.
- 3.2.13 This report sets out my findings, conclusions and recommendations taking these matters fully into account and applying s104 of the PA2008 in making my recommendation to the SoS.

3.3 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

Habitats Directive (Council Directive 92/43/EEC) and Birds Directive (Council Directive 2009/147/EC)

- 3.3.1 The provisions of the Habitats Directive and the Birds Directive are addressed in the application.
- 3.3.2 The Applicant's screening exercise in respect of whether a Habitat Regulations Assessment (HRA) is required is summarised within its Environmental Statement (ES) [APP-208]. I deal with the need for a HRA in Chapter 6, and other matters relating to biodiversity and ecological conservation in Chapter 5.

Water Framework Directive (Council Directive 2000/60/EC)

- 3.3.3 On 23 October 2000, Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy, or in short the EU Water Framework Directive (WFD), was adopted. Representations from the Environment Agency in respect of the Applicant's assessment against the WFD status and objectives [APP-196] are considered in Chapter 5 of this report.

Air Quality Directive (Council Directive 2008/50/EC)

- 3.3.4 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 (EU Air Quality Directive) entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values are exceeded for ambient air quality with respect to sulphur

dioxide (SO₂), nitrogen dioxide (NO₂) and mono-nitrogen oxides and nitrogen dioxide (NO_x), particulate matter (PM10 and PM2.5), lead, benzene and carbon monoxide.

- 3.3.5 In England the Air Quality Standards Regulations 2010 give effect to the EU Air Quality Directive.
- 3.3.6 The Air Quality Strategy (AQS) establishes the UK framework for air quality improvements¹⁰. The AQS establishes a long-term vision for improving air quality in the UK and offers options for further consideration to reduce the risk to health and the environment from air pollution.
- 3.3.7 The policy paper Air quality in the UK: plan to reduce nitrogen dioxide emissions 2015¹¹ provides an overview of the UK plan for improving air quality. It sets out how the Government will fulfil its commitment to improve air quality and meet the requirements of the Air Quality Directive for nitrogen dioxide in the shortest possible time.
- 3.3.8 In 2015 ClientEarth brought proceedings against the UK Government for breaching the EU Air Quality Directive. The resulting judgment made by the Supreme Court¹² ordered the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) to prepare new air quality plans to achieve NO₂ limit compliance as soon as possible, in accordance with a defined timetable, to end with the submission of the revised plans in final form to the European Commission not later than 31 December 2015.
- 3.3.9 The new plan published by the UK Government in December 2015¹³ ('the December 2015 Plan') was again challenged by ClientEarth. The High Court judged that in, among other things, fixing on a projected compliance date of 2020 in the updated plan, the SoSEFRA had fallen into error in relation to Article 23 of the EU Air Quality Directive¹⁴.
- 3.3.10 A High Court Order was made on 21 November 2016 requiring the SoSEFRA to publish a draft modified Air Quality Plan by 24 April 2017. That deadline was later revised to 4:00pm on 9 May 2017. A final modified Air Quality Plan must be published and notified to the European Commission by 4:00pm on Monday 31 July 2017¹⁵.

¹⁰ The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (Defra, 2007)

¹¹ <https://www.gov.uk/government/publications/air-quality-in-the-uk-plan-to-reduce-nitrogen-dioxide-emissions>

¹² <https://www.supremecourt.uk/cases/docs/uksc-2012-0179-judgment.pdf>

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486636/air-quality-plan-2015-overview-document.pdf

¹⁴ <https://www.judiciary.gov.uk/judgments/clientearth-v-secretary-of-state-for-the-environment-food-and-rural-affairs/>

¹⁵ The High Court Order declared that the December 2015 Plan should remain in force and should continue to be implemented until the modified Air Quality Plan is adopted

- 3.3.11 The draft modified Air Quality Plan was published on 5 May 2017¹⁶ and the final modified Air Quality Plan was published on 26 July 2017¹⁷. The publication of the final modified Air Quality Plan post-dates the closure of the examination on 2 June 2017. I am therefore unable to take it into account. It will be a matter for the SoS for Transport to take it into account as they see fit before making their decision.
- 3.3.12 At the close of the Examination on 2 June 2017 the extant air quality plan was the December 2015 Plan. However I did seek the views of Interested Parties on the draft modified Air Quality Plan published on 5 May 2017, and I consider the potential implications for the application of an updated air quality plan in Chapter 5 of this report.

3.4 GOVERNMENT TRANSPORT POLICY

Road investment strategy for the 2015 to 2020 period

- 3.4.1 The Government's first Road Investment Strategy¹⁸ (RIS1) was published in December 2014 and establishes the performance specification for Highways England (HE). The RIS1 sets out:
- a long-term vision for England's motorways and major roads, outlining how HE will create smooth, smart and sustainable roads;
 - a multi-year investment plan that will be used to improve the network and create better roads for users; and
 - high-level objectives for the first roads period 2015 to 2020.
- 3.4.2 The M20 Junction 10a is described in the RIS1 as "*a new junction near Ashford in Kent in order to support a major new development to the south-east of the town*". It is identified as being "*committed subject to other contributions*"¹⁹.

National Infrastructure Plan

- 3.4.3 The National Infrastructure Plan (NIP) sets out an ambitious infrastructure vision for consecutive parliaments, reinforcing the government's commitment to investing in infrastructure and improving its quality and performance.
- 3.4.4 The NIP was first published in 2010. The National Infrastructure Delivery Plan (NIDP) updates and replaces the National Infrastructure Plan and outlines details of £483 billion of investment in over 600 infrastructure projects and programmes in sectors and spread across the UK to 2020-21 and beyond. This plan includes sections on how infrastructure will support large-scale housing and regeneration projects, alongside key social infrastructure.

¹⁶ <https://consult.defra.gov.uk/airquality/air-quality-plan-for-tackling-nitrogen-dioxide/>

¹⁷ <https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>

¹⁸ <https://www.gov.uk/government/publications/road-investment-strategy-for-the-2015-to-2020-road-period>

¹⁹ See Chapter 8 of this report for my findings in respect of funding

3.4.5 The NIDP sets out what will be built and where, focusing specifically on nearly £300 billion of infrastructure that will be delivered over the next 5 years to 2020-21. Chapter 3 of the NIDP sets out how the government is investing over £15 billion to support HE in transforming the SRN with over 100 major schemes to be completed or in construction by the end of 2020-21. Ministers have established a clear regulatory framework for HE, setting up investment periods with legally-guaranteed funding levels. The first of these, Road Period 1, runs from 2015 to 2020. The goals and objectives of Road Period 1 are detailed within the RIS1.

3.4.6 Highways England's licence

3.4.7 HE operates as a Government owned company under a licence²⁰. Part 4 of the licence lays out the aims and obligations that the licence holder must observe to:

- ensure the effective operation of the network;
- ensure the maintenance, resilience, renewal, and replacement of the network;
- ensure the improvement, enhancement and long-term development of the network;
- ensure efficiency and value for money;
- protect and improve the safety of the network;
- cooperate with other persons or organisations for the purposes of coordinating day-to-day operations and long-term planning;
- minimise the environmental impacts of operating, maintaining and improving its network and seek to protect and enhance the quality of the surrounding environment; and
- conform to the principles of sustainable development.

3.4.8 The licence also requires HE to "*provide for sufficient flexibility and future-proofing in planning the long-term development and improvement of the network, taking account of long-term trends, uncertainties and risks - including new and emerging technologies and long-term trends in climate and weather conditions*".

3.4.9 I take account of the duties imposed on HE by the licence in considering the impacts of the Proposed Development and the relevant proposals for mitigation in Chapter 5.

3.5 OTHER LEGAL AND POLICY PROVISIONS

The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG)

3.5.1 The NPPF does not contain specific policies relating to NSIPs. However, pursuant to paragraph 1.18 of the NPSNN, insofar as provisions in the

²⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/431389/strategic-highways-licence.pdf

NPPF are relevant to the application, I have taken them into account in my assessment of the issues in this case. The PPG is also taken into account where appropriate, in particular in the advice on the imposition of planning conditions²¹ as applied to my consideration of appropriate Requirements.

The National Parks and Access to the Countryside Act 1949 (NPACA)

- 3.5.2 The NPACA provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty. It also established powers to declare National Nature Reserves, to notify Sites of Special Scientific Interest (SSSI) and for local authorities to establish Local Nature Reserves (LNR).
- 3.5.3 The NPACA has relevance to the consideration of any impacts on the Kent Downs area of outstanding natural beauty (AONB) which is in the vicinity of the application site, and to any impacts on SSSIs, as discussed in Chapter 5.

The Wildlife and Countryside Act 1981 (WCA)

- 3.5.4 The WCA is the primary legislation which protects animals, plants, and certain habitats in the UK. The WCA provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, Natural England). The WCA also contains measures for the protection and management of SSSIs.
- 3.5.5 The WCA has relevance to the consideration of impacts on SSSIs and on protected species and habitats which are discussed in Chapter 5.

The Countryside and Rights of Way Act 2000 (CRWA)

- 3.5.6 The CRWA brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The CRWA also brought in improved provisions for the protection and management of SSSIs, strengthened wildlife enforcement legislation and made provisions in relation to public rights of way.
- 3.5.7 The effects on landscape and visual impacts as well as the effects on rights of way and the ease of movement for Non-Motorised Users (NMUs) are considered in Chapter 5 of this report.

The Natural Environment and Rural Communities Act 2006

²¹ <https://www.gov.uk/guidance/use-of-planning-conditions>

(NERCA) and the United Nations Environment Programme Convention (UNEPC) on Biological Diversity 1992

- 3.5.8 The NERCA made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.
- 3.5.9 The UK Government ratified the United Nations Environment Programme Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.5.10 The effects on biodiversity, the biological environment and ecology and landscape matters are considered in Chapter 5 of this report. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the UNEPC in its consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation.

Protection of Badgers Act (1992)

- 3.5.11 The Protection of Badgers Act (1992) proscribes offences relating to badgers (taking, injuring or killing badgers; cruelty; interfering with badger setts; selling and possession of live badgers; marking and ringing of badgers), together with exceptions and licences, and enforcement and penalties. The implications of the Proposed Development for badgers are provided in Chapter 8 and Appendix 8.1 of the ES [APP-036 and APP-175]. Appendix 8.1 of the ES includes a Confidential Badger Report which has been withheld from publication to the Planning Inspectorate's website.

3.6 TRANSBOUNDARY EFFECTS

- 3.6.1 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations) the Planning Inspectorate on behalf of the SoS has concluded that the Proposed Development is not likely to have significant effects on the environments in another European Economic Area (EEA) State.
- 3.6.2 In reaching this view the Planning Inspectorate has applied the precautionary approach²². The conclusions have been published in the Transboundary Screening matrices produced on behalf of the SoS

²² As explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation

dated 2 April 2015 and 29 September 2016 [OD-020]. These screening reports each concluded that the Proposed Development was not likely to have significant effects on the environment in another EEA State. Transboundary issues consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary in relation to this application.

- 3.6.3 Having regard to these reports and having kept the matter under review throughout the Examination, I am satisfied with regard to Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 that there are no outstanding Transboundary issues that would prevent the Order from being made.

3.7 DEVELOPMENT PLANS

- 3.7.1 The Applicant sets out relevant policies from ABC's and KCC's development plans in The Case for the Scheme [OD-007]. ABC and KCC undertook the same exercise and presented their conclusions in the joint Local Impact Report [REP3-005].

- 3.7.2 The development plans applicable to my consideration of the Proposed Development are:

- ABC Core Strategy 2008.
- Ashford Borough Local Plan 2000 Saved Policies.
- ABC Urban Sites and Infrastructure Development Plan Document 2012.
- ABC Supplementary Planning Guidance 6: Providing for transport needs arising from the South of Ashford Transport Study 2004.
- ABC Dark Skies Supplementary Planning Document 2014.
- ABC Landscape Character SPD 2011.
- ABC Sustainable Drainage SPD 2010.

- KCC Local Transport Plan for Kent 2011-16 (LTP3).
- KCC Kent Mineral and Waste Local Plan 2013-2030 (and saved policies).
- KCC Kent Environmental Strategy (March 2016).
- KCC Drainage and Planning Policy Statement (September 2015).
- KCC Kent Local Flood Risk Management Strategy (June 2013).

- Kent Downs Management Plan 2014-2019 (April 2014).

- The Joint Municipal Waste Management Strategy 2006-2026.

- 3.7.3 Paragraph 216 of the National Planning Policy Framework states that decision-takers may also give weight to relevant policies in emerging plans. Public consultation on the draft version of ABC's Local Plan 2030 ran between 15 June and 10 August 2016, and ABC is currently still

considering the evidence base. The timetable provided in its Local Development Scheme is therefore out of date²³.

3.7.4 ABC states that the Local Plan 2030 "*relies on the delivery of Junction 10a to an even greater degree as it will be fundamental to ABC's ability to demonstrate the deliverability of key proposed site allocations for housing and employment development*", and draws attention to 17 draft policies which are dependent on the delivery of the Junction 10a [REP3-005].

3.7.5 Other relevant emerging plans include:

- KCC Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031 (LTP4)²⁴.
- KCC Kent Minerals and Waste Sites Plan: Second Call for Sites 2016.
- KCC Kent Mineral Safeguarding SPD.
- KCC Draft Waste Disposal Strategy 2017-2035 [REP3-005].

3.7.6 Paragraphs 1.3 and 5.173 of the NPSNN refer to the status of development plans in the decision-making process, and I take account of these in making my recommendations to the SoS.

²³ <http://www.ashford.gov.uk/timetables-and-monitoring>

²⁴ Which identifies the M20 Junction 10a as a transport priority that will improve transport to enable growth

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.1 MAIN ISSUES IN THE EXAMINATION

Initial Assessment of Principal Issues

- 4.1.1 The Examining Authority (ExA)'s Initial Assessment of Principal Issues was published on 28 October 2016 as Annex B to the Rule 6 letter which announced the Preliminary Meeting (PM) [PD-006]. This forms an initial assessment of the issues based on the application documents and submitted Relevant Representations (RRs). The list of issues relates to both the construction and operation phases of the Proposed Development.
- 4.1.2 It includes matters relating to policy as set out in the National Policy Statement for National Networks (NPSNN), and the extent to which the Proposed Development would comply with the policies of local development plans.
- 4.1.3 In the Rule 6 letter, issues are identified in relation to the environment, which include the impact on landscape, including the effect on the Kent Downs Area of Outstanding Natural Beauty (AONB); the visual impact of the Proposed Development; whether there would be any increase in flood risk; effects on nature conservation; impacts on air quality; the effects on the noise and vibration environment; and the effects on heritage assets.
- 4.1.4 Under the heading of engineering and design there are the issues of whether the Proposed Development is the most appropriate means of meeting the need identified in the NPSNN, the extent to which the design meets the requirements for good design in the NPSNN, and the extent to which engineering details and design, including mitigation measures, have been agreed with the relevant local authorities.
- 4.1.5 Matters relating to the impact of the Proposed Development on road users include the impact on traffic flows in roads in the surrounding area, traffic safety, and the effect on the safety or convenience of Non-Motorised Users (NMUs).
- 4.1.6 The draft Development Consent Order (dDCO) includes provision for the Compulsory Acquisition (CA) of land, and issues are identified relating to the tests set out in sections 122(2) and 122(3) of the Planning Act 2008 (PA2008). There is also an issue relating to the acquisition and replacement of public open space.
- 4.1.7 The issues identified in the Rule 6 letter have informed the matters considered by the ExA throughout the Examination. Further issues have been raised as the Examination has progressed as a result of submissions from Interested Persons (IP), and issues have also been raised by the two local authorities in their joint Local Impact Report (LIR) [REP3-005]. I consider all the issues raised throughout the

Examination and deal with them where relevant and appropriate in this report.

Issues arising from further submissions

- 4.1.8 In response to Annex B to the Rule 6 letter [PD-006] and at the PM on 2 December 2016 [EV-001], there were no further submissions requesting that additional issues be considered in the Examination.
- 4.1.9 Issues raised in submissions informed both my First Written Questions (FWQs) and Second Written Questions (SWQs) [PD-008 and PD-012]. In my FWQs issued on 9 December 2016, I examined the Applicant's compliance with the NPSNN and Local Development Plans (questions 1.1 to 1.12), all chapters of the Environmental Statement (ES) (2.1 to 17.2), the Case for the Scheme (18.1 to 18.2), the Transport Assessment (19.1 to 19.7), the dDCO (20.1 to 20.30), and CA and other land matters (21.1 to 21.25).
- 4.1.10 The first round of hearings took place from 22 to 24 February 2017 [EV-008 to EV-015]. These comprised Issue Specific Hearings (ISHs) on the environment and the dDCO, as well as a hearing on CA and an Open Floor Hearing (OFH). The issues that I wanted to examine further were [EV-006]:
- the Proposed Development - Statutory Undertakers' diversions; a Southern Water pumping station; UK Power Networks apparatus; presence and use of construction compounds; Public Rights of Way (PRoW) diversions.
 - transport assessment - rat running; safety on the northbound M20; the Barrey Road exit onto the A2070; Kingsford Street proposals; local users versus long-distance users; the A2070 roundabout; traffic modelling and uncertainties;
 - air quality - impact on air quality of the ClientEarth High Court judgment; use and applicability of Highways England's interim advice notes; air quality and health; air quality monitoring during operations; effect of construction traffic movements;
 - cultural heritage - impact on the Grade 1 listed St Mary's Church Sevington, Court Lodge Farm and Barn; adequacy of archaeological surveys;
 - landscape - compensatory tree planting; trees under Tree Preservation Orders (TPOs); viewpoints;
 - nature conservation - Ashford Green Corridor Local Nature Reserve (LNR); Highfield Lane Roadside Nature Reserve (RNR); compensatory habitat for reptiles and amphibians; securing of monitoring and planting;
 - materials - adequacy of minerals assessment; provisions for waste management;
 - noise and vibration - low noise surfacing; acoustic barriers; establishing benefits due to noise mitigation; noise and vibration limits and their significance;
 - effects on all travellers - status of the Road Safety Audit;

- community and private assets - Church Road Public Open Space - temporary and permanent acquisition and replacement land;
- road drainage and water environment - Flood Risk Assessment (FRA); access to Aylesford Stream; land contamination, groundwater protection and pollution prevention; proposed disapplication of legislation and Protective Provisions; dewatering and abstraction;
- combined and cumulative effects - Operation Stack lorry park.

4.1.11 My SWQs issued on 20 March 2017 [PD-012] examined issues remaining following the first round of hearings, which included further examination of the above issues, plus the following:

- construction working hours near the Pilgrims' Hospice; and
- access to, and pollution of, the William Harvey Hospital.

4.1.12 At the start of the second round of hearings, 17 to 18 May 2017 [EV-017 to EV-022], I wanted to examine the following issues further [EV-016]:

- air quality - the impact of the revised Draft UK Air Quality Plan issued by Defra on 5 May 2017; the possible need for monitoring air quality during operations;
- cultural heritage - the need for a revised Written Scheme of Investigation;
- landscape - the need for additional detail to the design intent statement in the Environmental Masterplan to secure mitigation planting and other landscape matters;
- nature conservation - mitigation measures for the Ashford Green Corridor LNR and Highfield Lane RNR;
- noise and vibration - establishing benefits due to noise mitigation; noise and vibration limits and their significance;
- effects on all travellers - the Highfield Lane turning loop; the Barrey Road exit onto the A2070; traffic modelling uncertainties; ensuring safe access to the A20 from the end of the Highfield Lane Bridge;
- road drainage and water environment - progress towards finalising the FRA; securing access to the Aylesford Stream; agreeing Protective Provisions for the Environment Agency (EA); securing mitigation for contaminated land and groundwater in the dDCO; and
- combined and cumulative effects - cumulative effects of Operation Stack lorry park during M20 Junction 10a construction; Operation Stack operational tests.

Statements of Common Ground

4.1.13 Many of the issues summarised above were raised in the various Statements of Common Ground (SoCGs) or similar documents between the Applicant and the following:

- Natural England - submitted at Deadline 3 [REP3-013]; all issues are shown as agreed;
- Public Health England - submitted at Deadline 3 [REP3-014]; one issue is shown as not agreed;
- South Ashford Developers - submitted at Deadline 3 [REP3-015]; all issues are shown as agreed;
- Historic England - submitted at Deadline 4 [REP4-005]; one issue is shown as not agreed;
- Southern Gas Networks - submitted at Deadline 6 [REP6-020]; two issues are shown as not agreed;
- EA - late submission for Deadline 9 [REP9-007]; one issue is shown as not agreed;
- Kent County Council (KCC) - late submission for Deadline 9 [REP9-006]; two issues are shown as not agreed;
- Ashford Borough Council (ABC) as local authority - accepted at my discretion on 1 June 2017 [OD-036]; eight issues are shown as not agreed;
- Friends Life Ltd - accepted at my discretion on 1 June 2017 [OD-040].

Issues arising in Local Impact Report

- 4.1.14 A Joint LIR was submitted by the two local authorities, ABC and KCC and the Applicant duly responded [REP3-005; REP4-018 and REP4-019].
- 4.1.15 The two councils have constructed their LIR around the headings contained in the Planning Inspectorate's Advice Note One: Local Impact Reports (Version 2, April 2012). Their joint LIR covers the following matters:
- local area characteristics - such as landscape, the AONB and the maintenance of connection between the three churches in the vicinity (St Mary's at Sevington, St Mary the Virgin at Willesborough, and St John the Baptist at Mersham), with which the Proposed Development will need to be as harmonious as possible [REP3-005, section 7];
 - local transport patterns and issues - congestion along Barrey Road; proposal for maintenance by HE of the A20 between J10 and Junction 10a; rat-running around Kingsford Street [REP3-005, section 8];
 - designated sites - statutory and non-statutory sites in the vicinity of the Proposed Development, including public open space and the green corridor [REP3-005, section 9];
 - conservation and heritage - there is a significant area of archaeological potential associated with multi-period activity in the Stour valley. The councils consider that on-site archaeological surveys are insufficient at present [REP3-005, section 10];
 - socio-economic matters - a number of factors are not taken into account, eg more emphasis might have been made of the impact of Junction 10a on the wider community [REP3-005, section 11];

- dDCO - the councils are not content that the dDCO sufficiently ensures adequate protection and mitigation throughout the construction of the development, as well as for the Proposed Development itself [REP3-005, section 12].

4.1.16 In this chapter, I report the issues raised, and where an issue remains to be considered in more detail, I deal with it under the relevant topic heading in Chapter 5, or in the case of the dDCO, Chapter 9.

4.2 CONFORMITY WITH THE NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

4.2.1 As stated in Section 3.5 of this report, the NPPF does not contain specific policies for NSIPs. This accords with s104 of PA2008 which requires an application for development consent to be determined in accordance with the relevant National Policy Statement (NPS), in this case the NPSNN.

4.2.2 The NPSNN notes at paragraph 1.17 that the overall strategic aims of the NPS and the NPPF are consistent, and at paragraph 1.18 that the NPPF is likely to be an important and relevant consideration in decisions on NSIPs, but only to the extent relevant to the project. Those parts of the NPPF (29 to 41) which relate to transport are largely focussed on transport arrangements arising from development. In relation to sustainable transport, the NPPF states that *"encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion."* It is a primary objective of the Proposed Development to reduce congestion and to that extent the project complies with the NPPF. Nevertheless, in this case the specific policies relating to the need for the project, its design and environmental impacts are set out in the NPSNN.

4.3 THE PRINCIPLE OF THE DEVELOPMENT AND CONFORMITY WITH THE NPSNN

PRINCIPLE OF THE PROPOSED DEVELOPMENT

The Applicant's case

4.3.1 The Applicant makes the case for the Proposed Development in the Case for the Scheme [APP-209, updated to OD-007]. The Applicant articulates the need for the Proposed Development in terms of high traffic flows leading to congestion and safety issues; national, regional and local growth; network resilience; and environmental issues. The strategic scheme objectives are stated to be to increase capacity, combat congestion, connect people, minimise environmental impact and improve reliability.

4.3.2 The Applicant also makes the case in terms of the economic case, and the policy context. For the economic case, the Applicant considers the benefits and dis-benefits associated with the Proposed Development's overall value for money. For the policy context, the Applicant the Applicant considers the strategic alignment of the of the Proposed

Development with national planning and policy, local transport plans, local development plans, and minerals and waste plans.

- 4.3.3 In the Case for the Scheme, the Applicant summarises the history of the scheme from 2001, including options appraisals in 2002, 2005 and 2014 [APP-209, updated to OD-007 Chapter 4]. There were several periods of consultation and a number of alternative schemes were considered. Finally, in December 2013, the Government announced that it was committed to funding nine schemes as part of the spending review 2013. The M20 Junction 10a was one of the nine schemes named. Preliminary design commenced on the Proposed Development in September 2014, leading to a fifteen month development phase.

The local authorities' position

- 4.3.4 In their joint LIR, ABC and KCC confirm that, in their view, the Proposed Development would be a good fit with local plans, and would make a significant contribution to their economic and development plans [REP3-005].
- 4.3.5 The Proposed Development is supported by ABC and KCC as a key transport requirement in support of future development south of Ashford. With the expected level of growth, the capacity of M20 Junction 10 has been identified as a significant issue. The local authorities' strategies and plans are heavily reliant on new motorway capacity in the south-east of Ashford.

In conclusion

- 4.3.6 I therefore consider that, in terms of the need for enhancements to the existing national road network, the Proposed Development conforms with the NPSNN and local plans, in that it would provide increased capacity, improved performance and additional infrastructure for economic growth.
- 4.3.7 As a part of the strategic road network (SRN), the Proposed Development would deliver the additional capacity which is needed to support economic development at a local and regional level. I deal with the environmental effects of the Proposed Development in Chapter 5, and find that no further consideration of alternative options is justified.

CONFORMITY WITH THE NPSNN

- 4.3.8 The M20 motorway forms a part of the strategic national road network. The NPSNN paragraph 2.2 identifies "*a critical need to improve the national networks to address road congestion ---- to provide safe, expeditious and resilient networks that better support social and economic activity*" and also states "*Improvements may also be required to address the impact of the national networks on quality of life and environmental factors.*"

- 4.3.9 The NPSNN paragraph 2.6 states: *"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. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other. This can help rebalance the economy."*
- 4.3.10 It is further stated in the NPSNN paragraph 2.22 that *"the government has therefore concluded that at strategic level there is a compelling need for development of the national networks - both as individual networks and as an integrated system."*
- 4.3.11 The NPSNN considers a range of options for addressing the need, including maintenance and asset management, demand management and modal shift, but concludes that relying on these options, or a combination of them, would not be desirable or viable as a means of managing need. Furthermore, without improving the road network, including its performance, NPSNN paragraph 2.22, *"it will be difficult to support further economic development, employment and housing and this will impede economic growth and people's quality of life. The government has therefore concluded that at a strategic level there is a compelling need for development of the national road network"*.
- 4.3.12 As stated in the NPSNN paragraph 4.2, *"subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act, there is a presumption in favour of granting planning development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS."*
- 4.3.13 I am satisfied that the Proposed Development conforms with the NPSNN in these regards.

4.4 ENVIRONMENTAL STATEMENT AND ENVIRONMENTAL IMPACT ASSESSMENT

- 4.4.1 As stated in NPSNN section 4.15, all proposals for projects which are subject to the European Environmental Impact Assessment Directive²⁵, and are likely to have significant effects on the environment, must be accompanied by an ES describing the aspects of the environment likely to be significantly affected by the project²⁶.
- 4.4.2 The ES submitted in support of the development consent order (DCO) application includes an assessment of the effects of the construction and operation of the Proposed Development on human beings, fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them, as required by the Directive [APP-029 to APP-208]. The mitigation measures proposed as part of the design and operation of the Proposed

²⁵ Council Directive 92/2011

²⁶ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI2009/2263)

Development together are summarised in an updated Table of Environmental Effects [REP6-024].

- 4.4.3 I am satisfied that the ES, together with the other information submitted by the Applicant during the Examination, is adequate and that it meets the requirements under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended (EIA Regulations 2009)²⁷. I have taken full account of the environmental information in the assessment of the application and in making my recommendation to the Secretary of State (SoS).
- 4.4.4 Environmental management of the project is secured in accordance with Design Manual for Roads and Bridges (DMRB) Volume 11 Section 2 Parts 5 and 6, and the advice in Interim Advise Note 183/14²⁸ through a Construction Environmental Management Plan (CEMP), an outline version of which (oCEMP) was submitted with the application and updated in the course of the Examination [APP-204, REP6-018]. The CEMP would be secured through Requirement 3 in the dDCO, under which no part of the authorised development is to commence until a CEMP, developed substantially in accordance with the oCEMP, has been prepared in consultation with the relevant planning authority, the local highway authority and the EA and submitted to and approved in writing by the SoS.
- 4.4.5 The oCEMP contains the control measures and standards to be implemented throughout the construction of the Proposed Development, as developed through the environmental impact assessment (EIA) and reported in the ES. It also provides the mechanisms for engagement with the local community and their representatives throughout the construction period.
- 4.4.6 Under Requirement 3 of the dDCO, which was developed and refined throughout the Examination [OD-033], the CEMP must include a number of management plans, working methods and mitigation measures, including:
- Landscape Environmental Management Plan;
 - Arboricultural Method Statement;
 - Archaeological Written Scheme of Investigation;
 - Materials Management Plan;
 - Soil Handling Management Plan;
 - Site Waste Management Plan;
 - Community Relations Strategy;
 - Groundwater Monitoring Strategy;
 - Noise and Vibration Monitoring Strategy.
- 4.4.7 Towards the end of the construction period, the CEMP would be converted into the Handover Environmental Management Plan (HEMP)

²⁷ Statutory Instrument 2009 No 2263

²⁸ <http://www.standardsforhighways.co.uk/ians/pdfs/ian183.pdf>

which would set out the proposed strategy for the future maintenance and management of all environmental areas and mitigation. Requirement 3 secures the operation and maintenance of the authorised development in accordance with the document Indicative Contents of a HEMP [APP-205].

- 4.4.8 During the construction phase, measures for the control of pollution and mitigation of noise and vibration, dust, visual impact and general disturbance to residents and travellers would be secured through a number of Requirements in the dDCO, through the CEMP [REP6-018] and through various tables and sections of the ES. The dDCO would not suspend the operation of s61 of the Control of Pollution Act 1974 which would provide additional control in respect of noise and vibration.
- 4.4.9 For the operational phase, control and mitigation would again be secured through a number of Requirements in the DCO - through the HEMP, the FRA [APP-197, OD-022, OD-028, OD-030], environmental licences where required, and various tables and sections of the ES.
- 4.4.10 More detail on mitigation measures is in the consolidated table of environmental mitigation measures, which includes details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the dDCO [REP6-024].
- 4.4.11 I assess the adequacy of the mitigation proposed through the mechanisms for environmental management which would be secured through the Requirements in the DCO in my consideration of the impacts of the Proposed Development.
- 4.4.12 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. I have dealt with the issue of alternatives in my consideration of the principle of the development and conformity with the NPSNN in Section 4.3 of this chapter and also the design of the Proposed Development in Section 5.6 of Chapter 5. Since this proposal has been subject to an options appraisal I am satisfied that there has been an adequate assessment of alternatives [APP-209, updated to OD-007].

4.5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATION ASSESSMENT

- 4.5.1 I consider the Habitats Regulation Assessment in Chapter 6.

4.6 CONCLUSIONS ON CHAPTER 4

- 4.6.1 The principle of the Proposed Development is in accordance with the NPSNN and the local authorities' strategies, and alternatives have been satisfactorily covered, so no further consideration of these points needed

- 4.6.2 I have had regard to all the submissions made in the course of the Examination, and have identified in this chapter the various issues which arose in submissions from local authorities and IPs from the outset of the Examination. I deal with the principal issues relating to the effects of the Proposed Development on the environment in Chapter 5.
- 4.6.3 Summarising the issues identified above in this chapter, the main issues are:
- air quality - the impact of the UK Air Quality Plan, and the possible need for air quality monitoring during operations;
 - cultural heritage - the impact on heritage assets;
 - landscape - the impact on landscape;
 - nature conservation - the impact on the Ashford Green Corridor LNR and Highfield Lane RNR;
 - noise and vibration - the impact on people and property;
 - effects on all travellers - local issues; traffic modelling uncertainties;
 - road drainage and water environment - finalising the FRA; securing access to the Aylesford Stream; agreeing Protective Provisions for the EA; securing mitigation for contaminated land and groundwater in the dDCO;
 - open space land and replacement land; and
 - combined and cumulative effects - including possible effects of Operation Stack lorry park during M20 Junction 10a construction and operations.
- 4.6.4 In assessing those issues, I have regard to the tests set out in the NPSNN and other relevant policy and statutory requirements.

5 IMPACT OF THE PROPOSED DEVELOPMENT

5.1 INTRODUCTION

5.1.1 This chapter considers the impact of the Proposed Development on the environmental areas. Each sub-section is presented within a common framework:

- policy background;
- Applicant's approach;
- issues arising; and
- summary and conclusions.

5.1.2 Matters relating to the overarching legal and policy context and my findings in relation to these matters are considered in Chapters 3 and 4 respectively, and will not be repeated in this chapter.

5.1.3 I will refer to the 'Proposed Development' unless referring to impacts arising specifically from the Main Scheme or the Alternative Scheme.

5.2 TRAFFIC AND TRANSPORT

5.2.1 This section of the chapter examines traffic and transport matters relating to the Proposed Development, including the motorway itself, the wider road network, and non-motorised users (NMUs). The impact of the traffic forecasts on local road networks and on air quality are concerns of Interested Parties (IPs), as are provisions for pedestrians, cyclists and equestrians. Kent County Council (KCC) is the highways authority. A signed Statement of Common Ground (SoCG) between the Applicant and KCC summarises the consultation that has taken place in accordance with the National Policy Statement for National Networks (NPSNN) section 2.1.1 [REP9-006].

POLICY BACKGROUND

5.2.2 Government policy and the need for the development of the national networks are summarised in the NPSNN section 2. The need is stated to be *"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"*.

5.2.3 The NPSNN paragraphs 2.21 to 2.27 consider options for addressing the identified need for national networks, including sustainable private and public transport modes, whilst recognising that it is not realistic for public transport, walking or cycling to represent a viable alternative to the private car for all journeys. Paragraphs 3.17, 3.22 and 4.31 respectively address the responsibility of developments to assist NMUs, as well as addressing severance issues and the mitigation of existing adverse impacts.

5.2.4 NPSNN paragraph 2.20 states that traffic forecasts are not a policy goal and do not in themselves generate a need for development,

which arises from the pressures created by increases in traffic: *"Increased traffic without sufficient capacity will result in more congestion, greater delays and more unpredictable journeys"*. Paragraphs 5.201 et seq address impacts on transport networks.

- 5.2.5 The NPSNN paragraph 5.147 specifies the relevant statutes affecting National Trails and Public Rights of Way (PRoW), while paragraphs 5.180, 5.184 and 5.185 address the issues of maintaining access to, and connectivity with, trails and PRoW and providing adequate mitigation for any adverse effects.
- 5.2.6 The NPSNN Annex A considers congestion on the strategic road network (SRN) in terms of central, low and high growth forecasts, while Annex B considers road traffic forecasts and sets out the updated forecasts since earlier forecasts from 2013. The Applicant has followed the approach of low, central and high growth forecasts, as also specified in the Department for Transport's (DfT) Traffic Analysis Guidance²⁹ (TAG or WebTAG).
- 5.2.7 In accordance with NPSNN para 5.11, I am concerned about the potential for uncertainty in the assessment of air quality effects in view of the national concern about polluting vehicles and the court cases challenging the Department for the Environment, Food and Rural Affairs (Defra) Air Quality Plan³⁰. I consider air quality in Section 5.7.
- 5.2.8 Other impacts of concern which are addressed in this section relate to the effects on local road networks, during both the construction of the Proposed Development and its operation, and NMUs. I consider matters of road safety, air quality and the noise environment, which are related to traffic matters, elsewhere in this chapter.

APPLICANT'S APPROACH

- 5.2.9 The Applicant's assessment of impacts on traffic and transport is described in its Environmental Statement (ES) Chapter 12: Effects on All Travellers [APP-040]. This sets out the potential effects during construction and operation. More detail is included in a Transport Assessment and Report (TAR) [APP-210]. The Applicant presents its method of assessment, and identifies its baseline information, assumptions and limitations, mitigation and compensation measures, and predicted effects on all travellers. Chapter 13: Community and Private Assets [APP-041] also relates with regard to community severance (ES paragraph 12.2.2).
- 5.2.10 The Applicant provides a summary of the residual effects of the Proposed Development on NMUs and vehicle travellers [APP-040,

²⁹ <https://www.gov.uk/guidance/transport-analysis-guidance-webtag>

³⁰ <https://www.gov.uk/government/publications/air-quality-in-the-uk-plan-to-reduce-nitrogen-dioxide-emissions>

Tables 12.9 and 12.10]. During construction, the residual effects on NMUs and driver stress are assessed to be slight adverse, for the Proposed Development. During operation, the residual effects on NMUs and driver stress are assessed to be neutral, for both the Main and Alternative Schemes. Traffic management measures would be the principal means of mitigating the potential effects [APP-040, Section 12.7], and would be implemented through the Construction Environmental Management Plan (CEMP) [REP6-018].

Method of assessment

- 5.2.11 The TAR [APP-210] considers the baseline data and model development, road safety, sustainable transport, current network performance, and future network performance. Trip End Model Presentation Programme (TEMPro) and National Trip End Model (NTEM)³¹ growth factors have been applied [APP-210, para 3.4.15].
- 5.2.12 Under Sustainable Transport, the Applicant states that the Proposed Development delivers improvements in the local road network, better suited and improved infrastructure for NMUs and vulnerable users, and greater journey time reliability, and also accommodates the anticipated increase in traffic arising from the planned growth as a result of future developments [APP-210, Section 5].
- 5.2.13 Under Current Network Performance, the Applicant considers base year (2014) flows on the M20 J10, adjacent junctions and other roads in the vicinity, together with a base year operational assessment [APP-210, Section 6].
- 5.2.14 Under Future Network Performance, the Applicant addresses traffic forecasts, their impact on strategic routes and local road networks, an operational assessment and wider traffic impacts. The traffic forecasting situation in 2018 (opening year), 2023 and 2033 (design year) was modelled using a Dynamic Integrated Assignment and Demand Modelling (DIADeM)³² variable demand model combined with a SATURN³³ highway network assignment model for both 'Do Minimum' and 'Do Something' cases [APP-210, Section 7].
- 5.2.15 The SATURN model uses a 2014 base year [APP-210, paragraphs 3.4.6 to 3.4.7]. This model is a revised and updated version of a 2012 model, which was developed for ABC to enable testing of planned development. The 2012 model was itself an update, based on a model used for the Ashford 10a Highway Traffic Study which used 2003 data. Traffic counts were carried out to identify 2014 base traffic levels.
- 5.2.16 In response to my First Written Questions (FWQs) ABC deferred to KCC, and KCC stated that is satisfied that the modelling outputs are

³¹ <https://www.gov.uk/government/publications/tempro-downloads>

³² <https://www.gov.uk/government/publications/diadem-software>

³³ <https://saturnsoftware2.co.uk/>

robust, and that the Proposed Development will have minimal impact on the local road network [PD-008, Q19.6; REP3-004; REP3-024].

- 5.2.17 Overall, I find that the approach and techniques used in the modelling are appropriate for the Proposed Development, since they are the latest evolution of techniques that the DfT has been developing for some years through its Web-based Traffic Appraisal Guidance (WebTAG)³⁴. However, I now consider the issues that arose during the Examination.

ISSUES ARISING

- 5.2.18 The key issues that were considered during the Examination in relation to traffic and transport are:

- traffic modelling process and uncertainties;
- local traffic issues during construction;
- local traffic issues during operation: rat running, Barrey Road exit onto A2070, impact on Kingsford Street, concern regarding traffic north of M20, access to William Harvey Hospital, access to A20 from end of Highfield Lane Bridge, public transport, design of A2070 roundabout; and
- PRow, footpaths, bridleways, restricted byways, cycleways.

Traffic modelling process and uncertainties

Traffic modelling process

- 5.2.19 In my FWQs on the transport assessment [PD-008, Q19.1 to 19.7], I seek further information on:

- the baseline data collection (including survey data);
- transport demand modelling (the five stage process);
- local development (assumptions for low, core and high scenarios; uncertainty log);
- current network performance (assumptions and uncertainties);
- future network performance (assumptions and uncertainties); and
- the local model validation report.

- 5.2.20 The Applicant responds to these questions with its Report 3: Transport Assessment, and accepts that there is "*inevitably a degree of uncertainty in the input data used and in the modelled processes*". The Applicant argues that these uncertainties are minimised using the stated assumptions, and are dealt with by standard sensitivity tests for low and high growth either side of the most likely (core) scenario [REP3-019].

³⁴ <https://www.gov.uk/guidance/transport-analysis-guidance-webtag>

- 5.2.21 The North Willlesborough Community Forum (NWCF) reviews the Applicant's traffic modelling and states that the traffic modelling figures and processes, upon which much of the justification for the Proposed Development hangs, are flawed; but does not provide any counter evidence [REP3-039]. The Applicant responds with an explanation of how its modelling works and provides justification for the figures that it has presented [REP4-021, item 039.04].
- 5.2.22 The Village Alliance raises concerns about queuing traffic but does not provide any supporting evidence [REP5-034], and the Applicant responds that it has followed the guidance on traffic modelling [REP5-021].

Traffic modelling uncertainties

- 5.2.23 In the first round of hearings, I ask the Applicant to summarise and quantify the uncertainties in the traffic modelling, and to identify the worst case scenarios relative to the core scenario for the receptors most affected by the traffic volumes [EV-006 Q B6; EV-008 to EV-011].
- 5.2.24 The Applicant states that the uncertainty arises as (i) accuracy of base year modelling (how well it replicates observed traffic conditions in the base year it represents – in this case 2014); and (ii) accuracy in traffic forecasts, which are themselves based on incremental change from the base year model [REP5-017, item B6]. Uncertainty is reduced through averaging long-term counts and journey times, calibrating equipment, excluding outlying data and comparing similar estimates of the same measurements, where possible.
- 5.2.25 The Applicant further states that forecasting is inherently subject to more uncertainty than other aspects of the modelling. The main way in which this is dealt with is to have scenarios that assume 'low growth' and 'high growth' either side of what is the expected or most likely 'core scenario'. These scenarios use estimates of how likely local developments are to go ahead [REP5-017].
- 5.2.26 In response to my FWQs, KCC stated that is satisfied that the modelling outputs are robust [PD008, Q19.6; REP3-024]. I am satisfied that the traffic modelling employed by the Applicant follows Highways England (HE) and DfT standards, and that a sound approach has been used. With regard to the uncertainties, I assess their impact on air quality in section 5.7 of this chapter.

Local traffic issues during construction

- 5.2.27 Councillor Paul Bartlett and the Village Alliance raise concerns regarding parking for construction workers and delivery vehicles [REP5-029, REP5-034]. The Applicant responds that this will be addressed in the Traffic Management Plan (TMP) [REP5-021].
- 5.2.28 I am satisfied that construction parking will be adequately controlled through the TMP which the Applicant supplied in draft form [REP6-

033], and which would be secured in the recommended draft Development Consent Order (dDCO) through Requirement 11 (Appendix D to this report). The TMP would be subject to consultation with the relevant highway authority.

Local traffic issues during operation

5.2.29 A number of local traffic issues arose during the Examination:

- rat running and turning loop;
- Barrey Road exit onto A2070;
- impact on Kingsford Street;
- concern regarding traffic north of M20 not following the new route;
- access to William Harvey Hospital;
- access to A20 from end of Highfield Lane Bridge;
- public transport; and
- design of A2070 roundabout.

Rat running and turning loop

5.2.30 With regard to 'rat running', the process of drivers trying to find alternative routes when there are problems at the motorway junctions, Paul Bartlett and The Village Alliance express the view that 'rat runs' (via Highfield Lane, Kingsford Street and The Street, Mersham) should be closed to protect local villages [REP3-029; REP3-034, OD-042].

5.2.31 The Applicant responds that it has been informed by KCC that the Council will forward fund for closure of the Kingsford Street work and will implement this before the opening of the Proposed Development [REP4-021]. The Applicant would work with the Stour Park Developer to form an agreement outside of the dDCO.

5.2.32 At Deadline 6, KCC states that an agreement between KCC and the Applicant is being drawn up for a turning loop at Highfield Lane [REP6-054]. In the SoCG between the Applicant and KCC [REP9-006], the parties state that they have agreed to enter into an agreement confirming that:

- (1) The Applicant as the undertaker for the Proposed Development will not obstruct or prevent the delivery of the turning loop;
- (2) KCC will vacate the turning loop land by no later than 5 February 2018 in the event that works to construct the turning loop are ongoing when the Applicant (as the undertaker) enters the land; and
- (3) KCC will not commence the turning loop works any later than 13 November 2017 and following this date will not carry out the turning loop works until the project permitted by the DCO is completed and the Applicant (as the undertaker) has vacated the land.

5.2.33 I am satisfied that the rat running and turning loop issue has been appropriately resolved for the benefit of all parties. Requirement 3:

CEMP in the Applicant's final dDCO has been amended to make provision for the turning loop, which is being delivered outside of the dDCO by the local highway authority (KCC) [OD-033].

Barrey Road exit onto A2070

- 5.2.34 Councillor Paul Bartlett, the Village Alliance and NWCF state that the Barrey Road exit onto the A2070 is in need of upgrading to traffic lights or a roundabout to address safety and congestion concerns [REP3-029, REP5-029; REP3-034, REP5-034, OD-042; REP3-039].
- 5.2.35 The Applicant responds that any amendment to this junction would require a traffic assessment of the Ashford Retail Park and residential traffic impact, to be initiated by the local network authority at the request of local stakeholders, which is not part of the Proposed Development [REP4-021, items 029.06, 034.02, 039.07; REP4-019, item 023.02].
- 5.2.36 In the SoCG between the Applicant and KCC, it is agreed that the issue of congestion around Barrey Road lies outside the scope of the Proposed Development, and all parties are actively seeking a solution, with KCC seeking the necessary commitment from the Applicant alongside the Junction 10a scheme [REP9-006].

Impact on Kingsford Street

- 5.2.37 The Village Alliance cites concerns with regard to the adverse impact of the Proposed Development on Kingsford Street in respect of noise from the elevated link road and roundabout, light and air pollution, as well as bat foraging and visual amenity. It requests a native hedge to be planted to mitigate these impacts [REP3-034].
- 5.2.38 The Applicant responds that a new hedgerow with intermittent trees will form part of the planting design for the area between the new noise barrier and Kingsford Street, softening the potential visual impact of the barrier [REP4-021, item 034.03].
- 5.2.39 I am satisfied that appropriate mitigation is in place for Kingsford Street, secured through the recommended dDCO Requirement 4: Landscaping and Requirement 5: Implementation and maintenance of landscaping.

Concern regarding traffic north of M20 not following the new route

- 5.2.40 KCC raises concerns relating to traffic north of the M20 not following the new route, and states that it would want a prior traffic count and a post-scheme traffic count to be undertaken at a time when the Proposed Development has bedded in [REP5-026]. The Applicant responds that the impact of the Proposed Development will be monitored through Highways England's standard POPE (Post-Opening Project Evaluation) programme to confirm flow changes after one and five years [REP6-022, Q12.03].

- 5.2.41 I am satisfied that the Applicant's evaluation programme is an appropriate mechanism for identifying and responding to driver behaviour.

Access to William Harvey Hospital

- 5.2.42 Councillor Paul Bartlett and Robin Bristow state that the Proposed Development would increase access times to the William Harvey Hospital [REP3-029, REP5-030]. The Applicant responds that journey time reliability to the hospital will generally be improved as less congestion is forecasted to occur at Junction 10 in the future with the addition of Junction 10a [REP6-022]. However, the journey time for those currently travelling to the hospital in an eastbound direction, east of Junction 10, will be a little longer (estimated to be less than a half a minute from the traffic model) via the new link road.

Access to A20 from end of Highfield Lane Bridge

- 5.2.43 Barbara Winham representing the British Horse Society and KCC state that there is currently no safe access onto and across the A20 Hythe Lane from the new Kingsford Street Bridge, linking to both the A20 and Bockham Lane, for equestrians, pedestrians or cyclists to enable them to cross the A20 safely [REP5-003; REP5-026 and REP6-054]. KCC seeks a lower speed limit on the A20.
- 5.2.44 The Applicant responds that discussions have been ongoing and KCC has requested that the speed limit on the A20 be reduced from the existing 60mph to 40mph [REP6-022 and REP7-012]. In the recommended dDCO the Applicant has reduced the speed limit in the location of the Kingsford Street footbridge to 50mph.
- 5.2.45 KCC responds that post-scheme monitoring would need to be undertaken to assess the usage of the network, and the area must be included as part of the Road Safety Audit procedure [REP8-037]. Vehicle speeds, crash data at Bockham Lane, usage of the bridge and forward visibility will need to be assessed to inform any potential improvements. In its SoCG with the Applicant, KCC notes that the reduction in speed limit would be addressed by HE outside of the DCO process [REP9-006, item 3.1.4]. On this basis, KCC is content with the proposals.
- 5.2.46 I find that the Applicant has adopted a reasonable and proportionate approach to NMUs in meeting the requirements of NPSNN, in particular NPSNN paragraphs 3.17, 3.22 and 4.31.

Public transport

- 5.2.47 NWCF asserts that the Proposed Development makes no provision for public transport [REP3-039]. The Applicant responds by referring to KCC's response to my FWQ 1.10 in which KCC states that it is satisfied that every effort has been made to accommodate connections to support NMUs and to facilitate access to public transport [REP4-021, PD-008, REP3-024]. ABC defers to KCC [REP3-004].

- 5.2.48 The two local authorities are satisfied with public transport provisions, and I have no reason to disagree.

Design of A2070 roundabout

- 5.2.49 NWCF questions the design of the A2070 roundabout and proposes an alternative design [REP3-039]. The Applicant responds that the proposed roundabout is designed to accommodate predicted traffic flows from the traffic modelling and this leads to the free flow lanes provided [REP4-021, item 039.03]. The Applicant states that a free-flow lane between Junction 10 and Junction 10a is not required due to low traffic flows in that direction.
- 5.2.50 I am satisfied that the design of the A2070 roundabout meets the identified need.

Public Rights of Way, footpaths, bridleways, restricted byways, cycleways

- 5.2.51 The Applicant considers PRow, footpaths, bridleways, restricted byways, and cycleways in ES Chapter 12: Effects on all Travellers [APP-040] using the guidance in the Design Manual for Roads and Bridges (DMRB)³⁵. Predicted effects on NMUs are considered, and a range of mitigation measures are proposed [APP-040, Section 12.8; APP-040, Section 12.7].
- 5.2.52 There will be adverse effects resulting from the closure of Highfield Bridge (assessed as large adverse in the ES), but these effects are at least partially mitigated by the positive effects for NMUs resulting from the new Kingsford Street footbridge. There are also effects resulting from the closures of six PRow (AE339, AE337A, AU63C, AU65, AE636, AU53, AE338). In the SoCG between the Applicant and KCC, the Applicant summarises its proposals and KCC records its agreement [REP9-006].
- 5.2.53 The joint Local Impact Report (LIR) of ABC and KCC makes no mention of NMUs or their access routes [REP3-005]. I note that the residual effects on NMUs during both construction and operation of the Proposed Development are assessed, at worst, as slight adverse [APP-040, Table 12.9]. KCC confirms that it has agreed to the PRow closures which would be required to realise the Proposed Development, and that the proposed new NMU facilities will compensate for the loss of those PRow. The constraints on access to the affected PRow diminish their already low community or recreational value [REP3-024]. I am therefore satisfied that the needs of NMUs have been adequately considered by the Applicant through the design of the Proposed Development and the proposed mitigation measures.

³⁵ DMRB Volume 11, Section 3, Part 8: Pedestrians, Cyclists, Equestrians

SUMMARY AND CONCLUSIONS

- 5.2.54 With regard to traffic modelling and forecasting, I find that the Applicant has applied an appropriate and recognised methodology in accordance with the advice set out in the DMRB. As a result, it has achieved a reasonable assessment of future traffic flows to enable an assessment to be made of the additional capacity that would be provided by the Proposed Development and its likely benefits.
- 5.2.55 By providing for increased capacity for the M20 around Junction 10, the Proposed Development would improve traffic flow, and reduce journey times in accordance with Section 2 of the NPSNN, which seeks to address road congestion and to provide a national network which better supports social and economic activity.
- 5.2.56 I am satisfied that the Applicant's approach to traffic modelling follows HE and DfT standards, and that a sound approach has been used. With regard to the inherent uncertainties, which the Applicant accepts, I assess the impact of the uncertainties on air quality in the corresponding section of this chapter.
- 5.2.57 With regard to the construction period, I have assessed the concerns of the local authorities and residents in relation to the impact on the local road networks, and I find that adequate protection would be secured through the dDCO Requirement 3: CEMP and the Traffic Management Plan, secured through Requirement 11, to ensure that construction traffic impacts are effectively mitigated in accordance with NPSNN paragraphs 4.28 to 4.35.
- 5.2.58 With regard to the operation period, I find that, with the additional capacity provided by the Proposed Development, both the motorway and the local authority highway networks overall would be likely to benefit from the implementation of the Proposed Development. The issues that arose during the Examination are all satisfactorily addressed and mitigated in accordance with NPSNN Sections 2.21-2.27.
- 5.2.59 I find that the needs of NMUs have been adequately considered by the Applicant through the design of the Proposed Development and that effects would be mitigated in a reasonable and proportionate manner, in accordance with NPSNN Paragraphs 5.180, 5.184 and 5.185.
- 5.2.60 More detail on mitigation measures is in the consolidated table of environmental mitigation measures, which includes details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the dDCO [REP6-024].

5.3 ROAD SAFETY

POLICY BACKGROUND

- 5.3.1 The NPSNN addresses road safety in paragraphs 4.60 to 4.66.
- 5.3.2 It states that: "*New highways developments provide an opportunity to make significant safety improvements. Some developments may have safety as a key objective, but even where safety is not the main driver of a development the opportunity should be taken to improve safety, including introducing the most modern and effective safety measures where proportionate*".
- 5.3.3 The NPSNN goes on to state that an objective assessment of the impact of a scheme on safety, including the impact of any mitigation measures, must be carried out. Arrangements for undertaking a road safety audit process, a mandatory requirement for all trunk road highway improvement schemes in the UK (including motorways), must also be put in place. These are intended to ensure that operational road safety experience is applied during the design and construction process so that the number and severity of collisions is as low as is reasonably practicable.
- 5.3.4 The Secretary of State (SoS) will wish to be satisfied that all reasonable steps have been, and will be, taken to:
- minimise the risk of road casualties arising from the Proposed Development; and
 - contribute to an overall improvement in the safety of the Strategic Road Network.

APPLICANT'S APPROACH

- 5.3.5 The Applicant addresses road safety in ES Chapter 12: Effects on All Travellers, where various aspects of the design of the Proposed Development are considered, including their safety features [APP-040].

Method of assessment

- 5.3.6 The method of assessment for the effects on all travellers is summarised in the Traffic and Transport section of this chapter and will not be repeated here, except to highlight specific considerations related to road safety.
- 5.3.7 Under significance criteria, the Applicant highlights driver stress as an important factor influencing the value and safety of a journey, and references the DMRB as the source of its assessment methodology³⁶. The main ES chapter is supported by Appendix 12.1: Driver Stress

³⁶ DMRB Volume 11, Section 3, Part 9

Significance Criteria, Appendix 12.2: Driver Stress Main Scheme and Appendix 12.3: Driver Stress Alternative Scheme [APP-188, APP-190, APP-191].

- 5.3.8 Road safety is also considered in the TAR [APP-210, Section 4]. The Applicant considers collision data over the five-year period from 4 January 2010 to 31 December 2014, and makes a collision assessment using DfT's COBALT (Cost and Benefit to Accidents – Light Touch) methodology (DfT's method of estimating future collisions and associated economic impacts)³⁷ over 60 years to incorporate the period between the Proposed Development opening year 2018 and 2077.
- 5.3.9 The Applicant states that the expected collisions resulting from the Proposed Development on the M20 is slightly smaller (-6), while the collisions on the link roads is slightly more (+10). However, there are expected to be many fewer collisions within the Ashford area due to traffic diverting onto safer classes of roads [APP-210].

Mitigation and compensation measures

Construction

- 5.3.10 The Applicant states that a CEMP would be implemented during construction [APP-040, Section 12.7]. Traffic management would be the main measure for minimising effects upon vehicle travellers during the construction period. Works on the A20, M20 Junction 10a and A2070 would be phased to minimise effects on all travellers during construction. An on-demand signal controlled pedestrian facility would be made available on the A2070 to the south of the existing Church Road footbridge.

Operation

- 5.3.11 All NMU routes would meet required standards and would be lit at night [APP-040, Section 12.7]. With regard to NMU safety, the Proposed Development includes under Work No. 6 a new NMU footbridge with access ramps over the M20 east of the new Junction 10a at Kingsford Street, as NMU access across Junction 10a would not be desirable due to high safety risk [APP-040, Section 12.4]. The new footbridge would also be suitable for equestrians, and would mean that NMUs would no longer have to cross the A20.
- 5.3.12 The replacement Open Space land to be provided adjacent and to the north of the existing Open Space land would be made accessible for NMUs through the addition of access ramps and stairs from the new

³⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488064/cobalt-user-manual.pdf

footbridge and from the footpaths running alongside the A2070 Bad Munstereifel Road to the west [APP-040, Section 12.7]³⁸.

- 5.3.13 The existing Church Road footbridge would be replaced with a new cycle friendly footbridge that is compliant with the Equality Act (2010). A new connection for cyclists would also be made at the end of the access road for St Mary's Church. The existing substandard footway situated to the west side of the A2070 Bad Munstereifel Road would be upgraded to form a 3m wide shared footway and cycleway [APP-040, Section 12.7].

ISSUES ARISING

- 5.3.14 The main issues raised in submissions to the Examination relate to:

- Road Safety Audit (RSA);
- Safety Plan, and Combined Safety and Hazard Log; and
- Safety on northbound M20.

Road Safety Audit

- 5.3.15 In my FWQs, I asked the Applicant to provide to the Examination a copy of the RSA, cited in section 7.15 in the Transport Assessment [PD-008, Q12.3; APP-210]. The Applicant provided the RSA at Deadline 3 [REP3-035, Appendix D].

- 5.3.16 The RSA highlights two issues associated with merge points:

- (1) The A2070 Sevington Roundabout westbound approach to the roundabout; and
- (2) The proximity between the roundabout segregated left-turn lane and the right-turn to Ashford Business Park.

- 5.3.17 Both issues were accepted by the Applicant and amendments were made to the design.

- 5.3.18 I am satisfied that the RSA was undertaken in accordance with recognised standards, and that the Applicant has provided an appropriate response to the recommendations. No other parties challenged the findings of the RSA during the Examination.

Safety Plan and Safety and Hazard Log

- 5.3.19 The Applicant provided a Safety Plan, and Combined Safety and Hazard Log at Deadline 3 [REP3-035, Appendices B and C].

- 5.3.20 The Safety Plan lays out the project safety objectives, the Safety Management System, the Safety Baseline, and the responsibilities for safety. The purpose of the Combined Safety and Hazard Log is to

³⁸ See Chapter 8 Section 8.7 of this report for details of the Open Space land

demonstrate that the appropriate level of safety management has been undertaken [REP3-035, Appendix B and C].

5.3.21 There were no challenges to these two documents during the Examination, and I find that they are fit for purpose.

Safety on northbound M20

5.3.22 The Village Alliance raises a concern regarding safety on the northbound M20 approaching Junction 10, where there is a bend in the motorway [REP3-034]. I raised this matter at the first hearings [EV-006, EV-008 to EV011].

5.3.23 The Applicant responded that the curvature of the motorway at the location in question had been reviewed and found to be within design limits. Collisions were reviewed as part of the design process for the Proposed Development, and the latest five years of available data at the time of the design was 1 January 2010 to 31 December 2014 [REP4-021, item 034.05]. Three collisions were identified on the M20 northbound carriageway, in the vicinity of the start of the new off slip. No patterns or trends were found in the analysis of these three collisions.

5.3.24 The Village Alliance challenges the Applicant's response, asserting that data from 2015 and 2016 should be used, and expands on its concerns regarding queuing traffic at the slip roads and allegedly poor line of sight visibility [REP5-034].

5.3.25 The Applicant responds that, aside from the design standards being met, other factors to consider are [REP5-017]:

- The presence of two junctions instead of one would reduce the overall loading on each, compared with that of Junction 10 now;
- Based on modelling, the expectation is that, at least until 2033 under average conditions, westbound off-slip traffic should not tail back to the motorway; and
- The signals at Junction 10a (on the two off-slips) could be left on green in the westbound direction in an emergency to keep traffic moving off the motorway, although this might cause temporary problems on the non-motorway network.

5.3.26 The Village Alliance again raises safety matters on the last day of the Examination, too late for the Applicant or other IPs to respond, alleging that its concerns had not been addressed by the Applicant [OD-042]. Given the late timing of the submission, I am unable to give this submission much weight, though the concerns do seem to have been addressed appropriately.

5.3.27 From the evidence provided, I find that there is no undue safety risk on the northbound carriageway of the M20 in the vicinity of the Proposed Development.

SUMMARY AND CONCLUSIONS

5.3.28 Through the design of the Proposed Development, amended as a result of the RSA and this Examination, I am satisfied that the Proposed Development would achieve a good level of safety. As a result I find that the Proposed Development would comply with Government policy in NPSNN paragraphs 4.60 to 4.66. I am also satisfied that the Applicant has taken specific opportunities to improve road safety through the introduction of proportionate measures in accordance with NPSNN paragraph 3.10.

5.4 NOISE AND VIBRATION

POLICY BACKGROUND

5.4.1 The NPSNN addresses noise and vibration in paragraphs 5.186 to 5.200

5.4.2 It refers to Government policy as set out in the Noise Policy Statement for England³⁹ (NPSE), which promotes good health and good quality of life through effective management of noise and vibration. The NPSE refers to three thresholds of noise - No Observed Adverse Effect Level (NOAEL), Lowest Observable Adverse Effect Level (LOAEL), and Significant Observed Adverse Effect Level (SOAEL).

5.4.3 The World Health Organisation's Night Noise Guidelines for Europe⁴⁰ define the LOAEL as 40 dB equivalent continuous sound level over 8 hours (LAeq,8h) (free field), necessary to protect the public including most of the vulnerable groups from the adverse health effects of night noise, but it is recognized in the guidelines that many people are exposed to noise levels above this value and the guidelines therefore recommend an interim target of 55 dB LAeq,8h (free field).

5.4.4 Factors that will determine the likely noise impact include:

- construction noise and the inherent operational noise from the Proposed Development and its characteristics;
- the proximity of the Proposed Development to noise sensitive premises (including residential properties, schools and hospitals) and noise sensitive areas (including certain parks and open spaces);
- the proximity of the Proposed Development to quiet places and other areas that are particularly valued for their tranquillity, acoustic environment or landscape quality such as National Parks and areas of outstanding natural beauty; and

³⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69533/pb13750-noise-policy.pdf

⁴⁰ http://www.euro.who.int/__data/assets/pdf_file/0017/43316/E92845.pdf

- the proximity of the Proposed Development to ecologically designated sites where noise may have an adverse impact on the special features of interest, protected species or other wildlife.

5.4.5 With regard to decision making, due regard must be given to the relevant sections of the NPSE, national planning policy framework (NPPF) and the Government's associated planning guidance on noise⁴¹.

5.4.6 The NPSNN at paragraph 5.195 states that the SoS should not grant development consent unless satisfied that a development proposal will meet the following aims, within the context of Government policy on sustainable development:

- avoid significant adverse impacts on health and quality of life from noise as a result of the new development;
- mitigate and minimise other adverse impacts on health and quality of life from noise from the new development; and
- contribute to improvements to health and quality of life through the effective management and control of noise, where possible.

5.4.7 NPSNN paragraph 5.197 states that the Examining Authority (ExA) and the SoS should also consider whether mitigation measures are needed both for operational and construction noise over and above any which may form part of the project application.

APPLICANT'S APPROACH

5.4.8 The Applicant's assessment of the effects of the Proposed Development in terms of noise and vibration is set out in ES Chapter 11: Noise and Vibration [APP-039]. This is supported by figures and an appendix containing further technical details on the method of assessment, baseline survey information and modelling assumptions for the construction noise assessment [APP-121 to APP-127; APP-187].

Method of assessment

5.4.9 The Applicant describes the method of assessment, which has been undertaken in accordance with its detailed level of assessment as per HD 213/11⁴². This methodology identifies typical classes of receptor, the criteria to be used in determining the sensitivity of a receptor, and the magnitude of impacts (permanent and temporary).

5.4.10 The Applicant goes on to describe its assumptions, constraints and baseline, as well as the proposed mitigation and compensation measures [APP-039].

⁴¹ <https://www.gov.uk/guidance/noise>

⁴² DMRB (2011) Design Manual for Roads and Bridges Volume 11 Section 3 Part 7 HD213/11 Noise and Vibration.

- 5.4.11 The Applicant also makes reference to the British Standard 5228 (BS 5228) Code of Practice for Noise and Vibration Control on Construction and Open Sites (parts 1 and 2) in terms of assessment of construction impacts and the Calculation of Road Traffic Noise (CRTN) for operational impacts⁴³ [APP-039].
- 5.4.12 As part of its written representation, ABC, via a report by its commissioned consultant the Temple Group, concludes that in its view the approach and methodology taken to the noise assessment is in line with current legislation, policy, guidance and good practice [REP3-001].

Mitigation and compensation measures

- 5.4.13 During the construction of the Proposed Development, noise mitigation identified by the Applicant would comprise various controls: shielding of noisy items of plant, appropriate siting of haul routes, specification of the construction methodology, use and siting of equipment, modification of plant, specification of noise limits (with monitoring), and screening. Such measures would be required under an agreement under s61 of the Control of Pollution Act 1974 [APP-039].
- 5.4.14 Impacts would also be controlled through the CEMP which would be secured by the recommended dDCO Requirement 3. The CEMP must be substantially in accordance with the outline construction environmental management plan (oCEMP) to be certified under dDCO Article 44 [REP6-018].
- 5.4.15 During operation, mitigation measures identified by the Applicant would comprise thin surface course for all new road surfacing, acoustic bunds, and acoustic barriers. The barrier heights would be selected on the basis of zero properties remaining at or above the SOAEL for the given height of barrier, which leads to 3m high barriers. These are described as "*mitigation incorporated into the Scheme design*" in the ES [APP-039, paragraph 11.7.2].
- 5.4.16 Noise mitigation measures are summarised in the updated versions of the oCEMP (in particular Appendix D: Register of Environmental Action and Commitments) and the Environmental Masterplan (updated at Deadline 6 and Deadline 8 as explained in subsequent sections of this report) [REP6-018; APP-060 to APP-069; REP6-005 to REP6-015; REP8-008 to REP8-017].

Assessment of residual effects

- 5.4.17 According to the Applicant, the construction noise and vibration assessments indicate that with mitigation there would be no significant effects [APP-039, Section 11.9]. An acoustic barrier has been included as part of the Proposed Development along Kingsford Street, while

⁴³ <https://shop.bsigroup.com/ProductDetail/?pid=000000000030258086>

adjacent to the A2070 noise levels will reduce with the Proposed Development and the existing acoustic barrier is considered sufficient. The overall number of properties at or above SOAEL would reduce with the introduction of the Proposed Development.

ISSUES ARISING

5.4.18 The main issues arising during the Examination are:

- noise mitigation and monitoring;
- vibration effects;
- construction working hours; and
- noise impacts on health.

Noise mitigation and monitoring

5.4.19 Resident and Councillor Paul Bartlett raises concerns about ambient noise levels, and the Village Alliance similarly raises concerns [REP3-029, REP3-034, OD-042]. The Applicant addresses these concerns point by point with reference to ES Chapter 11: Noise and Vibration and related contour figures, highlighting noise barriers, bunds and additional tree planting as the proposed mitigation measures [REP4-021, APP-039]. The DMRB⁴⁴ cites the use of trees as a noise mitigation measure, but states *"The use of shrubs or trees as a noise barrier has been shown to be effective only if the foliage is at least 10m deep, dense and consistent for the full height of the vegetation"*. Trees cannot therefore be relied upon for noise mitigation unless they comply with this statement.

5.4.20 In response to my second round of written questions (SWQ) on noise issues, ABC outlines its expectations for monitoring noise levels at a number of locations [PD-012, Q11.01 to Q11.03; REP6-001]. The Applicant responds by stating that there is broad agreement on the proposed noise monitoring methodology and that this will be considered further when drafting the noise survey methodology during the detailed design stage [REP7-012]. At the second round of hearings on the environment, I seek further clarity and at Deadline 8 the Applicant submits a written summary of its response that noise monitoring will be carried out pre and post-construction to assess the effectiveness of mitigation measures and that the methodology for the monitoring strategy will be produced by the Principal Contractor as part of the CEMP, secured in recommended dDCO Requirement 3 [EV016, item E.01; REP8-027].

5.4.21 Proposed operational noise mitigation in the form of noise attenuation barriers, bunds and additional tree planting, is set out in the Environmental Masterplan [APP-060 to APP-069]. This was updated by the Applicant at Deadlines 6 and 8 [REP6-005 to REP6-015; REP8-008

⁴⁴ DMRB (2011) Design Manual for Roads and Bridges Volume 11 Section 3 Part 7 HD213/11 Noise and Vibration paragraph 4.5

to REP8-017]. Updates to the Environmental Masterplan during the examination were summarised in the Applicant's Environmental Masterplan update Report [REP6-023; REP8-026] and were made in response to errata and representations made by IPs during the Examination across the entirety of environmental topics including noise and vibration. One of the modifications to the Environmental Masterplan was in response to representations made by Historic England regarding bunding around St Mary's Church [RR-018].

- 5.4.22 In the update report submitted at Deadline 6, the Applicant states that adjustments have been made to the noise barriers, footpaths and associated planting for screening to the north of Kingsford Street and adjustments have also been made to the proposed ramps leading to the Kingsford Street footbridge, including merging the noise bund adjacent to the footbridge with the footbridge earthworks [REP6-023, Section 2.2]. The noise bund proposed in land plot 2/4/b, to the rear of the properties on the A20, has been extended to provide greater screening of the view towards Junction 10a. Screening planting is shown on the bund extension [REP6-023, Section 2.8].
- 5.4.23 In addition to noise barriers/ bunds, a low noise surface (thin surface course (TSC)) will be provided as stated in the oCEMP [REP6-018]. In my FWQs on the issue of low noise surfacing, I enquired as to the extent to which assumptions have been made in the assessment regarding its use [PD-008, Q11.2]. The Applicant explains that the approach was a conservative one in terms of assuming lower baseline conditions, thereby overestimating the impacts [REP3-035].
- 5.4.24 In my SWQs, I ask the Applicant about whether TSC would be secured in the dDCO in response to matters raised at the first Issue Specific Hearing (ISH) dealing with the dDCO, and whether a separate Requirement in the dDCO would be necessary [PD-012; EV-013 to EV-014]. The Applicant is of the view that TSC is secured through adherence of the Proposed Development's detailed design to the DMRB and Interim Advice Note 156/16 [REP6-022]. TSC is also specified in the oCEMP [REP6-018].
- 5.4.25 Two Noise Important Areas are contained within the Order Limits [APP-039, Paragraph 11.7.5]. While there are existing acoustic barriers in place, acoustic barriers have been included as part of the Propose Development in the case of the Kingsford Street area, and noise levels at the A2070 are predicted to decrease with the Proposed Development.
- 5.4.26 In ABC's submission at Deadline 8, the Council states that it is content that the noise mitigation proposed (noise bunds, barriers and lower noise thin course road surfaces) are appropriate [REP8-001]. ABC also includes proposed dDCO wording for monitoring and if necessary mitigation.
- 5.4.27 I am satisfied that the recommended dDCO Requirement 3(2)(f)(x), which secures a Noise and Vibration Monitoring Strategy as a

management plan within the CEMP, adequately secures the noise monitoring and mitigation.

Vibration effects

- 5.4.28 At the second ISH dealing with environmental matters [EV-017 to EV-019], a concern was raised verbally by Councillor Bartlett over potential vibration effects on St Mary's Church at Sevington, a Grade I listed building. A similar concern was raised by Mrs Swandale on behalf of the Village Alliance over a Grade II listed property on Kingsford Street. In response, the Applicant supplied a vibration technical note as an appendix to its hearing summary [REP8-027, Appendix B].
- 5.4.29 In the technical note, the Applicant states the proximity of the two buildings from the nearest part of the Proposed Development, and refers to ES Chapter 11: Noise and Vibration where the vibration effects are assessed based on the DMRB⁴⁵. The Applicant concludes, on the basis of the distance between the aforementioned properties and the potential sources of vibration, that structural damage from vibration during construction and operation is not anticipated [REP8-027].
- 5.4.30 In a submission on the last day of the Examination, the Village Alliance states that the vibration effects on Redburr and Ransley Kennels listed buildings should be assessed [OD-042]. Since the Applicant and other IPs did not have an opportunity to respond, I cannot give this submission much weight.
- 5.4.31 The Applicant's case is well-founded, and I concur with its conclusions. The Applicant states that excessive short-term noise levels will be controlled through the CEMP and a monitoring regime in such a way as not to exceed levels set out in the ES [APP-039 Table 11.3]. In consultation with ABC and KCC, a Noise and Vibration Monitoring Strategy will be produced as a management plan within the CEMP, secured through Requirement 3, and with the councils as consultees.

Construction working hours

- 5.4.32 Construction working hours were a source of concern, notably with regard to the Pilgrims' Hospice [RR-035]. ABC's RR also refers to the 'impact of works' at the front of the Hospice, which could also lead to concern about noise [RR-002]. The Hospice is situated on the A20 Hythe Road, immediately adjacent to the Order limits. The proximity of some of the proposed works to the Hospice means that in order to construct the Proposed Development the Applicant is requesting

⁴⁵ DMRB (2011) Design Manual for Roads and Bridges Volume 11 Section 3 Part 7 HD213/11 Noise and Vibration

Temporary Possession powers over lands which form the Hospice's only access for motorised vehicles⁴⁶ [REP6-035, REP6-040].

- 5.4.33 In response to my SWQs, ABC states that it would like to see a standard approach, ie common core hours for noisy works across the project, with suitable variation where appropriate to the circumstances, for example where night time working is essential [PD-012, Q11.03; REP6-001]. Requirement 3 of the recommended dDCO stipulates the construction working hours in the CEMP to be between 07:00 to 18:00 on Mondays to Fridays and 07:00 to 13:00 on Saturdays (with seven stipulations whereby an exception could be made). The variation would be achieved through the use of s61 of the Control of Pollution Act 1974⁴⁷ (CoPA74) on prior approval application via the CEMP [REP6-018]. ABC believes that this would be an appropriate means of securing controls on noisy construction activities [REP6-001].
- 5.4.34 In response to my SWQs, the Applicant confirms that it is content to use s61 of the CoPA74 to secure controls on noisy construction activities via consultation with the local councils on the production of the CEMP [PD-012, REP6-022]. With regard to the Pilgrims' Hospice, the Applicant states that it has already established a relationship with the Hospice to ensure that the impact of the works is minimised wherever possible, and the Applicant (as the Undertaker) will discuss any s61 application with the Hospice.
- 5.4.35 I find that the mitigation measures secured in the recommended dDCO and s61 of the CoPA74 are sufficient to protect residents from significant noise and vibration impacts from construction, particularly at night time.

Noise impacts on health

- 5.4.36 All issues discussed within this section have an impact on health. In response to my SWQs, Public Health England (PHE) states that it might be prudent to request that the Applicant evaluates the potential noise impacts from the Proposed Development once the development is complete [PD012, Q11.02; REP6-057]. PHE goes on to state that if it is found that that the Proposed Development has led to the relevant properties being exposed to levels in excess of 55dB at night-time, a scheme of mitigation should be developed and implemented in consultation with the relevant local authorities.
- 5.4.37 I consider this to be suitably covered by the Noise and Vibration Monitoring Strategy which would be produced as part of the CEMP and secured through Requirement 3.

⁴⁶ See also Section 8.5 of this report

⁴⁷ <http://www.legislation.gov.uk/ukpga/1974/40>

5.4.38 The health impacts of the Proposed Development are considered in more detail in Section 5.11.

SUMMARY AND CONCLUSIONS

5.4.39 I find that the Applicant has adopted a robust, consistent, reasonable and proportionate approach to assess the noise and vibration characteristics of the Proposed Development, and makes appropriate proposals for mitigation. The Applicant has refined its mitigation proposals as a result of the Examination.

5.4.40 Mitigation would take the form of noise attenuation barriers and bunds, as set out in the updated Environmental Masterplan, as well as low noise surfacing [REP8-008 to REP8-017]. I am content that such measures are capable of being secured through Requirement 3: CEMP in the recommended dDCO.

5.4.41 Mitigation has been provided in order to reduce adverse impacts, although the Applicant's assessment identifies that these effects would occur on the existing network as a result of traffic changes (under the 'do-minimum' scenario). The modelling also shows that the overall number of properties at or above SOAEL would reduce with the introduction of the Proposed Development [APP-039, Table 11.21].

5.4.42 As a result, I am satisfied that the proposals accord with paragraphs 5.186 to 5.200 of the NPSNN.

5.5 WASTE MANAGEMENT AND MINERALS HANDLING

POLICY BACKGROUND

5.5.1 The NPSNN addresses waste management in paragraphs 5.39 to 5.45. In line with the Waste (England and Wales) Regulations 2011⁴⁸, developments are expected to ensure that sustainable waste management is implemented through the waste hierarchy as follows:

- Prevention;
- Preparing for re-use;
- Recycling;
- Other recovery (eg energy recovery); and
- Disposal, only as a last resort.

5.5.2 The Applicant should set out the arrangements that are proposed for managing any waste produced. The Applicant should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that the alternative is the best overall environmental outcome.

⁴⁸ And Guidance to The Waste (England and Wales) Regulations 2011

- 5.5.3 The SoS needs to consider the extent to which the Applicant proposes an effective process that would be followed to ensure effective management of hazardous and non-hazardous waste arising from the construction and operation of the Proposed Development.
- 5.5.4 In accordance with paragraph 5.169 of the NPSNN, applicants should safeguard any mineral resources on a proposed application site as far as possible. Paragraph 5.182 of the NPSNN states that where a Proposed Development has an impact on a Mineral Safeguarding Area, the SoS should ensure that the Applicant has put forward appropriate mitigation measures to safeguard mineral resources.

APPLICANT'S APPROACH

- 5.5.5 The Applicant addresses the management of waste and materials in ES Chapter 10: Materials and ES Chapter 9: Geology and Soils [APP-038, APP-037]. These are supported by the oCEMP which requires the production of management plans including a Site Waste Management Plan (SWMP) and a Materials Management Plan (MMP) [REP6-018]. The indicative contents for a Handover Environmental Management Plan are also provided with the application [APP-205].

Method of assessment

- 5.5.6 The oCEMP sets out the principles and processes for the management of the environmental effects of the Proposed Development, as identified within the ES, and demonstrates compliance with environmental legislation [REP6-018]. The outline SWMP (oSWMP) provides specific measures to ensure that all construction waste is managed, stored and disposed of in an appropriate manner by approved contractors in accordance with the waste hierarchy and all relevant legislation [REP4-022]. An outline MMP was not provided with the application or submitted to the Examination, but it is secured as a management plan through Requirement 3: CEMP and is subject to consultation with the local planning authority (LPA), LHA and Environment Agency (EA).
- 5.5.7 Section 2 of the oSWMP sets out how the Applicant would implement the waste hierarchy in its construction of the Proposed Development, and places various requirements on the relevant contractor(s) to that end. The general principle of the oSWMP is to maximise the re-use of site-won materials, therefore maximising diversion from landfill. Where waste cannot be re-used or recycled, it must be disposed of in accordance with the Landfill Directive (1999/31/EC) and waste acceptance criteria procedures [REP4-022].
- 5.5.8 All waste would be managed by the contractor(s) in accordance with the waste hierarchy, as set out in the Waste (England and Wales) Regulations 2011, and in such a way as to prevent harm to human health or the environment [REP4-022].
- 5.5.9 I am satisfied that the Applicant has adopted an appropriate methodology for the assessment of the potential effects associated

with waste management and mineral handling in ES Chapter 10: Materials and ES Chapter 9: Geology and Soils.

ISSUES ARISING

Outline Site Waste Management Plan

- 5.5.10 An oSWMP was not submitted with the application, and in my FWQs I asked the Applicant to prepare and submit one to the Examination [PD-008]. An oSWMP was subsequently submitted to Deadline 4 [REP4-022].
- 5.5.11 Although KCC did not comment on the oSWMP specifically, it did confirm that, in its view, the details on waste management in the oCEMP alone were comprehensive and appropriate with a strong sustainable stance in line with best practice [APP-204, REP3-024].

Waste disposal facilities

- 5.5.12 A significant adverse residual effect is identified in respect of soil waste arisings from site clearance. In ES Chapter 10: Materials, the Applicant identifies a number of waste management sites (WMS), (also called landfill sites in the ES) in the area, including sites which can take hazardous waste [APP-038, Table 10.4]. In the SoCG between the Applicant and KCC, KCC states that the WMS identified in Table 10.4 appear to be based on licenses/permits issued by the EA [REP9-006]. KCC cautions that, whilst a licence might have been issued in this regard, it does not necessarily mean that a WMS is operational [REP9-006].
- 5.5.13 The KCC Annual Monitoring Reports will provide a more accurate representation of operational WMS in Kent. This is also the case for mineral supply sites and KCC states that it would be advisable for the Applicant to use the most up-to-date information available and to be aware of any changes to the operational mineral supply and WMSs in Kent each year [REP9-006]. In this regard KCC states that, if the contractor(s) for the Proposed Development require any additional information relating to the WMSs identified, then KCC would be able to respond with the appropriate information [REP5-026].
- 5.5.14 The Applicant makes no changes to the ES arising from KCC's comments in respect of WMS operation. The location of the WMS provides background to the assessment and would not change its conclusions. The Applicant has confirmed that up to date information in the KCC Annual Monitoring Reports will be used to identify WMSs in the SWMP which will be produced by the contractor(s) prior to construction [REP9-006].

Minerals handling

- 5.5.15 In the joint LIR , KCC explains that because the whole application site comprises safeguarded limestones and alluvial deposits, in accordance with policies CSM 5 and DM 7 of the Kent Waste and Minerals Plan

2013-30 (KWMP), a Minerals Assessment is required [REP3-005]. The Applicant provided a Minerals Assessment in Chapter 9 of the ES [APP-037].

- 5.5.16 According to KCC, the Minerals Assessment carried out by the Applicant was not comprehensive enough to comply with the KWMP, and in its Written Representation KCC asked the Applicant to produce a Minerals Assessment examining the actual occurrence, characteristics and viability of three identified economically important minerals, namely: Sub-Alluvial River Terrace Deposits, Weald Clay Formation, and the Hythe Formation (Kentish Ragstone) [REP3-023]. In the assessment the Proposed Development should be assessed against the exemption from the safeguarding presumption criteria as set out by Policy DM7 of the KWMP. This would ascertain whether the Proposed Development is compatible with minerals safeguarding.
- 5.5.17 In response the Applicant reappraised the minerals safeguarding issues raised by KCC, focussing on the three economically important minerals which KCC identified. The Applicant submitted a Minerals Safeguarding Assessment to Deadline 5 in the Examination [REP5-022].
- 5.5.18 The SoCG between the parties confirms KCC's satisfaction with the Applicant's updated assessment and establishes that the presumption to safeguard the identifiable economic geologies within the application site, according to the KWMP, is not required. The investigative geological data shows that the relevant criteria of Policy DM 7 can be invoked to satisfy the exemption from the need to safeguard the minerals [REP9-006].

SUMMARY AND CONCLUSIONS

Waste management

- 5.5.19 The proposed measures for the management of waste are set out in the oSWMP [REP4-022]. The SWMP would be delivered as a management plan through the CEMP, which itself would be secured through Requirement 3 in the recommended dDCO. The SWMP would be a dynamic document that would be updated by the contractor(s) as the Proposed Development is progressed and information becomes available. Through the CEMP the local authorities and EA would be actively involved as consultees in plans for the management of waste, taking account of available facilities.
- 5.5.20 The ES identifies several landfill sites in the area, including sites that take hazardous waste [APP-038, Table 10.4]. The examination of the likely waste flows and how they will be managed have addressed KCC's concerns [REP6-054]. I am therefore satisfied that hazardous and non-hazardous waste arising from the construction of the Proposed Development would be able to be properly managed, that all necessary controls would be in place through the recommended dDCO,

and that the Proposed Development complies with NPSNN paragraphs 5.39 to 5.45 in this respect.

Materials/ minerals management

- 5.5.21 In respect of minerals, the resolution pursued by the parties outside of the Examination was encouraging and I am satisfied that the findings of the Applicant's Minerals Safeguarding Assessment satisfies paragraph 5.182 of the NPSNN [REP5-022]. A MMP, to be developed as a management plan within the CEMP, will secure the management of materials and minerals, with local authorities and the EA as consultees.
- 5.5.22 More detail on mitigation measures is in the consolidated table of environmental mitigation measures, which includes details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the dDCO [REP6-024].

5.6 DESIGN

POLICY BACKGROUND

- 5.6.1 The NPSNN sets out the criteria for good design for national network infrastructure in paragraphs 4.28 to 4.35.
- 5.6.2 Design is to be dealt with as an integral consideration from the outset of a proposal, in which visual appearance should be a key factor in considering the design of new infrastructure, as well as functionality, fitness for purpose, sustainability and cost.
- 5.6.3 A good design should:
- meet the principal objectives of the scheme by eliminating or substantially mitigating the identified problems, by improving operational conditions and by simultaneously minimising adverse impacts;
 - mitigate any existing adverse impacts wherever possible, for example, in relation to safety or the environment; and
 - sustain the improvements to operational efficiency for as many years as is practicable, taking into account capital cost, economics and environmental impacts.
- 5.6.4 The Applicant should take into account:
- functionality (including fitness for purpose and sustainability);
 - aesthetics (including the scheme's contribution to the quality of the area in which it would be located);
 - the role of technology (in delivering new national networks projects); and
 - opportunities to demonstrate good design (in terms of siting and design measures relative to existing landscape and historical

character and function, landscape permeability, landform and vegetation).

- 5.6.5 The ExA and SoS should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy.

APPLICANT'S APPROACH

- 5.6.6 The principal document detailing the design of the Proposed Development is ES Chapter 2: The Proposed Scheme [APP-030]. Other chapters of the ES consider the design impacts of each environmental topic [APP-029 to APP-208].

Method of assessment

- 5.6.7 The Applicant considers design options in ES Chapter 3: Consideration of Alternatives [APP-031]. This document describes the need and objectives for the Proposed Development, and provides a history of the Proposed Development from 2003 including the options considered.
- 5.6.8 In 2005/2006, an options assessment was undertaken, which identified a shortlist of three main options with their advantages and disadvantages. The Applicant, ABC and KCC favoured one of the three options, which, following public consultation in 2008, became the scheme that is the basis for the Proposed Development.
- 5.6.9 This option was considered to be the most feasible option for fulfilling the scheme objectives. It provided value for money, as shown by the Benefit Cost Ratio and, based on engineering data obtained, did not involve any unduly complex engineering or environmental impacts.
- 5.6.10 As I have already stated in Chapter 4, my view is that the options selection follows Government policy for the development of the SRN in accordance with NPSNN paragraph 2.23, and is soundly based.

ISSUES ARISING

- 5.6.11 I assess below the four main design issues identified in the NPSNN:

- functionality;
- aesthetics;
- technology; and
- siting relative to the existing landscape.

- 5.6.12 There were no other significant issues raised in submissions to the Examination.

Functionality: Fitness for purpose and sustainability

- 5.6.13 The objectives of the Proposed Development are stated in various application documents, such as the Non-Technical Summary and the

Case for the Scheme [APP-207; APP-209, updated to OD-007]. These objectives are to provide more capacity, alleviate congestion, provide a new route into Ashford, minimise the environmental impact, and reduce journey times, all of which make a contribution towards improved sustainability.

- 5.6.14 The current scheme, the subject of the Proposed Development, is the result of community consultation and options assessments over the last ten years, and I am satisfied that it is the best solution for addressing the identified need⁴⁹.

Aesthetics: The Proposed Development's contribution to the quality of the area in which it would be located

- 5.6.15 The Proposed Development would contribute to aesthetics through improved operational efficiency, less congestion, an improved experience for drivers and other road users, the visual and noise mitigation of new and improved noise barriers and additional tree planting, and the noise mitigation of low noise surfacing. I have considered these areas in more detail in other sections of this chapter.
- 5.6.16 I am satisfied that the proposed design meets NPSNN paragraphs 4.28 et seq, to produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction, matched by an appearance that demonstrates good aesthetics as far as possible.
- 5.6.17 The NPSNN at paragraph 4.30 acknowledges that, given the nature of much national network infrastructure development, there may be a limit on the extent to which it can contribute to the enhancement of the quality of the area. With this caveat in mind, I find that the Proposed Development is consistent with NPSNN paragraphs 4.28 to 4.35.

Role of technology in delivering new national networks projects

- 5.6.18 NPSNN paragraph 2.23 seeks to enhance the SRN through upgraded technology to address congestion and improve performance, while paragraph 4.33 requires Applicants to consider the role of technology in delivering new national networks projects.
- 5.6.19 The scope for new technology is limited in a development of this kind. However, low noise surfacing would be used for the existing M20 motorway as well as the construction and maintenance of the Proposed Development, in accordance with Highways England policy [APP-039]. In the second ISH on the environment, I ask the Applicant if it has considered very low noise surfacing, and the Applicant responds that this surfacing is used only for situations of high density

⁴⁹ See also Section 4.3 of this report

building close to the development in question, which does not apply to the Proposed Development [EV-017 to EV-019].

Siting and design measures

- 5.6.20 The siting of the Proposed Development is largely prescribed by the location of the existing motorway, towns and villages. The specific siting for the Proposed Development was selected following a substantial community consultation and series of options assessments over the last ten years, and I am satisfied that it is the best siting for meeting the identified need.
- 5.6.21 NPSNN paragraph 4.34 seeks demonstration of good design in terms of siting and design measures relative to existing landscape and historical character and function, landscape permeability, landform and vegetation. These topics are addressed in the main chapters of the application, and I have assessed them in the corresponding sections of this chapter, Sections 5.12 and 5.13. The use of clear-span bridges above the Aylesford Stream for the junction's slip roads means that the watercourse remains open and ecologically viable.⁵⁰ The visual appearance would be softened through design features and vegetation [APP-029 to APP-045].
- 5.6.22 As a result, I find that the proposed design meets NPSNN paragraphs 4.28 to 4.35 with regard to siting and associated design measures.

SUMMARY AND CONCLUSIONS

- 5.6.23 The design of motorways and their junctions is well-understood and established, and the Proposed Development is not innovative in engineering design terms.
- 5.6.24 The environmental effects of the design are considered in other sections of this chapter. Potentially harmful effects, such as noise, visual impact, and the loss of existing vegetation, are mitigated to a large extent, for reasons set out in the other sections of this chapter.
- 5.6.25 As a result I conclude that the Proposed Development meets the requirements of good design in the NPSNN, in particular paragraphs 2.23 and 4.28 to 4.35, as far as reasonably practicable.

5.7 AIR QUALITY AND EMISSIONS

POLICY BACKGROUND

- 5.7.1 The NPSNN at paragraph 5.3 advises that increases in emissions of pollutants during the construction or operation phases of projects on the national networks can result in the worsening of local air quality

⁵⁰ See also Section 5.8.48 of this report

and that increased emissions can contribute to adverse impacts on human health and on protected species and habitats. However, it also states that, for example, reduced congestion can have beneficial effects on air quality.

- 5.7.2 The NPSNN addresses the effects of a project on air quality in paragraphs 5.4 to 5.13. In particular, it states at paragraph 5.9 that *"the Secretary of State (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"*.
- 5.7.3 At paragraph 5.11 it states that *"air quality considerations are likely to be particularly relevant where schemes are proposed:*
- *within or adjacent to Air Quality Management Areas (AQMA)s; roads identified as being above Limit Values or nature conservation sites (including Natura 2000 sites and Sites of Special Scientific Interest (SSSIs), including those outside England); and*
 - *where changes are sufficient to bring about the need for a new AQMA or change the size of an existing AQMA; or bring about changes to exceedances of the Limit Values, or where they may have the potential to impact on nature conservation sites."*
- 5.7.4 In paragraph 5.12 the NPSNN states that the SoS *"must give air quality considerations substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact in relation to EIA and/or where they lead to a deterioration in air quality in a zone/agglomeration."*
- 5.7.5 It continues at paragraph 5.13 that the SoS *"should refuse consent where, after taking into account mitigation, the air quality impacts of the scheme will:*
- *result in a zone/agglomeration which is currently being reported as being compliant with the Air Quality Directive becoming non-compliant; or*
 - *affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision."*
- 5.7.6 Mitigation is addressed in paragraphs 5.14 to 5.15 of the NPSNN where measures are stated to include *"physical means including barriers to trap or better disperse emissions, and speed control."*
- 5.7.7 Dust emissions are addressed at paragraphs 5.81 to 5.89 of the NPSNN. For nationally significant infrastructure projects of the type covered by this NPSNN some impact on amenity for local communities is likely to be unavoidable but should be kept to a minimum and should be at a level which is acceptable. The SoS *"should ensure that sufficient information is provided to show that any necessary mitigation will be put in place and it is suggested that a construction management plan may help codify mitigation."*

- 5.7.8 The NPPF states at paragraph 124 that planning policies should *"sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas, and the cumulative impacts on air quality from individual sites in local areas."*
- 5.7.9 The UK Government has a statutory obligation to fulfil the requirements of the EU Air Quality Directive 2008⁵¹ (AQD). The AQD is transposed into UK Statute through the Air Quality Standards Regulations 2010⁵². Where a pollutant level exceeds any of the relevant limits or target values, the SoS must draw up and implement an air quality plan so as to achieve that value. In the UK a majority of zones/ agglomerations exceed the relevant limit or target values and air quality plans are in place.
- 5.7.10 The AQD sets limit values for the protection of human health for NO₂ (nitrogen dioxide) and PM10 (particulate matter 10 micrometres or less in diameter). These are that:
- annual mean concentration levels of NO₂ do not exceed 40µg/m³;
 - hourly mean concentration levels of NO₂ do not exceed 200µg/m³ of NO₂ more than 18 times a calendar year; and
 - 24-hour average of 50µg/m³ of PM10 not to be exceeded more than 35 times a year.
- 5.7.11 In addition to the AQD, the Environment Act 1995⁵³ places a duty on local authorities to review and assess air quality in their area and if any standards are being exceeded or unlikely to be met by the required date, they must set up air quality management areas (AQMA) and implement Air Quality Management Plans.
- 5.7.12 The UK Government is currently subject to infraction proceedings for breaching the Directive with regard to NO₂ levels. It has been successfully challenged in the Supreme Court for failing to comply with the Directive.
- 5.7.13 In April 2015 the Supreme Court ordered that the UK Government must submit new air quality plans to the European Commission by no later than 31 December 2015⁵⁴. In response to the judgment of the Supreme Court, Defra published the UK Air Quality Plan in December 2015⁵⁵. The plan comprises a technical report, list of UK and national measures to be read alongside the individual zone plans and an overview document 'Improving air quality in the UK, Tackling nitrogen dioxide in our towns and cities'.

⁵¹ Directive 2008/50/EC on ambient air quality and cleaner air for Europe

⁵² http://www.legislation.gov.uk/ukxi/2010/1001/pdfs/ukxi_20101001_en.pdf

⁵³ <http://www.legislation.gov.uk/ukpga/1995/25>

⁵⁴ <https://www.supremecmyt.uk/cases/docs/uksc-2012-0179-judgment.pdf>

⁵⁵ <https://www.gov.uk/government/publications/air-quality-in-the-uk-plan-to-reduce-nitrogen-dioxide-emissions>

- 5.7.14 In April 2017, following an attempt by the Government to delay the issue of a revised UK Air Quality Plan due to the general election in June 2017 and a further challenge by ClientEarth, the High Court ordered a revised draft UK Air Quality Plan to be published on 9 May 2017 (after the local elections but before the general election) and a final modified plan to be published on the unchanged date of 31 July 2017⁵⁶. Defra issued its draft modified UK Air Quality Plan on 5 May 2017⁵⁷.
- 5.7.15 The revised draft Air Quality Plan for NO₂ was consulted on between 5 May 2017 and 15 June 2017, and I invited submissions on this during my second ISH on the environment [EV-016 to EV-019]. The revised Air Quality Plan was issued on 26 July 2017⁵⁸, after the close of the examination, and so I have not been able to take it in to account in my recommendations.
- 5.7.16 On this point, I return to paragraph 5.13 of the NPSNN, which states that consent must be refused where the Proposed Development may *"affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision"*. For the purposes of my consideration of the NPSNN, the relevant Air Quality Plan for NO₂ is the still extant version published in December 2015, notwithstanding the effects of the ClientEarth litigation, and this is the plan that has been taken into account in this report. Any updated plan that may come into force will ultimately need to be taken into account in the SoS's decision, but I have considered below any issues arising from the draft Air Quality Plan published on 5 May 2017.
- 5.7.17 In the context of the Proposed Development, it is notable that the UK Air Quality Plan states that the largest source of emissions in areas of greatest concern are from diesel vehicles. This is due to both the significant growth in vehicle numbers over the last ten years and emission standards not meeting the expected reductions under real world driving conditions compared to laboratory testing. The failure of diesel vehicles to fulfil EU emission standards in real world driving conditions was recognised before the revelations about the use of defeat devices in 2015⁵⁹.
- 5.7.18 In relation to the potential link between NO₂ concentrations and health, Defra⁶⁰, using interim recommendations from a working group

⁵⁶ <https://www.judiciary.gov.uk/wp-content/uploads/2017/05/clientearth-v-secretary-of-state-for-the-environment-food-and-rural-affairs-20170427.pdf>

⁵⁷ https://consult.defra.gov.uk/airquality/air-quality-plan-for-tackling-nitrogen-dioxide/supporting_documents/Draft%20Revised%20AQ%20Plan.pdf

⁵⁸ <https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>

⁵⁹ In 2015 US regulatory authorities discovered that Volkswagen (VW) had fitted some of their vehicles with illegal software ('defeat devices') to enable them to pass laboratory emission tests

⁶⁰ The working group made an interim recommendation for a coefficient to reflect the relationship between mortality and NO₂ concentrations (per µg/m³). COMEAP has not yet made any estimates of the effects of NO₂ on mortality. Any analysis will be subject to change following further analysis by the working group and consultation with the full committee

of the Committee on the Medical Effects of Air Pollution (COMEAP), estimates an effect on mortality equivalent to 23,500 deaths annually in the UK based on NO₂ concentrations. It goes on to say that many sources of NO_x (mono-nitrogen oxides: NO (nitrogen oxide) and NO₂) are also sources of particulate matter. The impact of small particulate matter (PM2.5) is estimated to have an effect on mortality equivalent to nearly 29,000 deaths in the UK⁶¹. It states that there may be an overlap between these two estimates but that the combined impacts of these two pollutants "*is a significant challenge to public health*".

APPLICANT'S APPROACH

5.7.19 The Applicant makes an assessment of the air quality impacts of the Proposed Development during construction and operation in the ES Chapter 5: Air Quality [APP-033].

Method of assessment

5.7.20 The methodology used is that prescribed by the DMRB⁶² and associated Interim Advice Notes (IANs). The IANs used are:

- IAN 170/12⁶³ v3: Updated air quality advice on the assessment of future NO_x and NO₂ projections for users of DMRB Volume 11, Section 3, Part 1 Air Quality;
- IAN 174/13⁶⁴: Updated advice for evaluating significant local air quality effects for users of DMRB Volume 11, Section 3, Part 1 Air Quality;
- IAN 175/13⁶⁵: Updated air quality advice on risk assessment related to compliance with the EU Directive on ambient air quality and on the production of Scheme Air Quality Action Plans for users of DMRB Volume 11, Section 3, Part 1 Air Quality; and
- IAN 185/15⁶⁶: Updated traffic, air quality and noise advice on the assessment of link speeds and generation of vehicle data into 'speed-bands' for users of DMRB Volume 11, Section 3, Part 1 Air Quality and Volume 11, Section 3, Part 7 Noise.

5.7.21 The Applicant has acknowledged that, although IAN 175/13 is currently withdrawn pending a new version, it remains in use by the Applicant as the only associated guidance available for assessing risk related to compliance with the EU Directive on ambient air quality.

⁶¹ COMEAP (2009) The Mortality Effects of Long-Term Exposure to Particulate Air Pollution in the United Kingdom

⁶² Department for Transport (2007) Design Manual for Roads and Bridges, Volume 11, Section 3, Part 1: HA 207/07 Air Quality

⁶³ <http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian170.pdf>

⁶⁴ <http://www.standardsforhighways.co.uk/ians/pdfs/ian174.pdf>

⁶⁵ <http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian175.pdf>

⁶⁶ <http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian185.pdf>

Assessment of compliance with the EU Directive on Ambient Air Quality

- 5.7.22 An assessment of compliance with the EU Directive on Ambient Air Quality (2008/50/EC) was undertaken by the Applicant using IAN 175/13 [APP-033, Section 5.3.56]. The assessment uses the results of the local air quality modelling overlaid on the Defra Pollution Climate Mapping (PCM) model outputs for the compliance road network to establish whether, for each road, the change in NO₂ concentrations would result in:
- a compliant zone becoming non-compliant; and/ or
 - delay to Defra's date for achieving compliance for the zone; and/ or
 - an increase in the length of roads in exceedance in the zone which would be greater than 1% when compared to the previous road length.
- 5.7.23 The effects of the Proposed Development (ie the change in concentrations at receptors) are added to the concentrations predicted by the Defra PCM model for the Opening Year where:
- The equivalent Opening Year PCM or the equivalent scheme PCM modelled total NO₂ concentration is greater than 40 µg/m³;
 - The change in NO₂ concentrations at receptors is 0.4 µg/m³ or more.
- 5.7.24 The above approach is used to determine the Proposed Development's compliance risk rating, which is then used to inform the judgement on significance of effects.
- 5.7.25 For consistency with the assessment of local operational air quality effects for public exposure, the assessment of National and European designated habitat sites also follows the advice in the DMRB. The Applicant assesses the change in concentrations of NO_x, and in turn the change in nitrogen deposition rate for the European and nationally designated habitat sites within 200m of an affected link. The results of this assessment are considered further in Section 5.9: Biodiversity and Ecological Conservation of this report.

Significance of local air quality effects

- 5.7.26 The local operational air quality assessment considers ambient concentrations of key road traffic pollutants NO₂ and PM₁₀, and changes in concentrations at locations of public exposure [APP-033].
- 5.7.27 The air quality objectives only apply in locations of relevant exposure and therefore 'sensitive receptors' referred to in the assessment are locations with public exposure which may be affected by air quality impacts. In relation to the Proposed Development, the Applicant identifies sensitive receptors as being predominantly residential properties, schools, internationally and nationally designated ecosystems and allotment gardens (construction dust only). Figures

5.4a and Figure 5.4b present all sensitive receptor locations as also tabulated in ES Appendix 5.5 [APP-075 to APP-076; APP-167 Table 1.1].

5.7.28 For the construction phase, the air quality study area within which significance of effects are assessed considers heavy goods vehicles (HGV), traffic management assessments and the local operational assessment for the Proposed Development and identifies those routes where the Proposed Development might have an impact. The sensitive receptors most likely to be affected by construction dust are those within 200m of the Proposed Development route, bridges, and construction compounds. Those most likely to be affected by construction HGV movements are those located within 200m of the access roads to the Proposed Development route, bridges and the construction compounds.

5.7.29 An assessment is also made of construction phase traffic management to identify the potential effect of the proposed speed restrictions along the Proposed Development, Main and Alternative Schemes, during the construction phase and any associated re-routing of traffic onto the wider road network [APP-033, Sections 5.3, 5.7, 5.8]. The study area for the assessment of construction impacts is presented in Figure 5.1 [APP-071].

5.7.30 Operational phase impacts are identified by comparing traffic data with and without the Proposed Development with the local air quality screening criteria in order to define the affected roads that require consideration. These are defined by the following:

- road alignment will change by 5m or more; or
- annual average daily traffic (AADT) flows will change by 1,000; or
- heavy duty vehicle (HDV) (vehicles more than 3.5 tonnes, including buses and coaches) flows will change by 200 AADT or more; or
- daily average speeds will change by 10 km/h or more; or
- peak hour speed will change by 20 km/h or more [APP-033, Section 5.3]].

5.7.31 In terms of human health receptors, the Applicant adopts the definition of levels of significance set out in IAN 174/13 [APP-033, Section 5.3.62 et seq]. A change in predicted annual average concentrations of NO₂ or PM₁₀ of less than 0.4 µg/m³ is considered to be so small as to be imperceptible. A change (impact) that is imperceptible, given normal bounds of variation, would not be capable of having a direct effect on local air quality that could be considered to be significant. The significance of the effect is defined in terms of the number of properties for which there would be a worsening of air quality which is already above the objective or the creation of a new exceedance as follows:

- Large: 1-10 properties with a change of >4µg/m³;

- Medium: 10-30 properties with a change of $>2\mu\text{g}/\text{m}^3$ to $4\mu\text{g}/\text{m}^3$;
- Small: 30-60 properties with a change of $>0.4\mu\text{g}/\text{m}^3$ to $2\mu\text{g}/\text{m}^3$ [APP-033, Table 5.6].

- 5.7.32 A drawing showing the affected roads and other relevant features within the study area is presented in the ES [APP-072, Figure 5.2], and road links with 200 metres of affected roads have also been included by the Applicant within the dispersion modelling [APP-033, paragraph 5.3.20].
- 5.7.33 As part of its written representation, ABC (via its appointed consultant Temple Group) raises a point about differences in the criteria for determination of significance between IAN 174/13 and the widely used Environmental Protection UK (EPUK)/ Institute of Air Quality Management (IAQM) guidance document⁶⁷, which ABC states could be construed as being more stringent in its approach to the determination of significance [REP3-001].
- 5.7.34 In response, the Applicant cites sections of the EPUK/IAQM guidance which states that it does not have a formal or legal status and that it is not intended as a substitute for formal guidance such as the DMRB [REP4-018]. The Applicant also cites the acknowledgement within the ABC written representation that, although the use of EPUK/IAQM guidance for determining significance would draw slightly different conclusions, it is unlikely that the overall determination of significance of effect would be different [REP3-001].
- 5.7.35 The Village Alliance raises air quality concerns on the last day of the Examination, too late for the Applicant or other IPs to respond [OD-042]. Given this fact, I am unable to give this submission much weight, although these matters were considered throughout the Examination.

Local authority monitoring

- 5.7.36 The Applicant explains that ABC undertakes NO_2 diffusion tube monitoring at 16 current sites within the Borough [APP-033, Section 5.6.5]. According to the Applicant, monitoring data and assessment results from ABC in 2014 show no exceedances of the NO_2 air quality objectives. Monitored concentrations at the three background locations (locations not directly affected by emission sources such as roads and industry) were all below $20\mu\text{g}/\text{m}^3$ in 2014, which is well below the annual mean NO_2 objective of $40\mu\text{g}/\text{m}^3$.
- 5.7.37 No monitoring for PM_{10} is currently undertaken by ABC, but the Applicant states that concentrations of PM_{10} are significantly below the relevant air quality objectives in the study area, based on previous

⁶⁷ Institute of Air Quality Management (IAQM) (2015) Land-Use Planning & Development Control: Planning For Air Quality (note ABC's written representation referred to the 2015 version of this guidance which was subsequently updated in January 2017 during the course of the examination)

work completed by ABC, the Defra background data and Defra PCM model data [APP-033, paragraph 5.3.15].

- 5.7.38 Local authority monitoring data is used to inform the air quality assessment, with data collected through a combination of automatic monitoring stations and passive NO₂ diffusion tubes. Additional scheme-specific diffusion tube monitoring was undertaken by the Applicant from September 2013 to August 2014 [APP-033, paragraph 5.6.6].
- 5.7.39 A compliance risk assessment undertaken by the Applicant considers the potential effect of the operation of the Proposed Development upon the future compliance of zones as reported by Defra to the European Commission [APP-033, paragraph 5.8.18].

Mitigation

- 5.7.40 For mitigation during construction, the Applicant identifies a range of measures that it would expect its contractor, once appointed, to adopt [APP-033, Section 5.7.1]. These would be delivered through the CEMP and such measures are included within the oCEMP and the Register of Environmental Actions and Commitments contained therein [REP6-018].
- 5.7.41 With regard to mitigation during operation, the Applicant states that the results of the air quality assessment demonstrate that the Proposed Development does not result in a significant impact according to its adopted methodology, and nor does it affect reported compliance with the Air Quality Directive, and therefore mitigation is not required [APP-033, Section 5.7.2].
- 5.7.42 The Applicant states that there are five receptors within the study area where concentrations are predicted to be above the long term NO₂ objective [APP-033, Sections 5.8.29 and 5.9.5 and Table 5.20; APP-083, Figure 5.9]. These receptors are individual dwellings and exceedances are predicted under both the 'do-minimum' and 'do something' modelling scenarios. According to the Applicant, changes at these receptors as a result of the Proposed Development are 'imperceptible' and the Proposed Development does not create any new exceedances of the air quality objectives. There are no small, medium or large changes in long-term NO₂ concentrations at receptors experiencing concentrations above the objectives.
- 5.7.43 I examined this, and other matters relating to air quality, throughout the Examination, and I now consider the issues that arose.

ISSUES ARISING

- 5.7.44 I identify the key issues to be:
- implications of Draft UK Air Quality Plan on EU limit values;
 - impact of construction traffic movements;
 - the need for air quality monitoring during operation; and

- implications for the health of the surrounding populations.

Implications of Draft UK Air Quality Plan on EU limit values

5.7.45 I examined the impact on EU limit values of the uncertainties in the status of the UK Air Quality Plan at various points during the Examination: in the FWQs and at both ISHs on environmental matters [PD-008; EV-006 and EV-016].

Assessment of impact of Proposed Development on EU limit values

5.7.46 The Applicant's written response following the first ISH on environmental matters is that the Proposed Development is located in Zone 31 (south east), which is currently reported as being non-compliant with the EU limit values. According to the Applicant, this is because the worst link in the zone, located in Dartford approximately 60km from the Proposed Development, had an annual mean concentration of $59\mu\text{g}/\text{m}^3$ in 2013 [REP5-016].

5.7.47 According to the Applicant in ES Chapter 5: Air Quality, the equivalent annual mean NO_2 concentration from the PCM model in 2018 for PCM links which overlap the Proposed Development's affected road network was $28.3\mu\text{g}/\text{m}^3$ without the Proposed Development. Even with the additional modelled concentration of $1.1\mu\text{g}/\text{m}^3$ with the operation of the Proposed Development, resulting in an equivalent PCM concentration of $29.4\mu\text{g}/\text{m}^3$, it would be approximately $10\mu\text{g}/\text{m}^3$ below the EU limit value of $40\mu\text{g}/\text{m}^3$ [APP-033, paragraph 5.6.14].

5.7.48 In my FWQs, I asked the applicant to confirm the number of links where the equivalent PCM (based on the Applicant's modelled receptor results) is modelled as being greater than $40\mu\text{g}/\text{m}^3$ [PD-008, Q5.6]. The Applicant stated that there are no links in the Compliance Risk Road Network where the equivalent PCM with the Proposed Development's annual mean NO_2 concentration is greater than $40\mu\text{g}/\text{m}^3$, irrespective of any change [REP3-035].

5.7.49 As a result, the first test set out in paragraph 5.13 of the NPSNN, that the air quality impacts of the Proposed Development will result in a zone/ agglomeration which is currently reported as being compliant with the AQD becoming non-compliant, is not applicable as the Proposed Development cannot cause the zone to become non-compliant. The second test, that the air quality impacts of the Proposed Development will affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision, is also not applicable. This is because the worst link in the zone is not affected by the Proposed Development, nor will the effects of the Proposed Development cause any other PCM links to become the worst link. Therefore the Proposed Development will not delay compliance with the EU limit values. In response to my FWQs, the Applicant states that any changes to the PCM model as a result of the High Court

Judgement are highly unlikely to trigger the requirements set out in paragraph 5.13 [PD-008, Q5.1; REP3-035].

- 5.7.50 Taking all of this into account, I have assessed the impact of Proposed Development on EU limit values, and find that it is unlikely to trigger an exceedance of the EU limit values.

Impact of ongoing uncertainty over the UK Air Quality Plan

- 5.7.51 At the second ISH on the environment in May 2017, I asked the Applicant, ABC and KCC for their response to the revised draft UK Air Quality Plan issued by Defra on 5 May 2017⁶⁸ [EV-016 to EV-019].
- 5.7.52 In its response, the Applicant states that it has reviewed the Air Quality Plan, having particular regard to the M20 Junction 10a [REP8-027]. The Air Quality Plan sets out a series of possible measures that may be considered to help meet the EU limit values in the shortest time possible, eg Clean Air Zones, retro fitting and promoting cycling and walking. However, the Air Quality Plan does not explicitly identify the impacts of any of these measures for particular locations in the UK.
- 5.7.53 Consequently, the Applicant asserts that it is not possible to state what the precise implications of the draft Air Quality Plan may be on the Proposed Development at this time. However, the Applicant points out that neither ABC nor Shepway District Council, which are within the air quality study area for the Proposed Development, are included in the list in Table 1 of Annex L of the Air Quality Plan. This means that there are no identified exceedances of the EU limit values for NO₂ in either local authority. Furthermore, Maidstone Council, sited along the M20 corridor to the north of the Proposed Development is also not listed in Table 1 [REP8-027].
- 5.7.54 The Applicant concludes with its view that, on the basis of the latest published air quality information in the draft Air Quality Plan issued by Defra on 5 May 2017, the Proposed Development does not trigger paragraph 5.13 of the NPSNN [REP8-027].
- 5.7.55 In ABC's submission at Deadline 8, the Council states that the latest published information in the draft Air Quality Plan, as it stands, is likely to have no discernible impact on air quality in the vicinity of the Proposed Development [REP8-001].
- 5.7.56 Taking the above responses into account, I find that Defra's latest draft UK Air Quality Plan published on 5 May 2017 has done nothing to change the position with regard to air quality in the vicinity of the Proposed Development.

⁶⁸ https://consult.defra.gov.uk/airquality/air-quality-plan-for-tackling-nitrogen-dioxide/supporting_documents/Draft%20Revised%20AQ%20Plan.pdf

5.7.57 I am aware that the consultation period for the revised draft Air Quality Plan ended on 15 June 2017, after the closure of the Examination. It is a matter for the SoS to take into account any updated Air Quality Plan coming into force during the SoS's decision making period as appropriate and relevant.

Impact of construction traffic movements

5.7.58 In ABC's submission at Deadline 5, the council requested further information on likely air quality effects during construction [REP5-032]. This information related to ABC being able to satisfy itself that temporary construction traffic impacts would not lead to significant effects.

5.7.59 In my SWQs, I asked the Applicant and ABC to state their current positions on this matter and whether further discussions had taken place [PD-012, Q5.01]

5.7.60 The Applicant states at Deadline 6 that the SoCG between the Applicant and ABC would be updated following discussions with Temple Group acting on behalf of ABC [REP6-022]. In the final version of the SoCG submitted during the Examination in June 2017, ABC states that the Applicant has provided enough evidence that significant effects during construction are not likely [OD-036].

5.7.61 ABC refers in the SoCG to the updated construction plans, which would maintain two-way flow on the A20 during most of the construction phase [OD-036, OD-011 (Sheet 1), REP6-034, REP6-035, REP6-036, REP6-037 and REP6-038]. These updated plans did not form part of the ES, but were welcomed by ABC for their positive impact in terms of managing potential air quality impacts. Given that annual mean concentrations of NO₂ are below 30µg/m³, ABC accepts that significant effects during construction are unlikely on the A20 over a period of seven months. ABC also agrees that a 50mph restriction on the M20 during construction, to be implemented outside of the Proposed Development, could lead to small reductions in air pollution.

5.7.62 Taking this into account, I find that significant construction impacts are unlikely, and that construction is adequately secured in the recommended dDCO through Requirement 3: CEMP and its subsidiary management plans (Appendix D to this report).

Need for air quality monitoring during operation

Assessment of need for an air quality Requirement in the dDCO

5.7.63 At the first ISH on the environment, I asked the Applicant's position on the air quality monitoring Requirement in the made DCO for the M4

Junction 3 to 12 Smart Motorway⁶⁹ [EV-006; EV-008 to EV-011]. This was in response to the submissions made by ABC and PHE at deadline 3 [REP3-004 and REP3-014].

- 5.7.64 In its response, the Applicant states that as demonstrated in ES Chapter 5: Air Quality there are five receptors with concentrations of the modelled annual mean NO₂ concentration greater than 40µg/m³ in the opening year [REP5-016]. However, all changes as a result of the Proposed Development are less than 0.4µg/m³ and therefore imperceptible [APP-033, Tables 5.13 and 5.20]. Consequently, the Applicant states that predicted results would not meet the needs for air quality monitoring as described in the DCO Requirements for the M4 Junction 3 to 12 Smart Motorway and additional monitoring is not required. The Applicant also clarified how its POPE assessment would be undertaken in respect of air quality, and explained that it is an ongoing operational process carried out across all schemes after 1 and 5 years of opening to identify the extent to which the expected impacts have materialised [REP5-016].
- 5.7.65 In a submission at Deadline 6, ABC states that its position remains that it would like to see further monitoring of air quality to confirm the impacts of the Proposed Development, but the council does not supply any specific evidence [REP6-001]. At the second ISH on the environment in May 2017, I asked the Applicant for its latest position on air quality monitoring [EV-016 to EV-019].
- 5.7.66 The Applicant states that its position remains unchanged from that discussed at the ISH in February 2017 [REP8-027; EV-008 to EV-011]. This is because the outcome of the air quality assessment for the Proposed Development concluded that it would not trigger a significant air quality effect nor affect the UK's ability to comply with the Air Quality Directive.
- 5.7.67 Some IPs - Mr Bartlett and the Village Alliance - also called for air quality monitoring, but did not provide any specific evidence [REP3-029, REP5-029; REP5-034].

Results from recent air quality monitoring data

- 5.7.68 In its written summary following the second ISH on the environment, the Applicant summarises air quality monitoring data gathered between November 2016 and April 2017 [REP8-027]. This monitoring was undertaken at the locations where the air quality assessment indicated there would be receptors with concentrations of NO₂ above 40µg/m³ in the opening year (2018) with or without the Proposed Development. As set out in the assessment, all changes are described as 'imperceptible' as the indicated change is less than 0.4µg/m³ and they were not included in the judgement of significance [REP8-027, Item A.02].

⁶⁹ <http://www.legislation.gov.uk/ukxi/2016/863/contents/made>

- 5.7.69 According to the Applicant, the monitoring results clearly show that the equivalent annual mean measured NO₂ concentrations close to the properties are below the annual mean NO₂ air quality objective of 40µg/m³. The highest measured concentration in this area is 32.7µg/m³ at Lees Road, approximately 7µg/m³ below the annual mean NO₂ objective [REP8-027, Item A.02].
- 5.7.70 The Applicant also presents concentrations monitored by ABC along Lees Road where ABC has monitored for several years [REP8-027, Appendix A]. These data demonstrate that ambient concentrations along Lees Road remain below the annual mean NO₂ objective concentrations and the data compare well with the monitoring data collected by the Applicant. Analysis of both sets of data shows that the concentrations monitored at Lees Road and those at Winslade Way (monitoring location 1) are similar.
- 5.7.71 The receptors reported as being above the annual mean NO₂ objective in the ES have been considered in the light of the recent monitoring data. The greatest level of change of NO₂ for all receptors assessed with and without scheme of 2.4µg/m³ has been added to the highest measured concentration of 32.7µg/m³. This would give a maximum equivalent concentration of 35.1µg/m³ with the Proposed Development. The resultant concentrations would still remain below the air quality objectives [REP8-027, Item A.02].
- 5.7.72 The results from both the Applicant's and ABC's monitoring support the precautionary and conservative application of the Long Term Trends gap analysis, described in IAN170/12, that the Applicant applied when predicting absolute NO₂ concentrations both with and without the Proposed Development [REP8-027, Item A.02].
- 5.7.73 In summary, according to the Applicant, no operational monitoring is required for the Proposed Development, based on the conclusion presented in ES Chapter 5: Air Quality of no significant air quality effects, the results of the additional monitoring, and the fact that ABC currently monitors in an appropriate location to confirm the conclusions of the assessment [APP-033].

Effects of other developments on local road network

- 5.7.74 At the second ISH on the environment in May 2017, resident and Councillor Mr Bartlett states that there were other developments that have the potential to add additional traffic to the local road network following the opening of the Proposed Development [EV-016 to EV-019]. The Applicant responds that traffic data used in the air quality assessment includes trip generation from additional developments which meet the requirements for inclusion in the traffic model. As described previously, the Applicant's view is that the Proposed Development does not result in significant effects and operational monitoring is not required [REP8-027].

- 5.7.75 The Applicant states that it is not HE's responsibility as part of Proposed Development to undertake air quality monitoring for effects caused by other developments [REP8-027]. This responsibility falls to ABC as part of its local air quality management duties set out by the Environment Act 1995. All of the additional developments described by Mr Bartlett would be required to submit a planning application, and it would be for ABC's planning department to assess each development individually, and determine if the likely air quality impacts required air quality monitoring.
- 5.7.76 I have taken the above arguments carefully into account. Unlike the application for the M4 Junction 3 to 12 Smart Motorway which was located within several AQMAs which contained a high receptor density, the Proposed Development is not in or near a declared AQMA. While air quality assessments made by the Applicant using conservative long-term trends criteria do show exceedances of European values at five locations, recent monitoring undertaken by both the Applicant and ABC shows air quality results well within the required limits [APP-033, REP8-027]. I therefore find that, in the case of the Proposed Development, additional air quality monitoring is not necessary during operation.
- 5.7.77 However, it would be prudent for the current monitoring regimes to be continued, and I am satisfied that the provisions of local air quality management under Part IV of the Environment Act 1995 will ensure that appropriate monitoring by ABC will continue as required.

The health of the surrounding populations

- 5.7.78 I consider the effects of the Proposed Development on health in Section 5.11 of this report.

SUMMARY AND CONCLUSIONS

- 5.7.79 I accept that the Applicant has undertaken its assessment of air quality impacts in accordance with published guidance and best practice, and has used a conservative long-term trends methodology to allow for uncertainties in traffic and air quality modelling as well as assumptions about the performance of vehicles. I have considered the findings of the Applicant's assessment including local and regional air quality as well as its compliance risk assessment.
- 5.7.80 In particular, I am satisfied that the use of the DMRB and IAN174/13 methodology in the determination of significance of effect is appropriate as opposed to the EPUK/IAQM guidance.
- 5.7.81 With regard to the construction impacts of the Proposed Development, the NPSNN states that some impact on amenity for local communities is likely to be unavoidable, but should be kept to a minimum and should be at a level that is acceptable. Due to updated construction plans submitted during the Examination, ABC accepts that significant effects during construction are unlikely, and that a 50mph restriction

on the M20 during construction could lead to small reductions in air pollution.

- 5.7.82 With regard to the operational impacts of the Proposed Development, ABC has not declared an AQMA within the borough, but nevertheless makes a case, with some IPs, for air quality monitoring to be secured with an additional Requirement in the dDCO, similar to that used in the made DCO for the M4 Junction 3 to 12 Smart Motorway. The case of ABC was on the basis of uncertainties around Euro 6 emission factors, uncertainties of traffic modelling predictions and differences in the potential approaches regarding significance. On the former point, the Applicant explained that a worst case approach was adopted in that no allowance was made for any benefits from Euro 6 vehicles within the modelled fleet [REP3-035].
- 5.7.83 The circumstances are different between the two schemes and in my view the criteria used for the M4 Junction 3 to 12 Smart Motorway do not apply to the Proposed Development. I am also satisfied that, although not delivered as part of the recommended dDCO, the Applicant is committed corporately to post-completion evaluation of the Proposed Development (including air quality impacts) through its POPE process.
- 5.7.84 Given the fact that monitoring is already taking place on and near the M20 which appears to support the view that the Applicant's modelling and assessment is conservative, I see no need for a precautionary additional Requirement in this case, though I have noted the SoS's inclusion of such Requirements in the case of some made DCOs⁷⁰.
- 5.7.85 The oCEMP and TMP have been developed in the course of the Examination. I am satisfied that adequate mitigation would be achieved through the CEMP and TMP as secured through Requirements 3 and 11 in the recommended dDCO, and these are subject to consultation with the local authorities and the final approval of the SoS. I am satisfied that through this process the impacts on local communities during construction would be minimised and would be acceptable.
- 5.7.86 More detail on mitigation measures is in the consolidated table of environmental mitigation measures, which includes details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the dDCO [REP6-024].
- 5.7.87 I am satisfied that the Applicant has assessed air quality in an appropriate manner and mitigated for adverse effects in accordance with NPSNN paragraphs 5.3 to 5.15 and 5.81 to 5.89.

⁷⁰ eg The A14 Cambridge to Huntingdon Improvement Scheme DCO
<http://www.legislation.gov.uk/ukxi/2016/863/contents/made>

5.8 WATER ENVIRONMENT AND FLOOD RISKS

POLICY BACKGROUND

- 5.8.1 Water quality and resources matters are covered in the NPSNN at paragraphs 5.219 to 5.231. The NPSNN recognises at paragraph 5.219 that, during construction and operation, projects can lead to increased demand for water, and discharges of pollutants to water, causing adverse ecological impacts. There may also be an increased risk of spills and leaks of pollutants to the water environment. In turn, these could compromise environmental objectives established under the Water Framework Directive (WFD)⁷¹.
- 5.8.2 Activities that discharge to the water environment are subject to pollution control. For this reason, paragraph 4.50 of the NPSNN advises that decisions under the Planning Act 2008 (PA2008) should complement, but not duplicate, those taken under the relevant pollution control regime.
- 5.8.3 Flood risk is covered at paragraphs 5.90 to 5.115 of the NPSNN. A flood risk assessment (FRA) should be carried out if the application is in Flood Zones 2 and 3 (medium and high probability of river and sea flooding) and in Flood Zone 1 (low probability for projects of 1ha or greater (paragraph 5.92). In paragraph 5.95, it is stated that further guidance can be found in the NPPF planning guidance.
- 5.8.4 The NPSNN in paragraphs 5.98 to 5.108 states that the SoS should be satisfied that where flood risk is a factor in determining an application for development consent, the applicant should apply the Sequential Test as part of site selection and, if required, the Exception Test. In accordance with the NPPF, paragraphs 100 to 104, the applicant must also demonstrate that the Proposed Development will be safe from flooding for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, to show reduction of flood risk overall.
- 5.8.5 Further it states at paragraph 5.109 that "*any project that is classified as 'essential infrastructure' and proposed to be located in Flood Zone 3a or b should be designed and constructed to remain operational and safe for users in times of flood; and any project in Zone 3b should result in no net loss of floodplain storage and not impede water flows*".
- 5.8.6 The NPSNN paragraph 5.113 states that the volume and peak flow rates of surface water leaving the site once the project has been implemented should be no greater than the volume and peak flow rates prior to the implementation of the scheme. In the event that they would be greater, specific off-site arrangements should be made in order to result in the same net effect.

⁷¹ Water Framework Directive (2000/60/EC)

APPLICANT'S APPROACH

- 5.8.7 The Applicant addresses the potential effects of the Proposed Development on the water environment (namely surface water and groundwater, water resources and flood risk) in the ES Chapter 14. A WFD assessment, FRA and Highways Agency Water Risk Assessment Tool (HAWRAT) Assessment were also provided with the application [APP-042, APP-196, APP-197 and APP-198]. An addendum to the FRA was submitted in March 2017 as an 'other document' [OD-022].

Method of assessment

- 5.8.8 The Proposed Development is located within the South East River Basin District, for which the EA has prepared a River Basin Management Plan (RBMP). The study area was aligned with the RBMP⁷², which was used as the primary source of baseline data. Adjacent downstream WFD waterbodies as defined in the RBMP have also been considered. Similarly, for groundwater, the potential zone of impact during the construction and operation phases has been assessed on the underlying WFD groundwater body [APP-042].
- 5.8.9 With regard to significance criteria, the Applicant assesses the value of controlled water, both surface waters and groundwater, by taking into account the use and conservation importance of the waterbodies. Indicators of quality, scale, rarity and substitutability of the waterbodies are defined based on the guidance given within the DMRB Volume 11, Section 3, Part 10 (HD 45/09): Road Drainage and the Water Environment [APP-042]⁷³.
- 5.8.10 The methodology followed is that set out in the DMRB Volume 11, Section 3, Part 10 (HD 45/09) and Volume 4, Section 2, Part 3 (HD 33/06). HD 45/09 gives guidance on assessing impacts on the water environment in terms of water quantity and quality, while HD 33/06 gives guidance on the drainage of trunk roads including motorways [APP-042].
- 5.8.11 The Applicant considers licenced abstractions, consents to discharge, pollution incidents, existing drainage, groundwater, flood risk and aquatic ecology [APP-042].
- 5.8.12 I examine the FRA and its addendum in the Issues Arising sub-section below.

HAWRAT assessment

- 5.8.13 The Applicant undertook a HAWRAT assessment [APP-198].

⁷² <https://www.gov.uk/government/collections/river-basin-management-plans>

⁷³ <http://www.standardsforhighways.co.uk/ha/standards/dmr/vol11/section3/hd4509.pdf>

- 5.8.14 With regard to the assessment of impacts from routing run-off to surface waters, the Applicant concludes that *"the results of the assessment indicate that Environmental Quality Standards (EQS) would not be breached by routine run-off from either the Main or Alternative Schemes. The EQS would be met both with and without the proposed pollution reduction measures in place"* [APP-198].
- 5.8.15 With regard to the assessment of pollution impacts from spillages, the Applicant concludes that *"the results of the pollution risk assessment indicate that both the risk of accidental spillage and the risk of a spillage causing a Category 1 or 2 pollution incident (considered to be a serious pollution incident) are considered to be acceptable with the proposed pollution reduction measures in place"* [APP-198].

Mitigation and compensation measures

- 5.8.16 The Applicant describes proposed mitigation measures in the ES [APP-042, Section 14.7]. During construction, best practice for pollution prevention and water management would be implemented as part of the CEMP [APP-204, updated to REP6-018], utilising guidance on best practice in relation to pollution prevention and water management as set out in the CIRIA's Environmental Good Practice on Site⁷⁴.
- 5.8.17 The ES reports that no pollution pathways would be created between the construction site and watercourses, and the potential for impacts on surface water quality would be minimised by: locating storage compounds away from surface watercourses and drains; not storing materials within Flood Zones 2 or 3; regular cleaning of haul roads and the approaches to water courses to prevent the build-up of mud; keeping roads and hard standings clean and tidy; shielding water courses by bunds where appropriate; regulation of water sprays for reducing dust or washing construction areas to avoid washing silt into water courses; and close monitoring of concreting to avoid contamination of water courses [APP-042].
- 5.8.18 Monitoring of watercourses at risk from pollution would be carried out during the construction phase [APP-042].
- 5.8.19 During operation, the potential for impacts on flood risk as a result of the operation of the Proposed Development would be minimised by: utilising the mainline drainage system, incorporating revisions where necessary, and using three proposed attenuation ponds for surface water run-off [APP-042].
- 5.8.20 The Applicant submitted a consolidated table of environmental mitigation measures at Deadline 6 [REP6-024], which included those relating to the water environment.

⁷⁴ Construction Industry Research and Information Association, Environmental good practice on site (third edition) (C692), Audus, Charles and Evans, December 2010

5.8.21 I now consider the issues arising from the Applicant's approach.

ISSUES ARISING

5.8.22 KCC is the lead local flood authority (LLFA). In the SoCG with ABC, the parties agree that ABC was incorrectly identified as the LLFA in the FRA, when it should be KCC [OD-017]. In the SoCG with KCC, KCC defers to the EA on the FRA [OD-018].

5.8.23 The site is located partly within the River Stour (Kent) Internal Drainage Board (IDB) district. The IDB has confirmed that it has no adopted (maintained) watercourses which would be directly affected by the Proposed Development. Based on the information available, the IDB also notes that no ordinary watercourses are likely to be affected [REP3-030].

5.8.24 There are a number of issues that needed consideration throughout the Examination:

- WFD;
- FRA;
- Land and groundwater contamination;
- Access to the Aylesford Stream; and
- Protective Provisions.

Water Framework Directive

5.8.25 The ES has found that there are four WFD waterbodies within the study area which could potentially be impacted by the Proposed Development. The Applicant undertook a WFD assessment, which considers the potential effects on these four waterbodies, namely the Aylesford Stream, the East Stour, the Great Stour and the Kent Greensand Eastern groundwater body [APP-196]. The WFD assessment concluded that the Proposed Development is unlikely to have any significant adverse effects on the WFD waterbodies present as the activities proposed meet the criteria for being 'low risk' or can be screened out of the assessment using the EA's risk screening thresholds for rivers⁷⁵

5.8.26 Chapter 14 of the ES also considers the effects of changes in water quality and supply (resulting from the Proposed Development) on European sites [APP-042]. I report on Habitat Regulations Assessment (HRA) matters in Chapter 6.

5.8.27 In the SoCG between the Applicant and the EA [REP9-007], it is agreed that the recommendations in the WFD assessment regarding hydromorphological quality, biodiversity and enhancement measures are appropriate, and there are no concerns regarding the impact of

⁷⁵ WFD deterioration & risk to water body status objectives, Technical Guidance 488_10_SD06, issued 22 December 2014

the Proposed Development on these WFD elements. I have no reason to disagree with this assessment.

Flood Risk Assessment

- 5.8.28 A notable portion of the application site is located within EA Flood Zones 2 and 3, and is at risk of flooding from the Aylesford Stream. Flood risk is therefore a factor in determining the application for development consent⁷⁶ and the Exception Test must be passed. The Applicant describes how it undertook the Sequential Test and the Exception Test in the FRA [APP-197, Section 2; later OD-028].
- 5.8.29 With regard to the Sequential Test, the Applicant concludes that it is not possible to relocate the proposed Main or Alternative Schemes. With regard to the Exception Test, the Applicant refers to three new attenuation ponds which would bring the benefit of storing the increased surface water runoff from the development of the new junction and would also provide a new habitat for wildlife, thus providing an environmental benefit [OD-028].
- 5.8.30 The Applicant undertook pre-application discussions regarding the FRA with statutory environmental bodies, primarily the EA⁷⁷. In the EA's Written Representation at Deadline 3 [REP3-008], the EA states that it considers the FRA to be incomplete, and that the Applicant still needs to demonstrate that flood risk will not be increased by the Proposed Development, incorporating the new climate change allowances (2016). The EA summarises the information that it requires:
- information to demonstrate that there will be no loss of floodplain storage as a result of the development. The FRA must assess the loss of flood storage and provide compensation storage on a level for level, volume by volume, basis;
 - account to be taken in the FRA of the new climate change allowances published by the EA on 19 February 2016: Flood risk assessments: climate change allowances⁷⁸;
 - consideration of the effects, not only of the embankments in Flood Zone 3, but also of all crossings across flood zones that make up the Proposed Development and demonstrate no impact on flood risk; and
 - confirmation of the design requirements for mammals and the level of the animal pipe bridge.
- 5.8.31 The Applicant experienced significant problems with its modelling software [EV-017 to EV-019]. Following dialogue with, and assistance from, the EA, the Applicant submitted a 'Flood Risk Assessment Modelling Addendum' in March 2017 [OD-022].

⁷⁶ NPSNN paragraph 5.98

⁷⁷ NPSNN paragraph 5.96

⁷⁸ <https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>

- 5.8.32 The EA reviewed the modelling addendum and commented on it in its submission at Deadline 7 [REP7-002]. The EA states that "*The model submitted to support the modelling addendum report [OD-022] cannot be signed off by the Environment Agency ...*" and lists several reasons. In particular, the EA recommends that the 105% climate change scenario should be re-run.
- 5.8.33 The EA further states that "*We continue to have discussions and to support Highways England on the modelling aspects; however if this cannot be resolved, we would be minded to object to this development*" [OD-022].
- 5.8.34 At the second ISH on the environment in May 2017 [EV-017 to EV-019], the Applicant had still not submitted a FRA that was acceptable to the EA.
- 5.8.35 After the hearings, the Applicant submitted a revised FRA dated May 2017, as well as a 'FRA Depth and Hazard Mapping' and a 'FRA Additional Submission' [OD-028 to OD-030; REP8-030 and REP8-031]. The Applicant concludes that "*this additional modelling gives the Environment Agency the comfort it requires that the Scheme will not increase flood risk*".
- 5.8.36 In the SoCG between the Applicant and the EA near the close of the Examination, the item relating to the FRA is shown as agreed [REP9-007]. The EA states that the effects of the proposed structures within Flood Zone 3 (embankments, mammal pipe bridge and mammal ledge within the Lacton Farm Culvert) need to be clarified and confirmed through modelling and an updated FRA, with compensatory storage considered to mitigate any flood risk displacement.
- 5.8.37 However, the EA goes on to state that, although complete evidence on flood risk was not provided in time for the EA to review it within the Examination period, on this occasion the EA is confident that suitable mitigation of flood risk is possible on this site. The EA therefore removes its objection, subject to the Requirement recommended in its submission for Deadline 9 being included in the dDCO. The additional Requirement is Requirement 14: Flood compensatory storage, in the dDCO submitted at Deadline 9 [REP9-001] and the recommended dDCO (Appendix D to this report).⁷⁹
- 5.8.38 I am satisfied that the issue of flood risk and its assessment was resolved at the end of the Examination process through discussion with the EA and following several iterations of the FRA documentation. The EA is now content with the FRA, subject to an additional Requirement in the dDCO, and I have no reason to disagree with the EA's position.

⁷⁹ See also Chapter 9: Development Consent Order

Land and groundwater contamination

- 5.8.39 Regarding historic contamination, largely due to the known contaminated landfill site at Mersham Quarry, the EA points out that the Contaminated Land Desk Study and Preliminary Interpretative Report submitted with the application assessed groundwater to be at risk from historic sources, and that the introduction of mitigation measures during construction would not reduce this risk as it would already be present prior to construction [APP-211, REP9-007].
- 5.8.40 To address this, the EA recommends that Requirement 8: Land and groundwater contamination should be expanded to require a further Contamination Risk Assessment to identify remedial strategies and mitigation [REP9-007]. I consider this further in Chapter 9: DCO, but appropriate wording for the Requirement has been agreed between the Applicant and the EA, with which I have no reason to disagree [REP9-007].
- 5.8.41 Regarding piling, the EA accepts that the Foundation Works Risk Assessment, proposed in the ES Chapter 9: Geology and Soils [APP-037, page 24], is captured under Requirement 3: CEMP, for which the EA will be a consultee, but states the need for Requirement 8 to refer to the Contamination Risk Assessment [REP9-007]. As I note under the previous paragraph, this is now the case.
- 5.8.42 Regarding groundwater monitoring, the EA states that groundwater monitoring should be undertaken before, during and after construction work, and would expect further detail to be submitted as part of the CEMP [REP6-018]. I find that this is adequately covered by Requirement 3: CEMP and Requirement 8: Land and groundwater contamination, for which the EA is a consultee.
- 5.8.43 In the SoCG between the Applicant and EA at Deadline 9, the items relating to contaminated land are all shown as agreed [REP9-007].

Access to the Aylesford Stream

- 5.8.44 The Aylesford Stream is a tributary of the River Stour which passes under the A20 and M20 within the red line boundary of the Proposed Development. It is designated as a main river, so the EA is therefore responsible for carrying out flood risk management works on this water course. The EA requires access to the Aylesford Stream at all times for maintenance and incident management purposes, which was a matter discussed throughout the Examination [REP3-008, REP4-021, REP5-004, REP6-003, REP6-022, REP7-002, REP7-012, REP8-006, REP8-027].
- 5.8.45 In the SoCG between the Applicant and the EA at Deadline 9 [REP9-007], the item relating to access to the Aylesford Stream is shown as agreed. The EA states that it accepts the principles of access stated by the Applicant, but points out that further information would be required at detailed design stage to ensure that the area can be accessed for maintenance and incident management purposes.

- 5.8.46 I am satisfied that the EA has sufficient protection through the recommended dDCO Schedule 9: Protective Provisions (Appendix D to this report). I consider this further in Chapter 9: DCO.

Aquatic environment

- 5.8.47 The EA has a general statutory duty to promote the conservation of flora and fauna dependent on an aquatic environment and a specific duty to maintain, improve and develop this environment. In its Written Representation at Deadline 3, the EA states that it has reviewed the mitigation measures proposed by the Applicant and is satisfied that the proposals put forward to mitigate for the adverse effects on the water environment are appropriate [REP3-008].
- 5.8.48 Importantly, the use of clear-span bridges above the Aylesford Stream for the junction's slip roads means that the watercourse remains open and ecologically viable, no future improvement is prevented and the watercourse does not deteriorate under the WFD. The EA finds that the Proposed Development is compliant with WFD requirements, and the EA does not believe that the proposed works to the Aylesford Stream will cause deterioration to the stream or wider waterbody [REP3-008]. I have no reason to disagree.

Protective Provisions

- 5.8.49 In the SoCG between the Applicant and the EA at Deadline 9 [REP9-007], the item relating to the Protective Provisions is shown as not agreed. The EA confirms that there are no relevant fisheries bylaws affecting the Aylesford Stream, but the EA also states that it remains in disagreement with the Applicant over three Protective Provisions. The preferred wording for these Protective Provisions from the EA and the Applicant were submitted as 'other documents' after Deadline 8 [OD-032 and OD-031, respectively].
- 5.8.50 In Chapter 9: DCO, I examine the two sets of proposed wording in the context of Schedule 9: Protective provisions.

SUMMARY AND CONCLUSIONS

- 5.8.51 The WFD assessment carried out by the Applicant is considered to be adequate by the EA. As the EA is the statutory authority, I have no reason to disagree. I am satisfied that the application meets the tests set out at paragraphs 5.225 to 5.226 of the NPSNN.
- 5.8.52 The final FRA received near the close of the Examination was agreed by the EA as the statutory authority, subject to an additional risk Requirement being secured in the dDCO. Suitable wording for this Requirement, Requirement 14: Flood compensatory storage, has been agreed between the Applicant and the EA and I have included this in my recommended dDCO (Appendix D to this report). I am satisfied that the issues relating to flood risk have been resolved and agreed, and that they meet the tests set out at paragraphs 5.98 to 5.109 of the NPSNN, including the Sequential Test and Exception Test.

- 5.8.53 I find that land and groundwater contamination has been properly considered and agreed with the EA, which called for amendments to Requirement 3: CEMP and Requirement 8: Land and groundwater contamination, to ensure that these matters would be sufficiently mitigated and secured in the dDCO. These amendments are included in my recommended dDCO (Appendix D to this report).
- 5.8.54 More detail on mitigation measures is in the consolidated table of environmental mitigation measures, which includes details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the dDCO [REP6-024].
- 5.8.55 Overall I consider that the impacts on the water environment and flood risk have been adequately assessed and the mitigation measures proposed are sufficient. Therefore I am of the opinion that the Proposed Development meets the tests set out in paragraphs 5.90 to 5.115 and 5.219 to 5.231 of the NPSNN and would be in compliance with the WFD.

5.9 BIODIVERSITY AND ECOLOGICAL CONSERVATION

POLICY BACKGROUND

- 5.9.1 The NPSNN states at paragraph 5.23 that the Applicant should show how the project has taken advantage of the opportunities to conserve and enhance biodiversity and geological conservation interests. This echoes the NPPF which sets out the ways that the planning system should enhance the natural and local environment.
- 5.9.2 Matters which should be considered in decision-making are described in paragraphs 5.24 to 5.35 of the NPSNN and mitigation in paragraphs 5.36 to 5.38. In addition air quality impacts are addressed at NPSNN paragraphs 5.3 to 5.4 and noise impacts at paragraph 5.187.

APPLICANT'S APPROACH

- 5.9.3 In accordance with paragraph 5.22 of the NPSNN, the ES Chapter 8: Nature Conservation [APP-036] considers the likely significant effects on internationally, nationally and locally designated sites of ecological importance, protected species, habitats and other species identified as being of principal importance for biodiversity. The potential effects on ecological receptors during construction and operation of the Proposed Development have been identified. Supporting information is provided in the relevant figures and Appendices referred to in that chapter. Studies are included for birds, amphibians, crustaceans, reptiles and mammals (dormouse, badger, bat, otter and water vole). The ES also described the avoidance and mitigation measures proposed, and identifies those residual effects which are significant.

Method of assessment

- 5.9.4 The Applicant's assessment followed guidance within the DMRB⁸⁰ ⁸¹, with reference to the Chartered Institute of Ecology and Environmental Management's (CIEEM) Guidelines for Ecological Impact Assessment in the United Kingdom⁸². The ES describes the desk studies and field surveys which were undertaken to establish the baseline conditions and sensitive receptors [APP-036].
- 5.9.5 In my FWQ, I point out that new CIEEM guidance was published in January 2016⁸³ [PD-008, Q8.1]. I ask the Applicant to state why it has not used the 2016 guidelines, and what (if any) would have been the implications on the assessment conclusions had the 2016 guidance been used, rather than the 2006 guidance.
- 5.9.6 The Applicant responds that the assessment was undertaken in accordance with current DMRB guidance [REP3-035, Item 8.1]. The CIEEM guidelines were referred to where additional guidance was considered beneficial to provide a robust assessment. The fundamental principles were not changed when the CIEEM guidance was updated so it is not considered that referring to the previous version of the guidelines has had any implications on the assessment. The Applicant also states that Natural England (NE) has confirmed through the SoCG that it is in agreement with the assessment of impacts, proposed mitigation measures and conclusions regarding nature conservation [REP3-013]. I have no reason to disagree.
- 5.9.7 The Applicant identifies eleven organisations that were consulted on matters relating to nature conservation [APP-036, Section 8.4]. In addition to NE (the statutory nature conservation body), KCC, ABC and the EA, these organisations were Kent and Medway Biological Records Centre, Kent Stour Countryside Project, Kent Wildlife Trust, Kent Badger Group, Kent Bat Group, and Kent Mammal Group [APP-036].
- 5.9.8 The SoCG between the Applicant and NE states that the ES Chapter 8 and associated figures and technical appendices properly assess the potential impacts of the Proposed Development on nature conservation and the methodology used is appropriate, together with the assessment of impacts, proposed mitigation measures and conclusions regarding nature conservation [REP3-013].

⁸⁰ Highways England. Design Manual for Roads and Bridges (DMRB), Volume 10 Environmental Design. HMSO, London

⁸¹ Highways England. Design Manual for Roads and Bridges (DMRB), Volume 11 Environmental Assessment, Section 3 Chapter 7, parts 7.9-7.19 HMSO, London

⁸² Institute of Ecology and Environmental Management (IEEM) (2006) Guidelines for Ecological Impact Assessment in the UK

⁸³

https://www.cieem.net/data/files/Publications/EcIA_Guidelines_Terrestrial_Freshwater_and_Coastal_Jan_2016.pdf

Mitigation and compensation measures

- 5.9.9 The ES describes the proposed mitigation measures during both construction and operation [APP-036, Section 8.7]. The proposed mitigation measures during construction are set out in the oCEMP, with the CEMP secured by Requirement 3 in the recommended dDCO [APP-204, updated to REP6-018; OD-033].
- 5.9.10 The Applicant concludes that *"the sensitive design of both the main and alternative schemes and the comprehensive nature of the mitigation would ensure that there are no significant residual effects on any key or protected ecological receptors within the ZoI (Zone of Influence). A Slight Beneficial effect for nature conservation at the local level is predicted overall"* [APP-036, Section 8.9].
- 5.9.11 The Applicant submitted a consolidated table of environmental mitigation measures at Deadline 6 [REP6-024], which included those relating to nature conservation, and refers to the mitigation section of ES Chapter 8 [APP-036, Section 8.7]. The Applicant specifically cites Requirements 3, 5, 6, 8, 10, 12 and 13 as mitigation measures.
- 5.9.12 I now consider the matters arising from the Applicant's approach.

ISSUES ARISING

- 5.9.13 Key ecology matters considered during the Examination include:
- designated site - Hatch Park site of special scientific interest (SSSI);
 - non-statutory designated sites;
 - habitats;
 - protected species;
 - combined and cumulative effects
- 5.9.14 I consider Habitats Regulations Assessment (HRA) matters in Chapter 6 and water quality matters in Section 5.8 of this Chapter.

Designated site – Hatch Park SSSI

- 5.9.15 The Applicant identified one statutory designated site which could potentially be adversely affected by the Proposed Development - the Hatch Park SSSI [APP-036]. This SSSI is located approximately 40 m to the north of the Proposed Development. The SoCG between the Applicant and NE states that the correct SSSIs have been scoped into the Environmental Impact Assessment (EIA), and the Proposed Development would have no likely significant effect on the features for which the SSSIs were notified [REP3-013].
- 5.9.16 The ES states that construction of the Proposed Development would not result in any loss of habitat or integrity to the Hatch Park SSSI, with the effect being assessed as neutral [APP-036]. During operation, the Applicant anticipates that the Hatch Park SSSI would be subject to increased levels of airborne pollutants. The ES explains that, whilst

nitrogen deposition would be higher than the recommended Critical Load Ranges for the habitat types that this SSSI supports, these levels are already predicted to be exceeded in the opening year (2018) without the Proposed Development. In the opening year of the Proposed Development, total nitrogen deposition is predicted to reduce compared to existing levels [APP-036]. The ES concludes that there would be a slight adverse (not significant) residual effect on the Hatch Park SSSI during operation of the Proposed Development.

- 5.9.17 The ES concludes that there would be no significant adverse residual effects on this SSSI during construction or operation of the Proposed Development [APP-036, Table 8.14].
- 5.9.18 NE initially asked for supporting information regarding air quality, but subsequently agreed that there would be no significant effects on the SSSI due to air quality [REP3-028, response to FWQ 2.3].
- 5.9.19 With regard to the local authorities, KCC in its SoCG defers to Historic England on the SSSI [REP9-006] and ABC in its SoCG makes no comment [OD-036].
- 5.9.20 I find that there would be no significant adverse effects on the Hatch Park SSSI, in accordance with the NPSNN paragraph 5.29.

Non-statutory designated sites

- 5.9.21 The ES identifies a number of non-statutory wildlife sites within 2 km of the Proposed Development and provides a detailed assessment of the impacts on Ashford Green Corridor Local Nature Reserve (LNR) and Highfield Lane Nature Reserve (RNR), both of which lie partially within the Proposed Development Order limits [APP-036, Section 8.6]. The ES explains that the other non-statutory wildlife sites identified were scoped out from further assessment, given their distances from the application site and their negligible risk of being affected by the Proposed Development [APP-036].
- 5.9.22 The ES explains that to facilitate the construction of the proposed footbridge over the A2070, 0.12ha of broadleaved woodland and amenity grassland habitat would be lost from the Ashford Green Corridor LNR [APP-036]. The ES assesses this effect as neutral and not significant. The ES confirms that, during operation of the Proposed Development, there would be no further loss of the LNR, with no other impacts (such as lighting or disturbance) anticipated. The residual effect on Ashford Green Corridor LNR is assessed in the ES as neutral and not significant [APP-036].
- 5.9.23 Similarly the ES explains that 0.02ha of semi-improved grassland habitat would be permanently lost from the Highfield Lane RNR during construction of the Proposed Development, with the effect assessed as slight adverse [APP-036]. Following the completion of construction, as compensation for the 0.02ha of habitat lost from the RNR the Applicant proposes to plant an area of 0.08ha immediately adjacent to the lost area. This would include translocating turf and soil from the

RNR and supplementing this with seed planting. Taking account of the mitigation proposed, the residual effect on Highfield Lane RNR is assessed in the ES as slight beneficial (not significant) [APP-036].

- 5.9.24 With regard to the Highfield Lane turning loop⁸⁴, the Applicant states in its SoCG with NE that it has reviewed and updated the Environmental Masterplan to ensure ecological and landscape mitigation proposals take into account the proposed turning circle, should it be constructed [REP3-013]. This involves relocating the translocated Roadside Nature Reserve and removing a small area of woodland planting (658m²) and species rich grassland planting (262m²). Subject to the implementation of mitigation, there will be no significant impacts to the Highfield Lane Roadside Nature Reserve, either with or without the turning circle.
- 5.9.25 In a submission at Deadline 6, KCC states that it does not consider that appropriate mitigation measures are proposed and secured in the dDCO to mitigate for the loss of the LNR and RNR [REP6-056]. In response, the Applicant states that it has amended Requirement 10 in the dDCO to address these concerns [REP7-013]. At Deadline 8, KCC confirmed that it is satisfied with the mitigation for the loss of habitats in relation to the LNR and RNR [REP8-037]. I have no reason to disagree.
- 5.9.26 There were no submissions from Wildlife Trusts during the Examination.
- 5.9.27 I am satisfied that the impacts on non-statutory designated sites have been appropriately assessed and that suitable mitigation would be in place.

Assessment of Implications on European Sites (AIES)

- 5.9.28 The AIES is covered in Chapter 6 of this report.

Habitats

- 5.9.29 The Applicant's ecologists undertook a walkover of the area to identify the presence of any ecologically valuable habitats with the potential to support protected and notable species [APP-036, Section 8.6]. The ES identifies the habitats that would be temporarily damaged during construction of the Proposed Development, totalling 15.19ha [APP-036, Table 8.12]. To mitigate for this, as well as the permanent loss of 3.96 ha of habitat which would be permanently lost as hard standing, the Applicant proposes to plant 22.58 ha of replacement habitat, leading to a net gain in the long term [APP-036]. Following the maturation of this planting, the residual effect on habitats is assessed in the ES as slight beneficial (not significant).

⁸⁴ See section 2.4 (Chapter 2) of this report

- 5.9.30 Regarding light pollution, the lighting scheme includes the introduction of low directional LED bollards on Kingsford Street. Regarding bats, the loss of vegetation along Kingsford Street would be offset by the creation of additional habitat (three balancing ponds, 14.19 ha of grassland, and 4.89 ha of tree, scrub and woodland habitats) as well as the provision of bat boxes [REP4-021].
- 5.9.31 In their joint LIR, the local authorities comment on habitats with regard to the Hatch Park SSSI [REP3-005]. In the SoCG between KCC and the Applicant, habitats are shown as agreed, and KCC states that it is satisfied that a sound understanding of what species and habitats are present and what mitigation is required has been demonstrated [REP9-006]. In the SoCG between ABC and the Applicant, no comment is made on habitats [OD-036].
- 5.9.32 The Village Alliance expresses concern about proposals by Friends Life Limited (FLL) for the Applicant to move a compensatory habitat pond originally proposed by the Applicant at plots 4/16/e, 4/16/f and 4/16/g, to plot 4/11/d. According to the Village Alliance, the Applicant's original site for the relocation of Great Crested Newts (GCN) is a good quality terrestrial habitat and vastly superior to the new site proposed at plot 4/11/d. The site at plot 4/11d does not drain easily, and it is an area that floods extensively during the winter. The site originally proposed by the Applicant is ideal as it is on a ridge, drains easily and facilitates smaller GCN refuges for daytime shelter [REP3-034].
- 5.9.33 Further, the site at plot 4/11/d would adjoin residential properties and a proposed footpath over the M20, and the requisite fencing to secure the pond from public access would adversely affect the setting of nearby listed properties. The owners of Redburr require continuous access to the area of the proposed pond at plot 4/11/d, as part of their building creates the boundary wall which has to be maintained from inside plot 4/11/d [REP5-034].
- 5.9.34 In response to the concerns of the Village Alliance, the Applicant explains its obligation to minimise the compulsory acquisition (CA) of FLL's interest [REP5-021]. Notwithstanding this, the relocated pond in plot 4/11/d would be moved to a location further down the slope where the geology and topography are more suitable. In the same area, a 1m wide (approximately) grass strip has been added adjacent to the boundary of Redburr to enable the householder to maintain the boundary wall and garden boundary [OD-026].
- 5.9.35 I am satisfied that the impacts on habitats have been appropriately assessed and that suitable mitigation would be in place through recommended dDCO Requirements 3, 5, 6, 8, 10, 12 and 13.

Protected species

- 5.9.36 The Applicant undertook specific surveys for protected species, namely badgers, bats, birds (breeding and wintering), dormice, great crested

newts, reptiles (slow-worm, common lizard and grass snake), riparian mammals (water vole and otter) and white clawed crayfish [APP-036]. The presence or absence of other notable species (including brown hare, hedgehog and common toad) was noted during the surveys but these species were not subject to specific surveys [APP-036, Section 8.6]. Following the results of these surveys, the ES explains that white-clawed crayfish, brown hare, common toad and hedgehog were scoped out of further assessment [APP-036].

- 5.9.37 The ES concludes that the residual effects on bats, birds, badgers, dormice, great crested newts, reptiles, water voles and otters would be slight beneficial (though not significant) [APP-036].
- 5.9.38 In its Written Representation at Deadline 3, NE states that it has no concerns regarding European and Nationally Protected Species, confirming that it has provided detailed advice for all species (dormice, great crested newts, badgers, water voles, bats, reptiles) and has supplied Letters of No Impediment for dormouse, great crested newt and badger as appendices to the SoCG between the Applicant and NE [REP3-028, REP3-013]. NE confirms in response to FWQ 8.5 that it is satisfied that the proposed mitigation measures are sufficient to maintain the favourable conservation status of the dormouse and great crested newt populations [PD-008, REP3-028].

Great Crested Newts

- 5.9.39 Local residents and action groups Paul Bartlett, Shepway Environment and Community Network, and Village Alliance raise questions regarding GCNs [REP3-029, REP5-029, REP5-033, REP5-034, OD-042].
- 5.9.40 In a response to issues raised at the Open Floor Hearing (OFH) on 24 February 2017, the Applicant describes its mitigation strategy in respect of GCN [EV-015; REP5-021 Appendix A]. No GCN breeding ponds or core terrestrial habitat (ie habitat within 50m of a GCN pond) lies within the footprint of the Proposed Development. However, a strip of 'intermediate' and 'distant' habitat to GCN breeding ponds does lie within the footprint. During construction, a combined total of 1.57 ha of terrestrial habitat within these intermediate and distant zones would be affected.
- 5.9.41 In summary, the Applicant states that the GCN mitigation strategy comprises the capture and removal of GCN from the works area prior to the start of construction, and the prevention of GCN from entering the site during the works. As no GCN breeding ponds, or ponds where GCN have been recorded, would be impacted by the Proposed Development, no pond creation or enhancement is required [REP5-021].
- 5.9.42 A letter of no impediment (LoNI) has been issued by NE, indicating its agreement with the Applicant's proposed approach to GCN relocation [REP3-013, appendices].

- 5.9.43 The Applicant amended dDCO Requirement 10: Protected species, in response to issues raised by KCC over the wording of the Requirement [OD-033, REP6-056]
- 5.9.44 I am satisfied that protected species have been properly assessed and that appropriate mitigation would be in place through the ES and recommended dDCO Requirements, in particular Requirements 3 and 10 (Appendix D to this report).

Combined and cumulative effects

- 5.9.45 The SoCG between the Applicant and NE states that ES Chapter 15: Combined and cumulative effects, properly assesses the potential impacts of the Proposed Development in combination and in conjunction with other relevant developments and the methodology used is appropriate [REP3-013].
- 5.9.46 I have no reason to disagree.

SUMMARY AND CONCLUSIONS

- 5.9.47 The Applicant concludes in the ES that there would be no significant effects on ecology [APP-036]. NE and the EA, as the relevant statutory authorities, have reached agreement on biodiversity with the Applicant in their SoCGs and other submissions, as have the local authorities. I have no reason to disagree with these organisations, and consider that biodiversity and ecological conservation issues have been sufficiently considered by the Applicant with appropriate mitigation secured in the recommended dDCO (Appendix D to this report). I also recognise that some level of enhancement, as required by the NPSNN, has been considered by the Applicant, and I find that the tests set out in paragraphs 5.23 to 5.38 of the NPSNN are met.
- 5.9.48 NE has issued LoNI with regard to draft mitigation licence applications in respect of dormouse, great crested newt and badger [REP3-013, appendices].
- 5.9.49 I recognise the concerns of local residents and action groups with regard to GCNs, but consider that the issues raised would be adequately addressed by the proposed mitigation.

5.10 CLIMATE CHANGE ADAPTATION AND CARBON EMISSIONS

POLICY BACKGROUND

Climate change adaptation

- 5.10.1 The NPSNN paragraphs 4.36 to 4.47 sets out how the potential impacts of climate change should be taken into account using the latest available UK Climate Projections. It then states that appropriate mitigation or adaptation measures should be included in the ES.

- 5.10.2 At paragraph 4.40 the NPSNN states that *"New national networks infrastructure will be typically long-term investments which will need to remain operational over many decades, in the face of a changing climate. Consequently, Applicants must consider the impacts of climate change when planning location, design, build and later operation."*
- 5.10.3 It continues at paragraph 4.41 that *"Where transport infrastructure has safety-critical elements and the design life of the asset is 60 years or greater, the Applicant should apply the UK Climate Projections 2009 (UKCP09) high emissions scenario (high impact, low likelihood) against the 2080 projections at the 50% probability level."*

Carbon emissions

- 5.10.4 Regarding carbon emissions, the NPSNN states at paragraph 3.8 that the annual carbon dioxide (CO₂) impacts from delivering a programme of investment on the Strategic Road Network on the scale envisaged over a 10 to 15 year period amount to well below 0.1% of the annual carbon emissions allowed in the fourth carbon budget.
- 5.10.5 According to NPSNN paragraphs 5.16 to 5.19, carbon impacts should be considered by the Applicant and evidence of appropriate mitigation measures provided. At paragraph 5.17 it states that *"It is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction targets. However, for road projects Applicants should provide evidence of the carbon impact of the project and an assessment against the Government's carbon budgets."*

APPLICANT'S APPROACH

Climate change adaptation

Method of assessment

- 5.10.6 The method of assessment relevant to climate change adaptation is summarised in the Water Environment and Flood Risks section of this chapter, and is not repeated here.

Mitigation and compensation measures

- 5.10.7 The mitigation and compensation measures relevant to climate change adaptation are summarised in the Water Environment and Flood Risks section of this chapter, and are not repeated here.

Predicted effects

- 5.10.8 The predicted effects relevant to climate change adaptation are summarised in the Water Environment and Flood Risks section of this chapter, and are not repeated here.

Carbon emissions

Method of assessment

- 5.10.9 The Applicant addresses the carbon impact of the Proposed Development in the ES Chapter 10: Materials, supported by Appendix 10.1: Carbon Assessment Calculation [APP-038 and APP-186].
- 5.10.10 The quantification of the carbon impacts of the construction of the Proposed Development has been carried out using the Applicant's Carbon Tool⁸⁵ [APP-038].
- 5.10.11 A scale of magnitude has been used to assess the magnitude of change associated with the material requirements of the Proposed Development, based on benchmark data from previous road projects⁸⁶ where the magnitude of change as a result of materials use has been quantified [APP-038, Table 10.2].
- 5.10.12 The carbon assessment has considered the amount of embodied carbon of the proposed materials for the construction of the Proposed Development, and the detailed assessment of materials has considered the impacts on material use associated with the construction of the Proposed Development in accordance with the DMRB and IAN 153/11 Guidance on the Environmental Assessment of Material Resources⁸⁷.

Mitigation and compensation measures

- 5.10.13 Mitigation measures are proposed by the Applicant for carbon emissions [APP-038, Section 10.7], based on the measures to be employed for the efficient use of materials, the efficient disposal of waste, and efficient transport. The appointed Contractor would produce a CEMP secured through Requirement 3, based on the oCEMP [REP6-018], and the CEMP would include as subsidiary documents the SWMP, MMP, and Soil Handling Management Plan (SHMP). The appointed Contractor would also produce a TMP secured through Requirement 11. These documents would detail specific mitigation measures to be followed.
- 5.10.14 According to the Applicant, the preparation of, and adherence to, the CEMP, SWMP, MMP, SHMP and TMP would ensure that any adverse impacts associated with material use, waste generated and required transport are minimised during the construction phase of the Proposed Development [APP-038].

⁸⁵

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/453177/Task_446_Guidance_Document.pdf; release 3 February 2016

⁸⁶ A14 Cambridge to Huntingdon Improvement Scheme Environmental Statement, December 2014

⁸⁷ <http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian153.pdf>

Predicted effects

- 5.10.15 The Applicant undertakes carbon calculations specifically, and estimates that approximately 7,819 tonnes of carbon dioxide equivalent (CO₂e) would be produced as a result of the Main Scheme [APP-038, Section 10.8, Table 10.11] during construction. The Applicant concludes that the Main Scheme's impact on UK wide emissions is therefore not significant, as the emissions for the UK's infrastructure for 2013⁸⁸ were 338,000,000 tonnes of CO₂e. The Applicant estimates that the carbon calculations for the Alternative Scheme would be approximately 8,068 tonnes of carbon dioxide equivalent (CO₂e), also not significant.

ISSUES ARISING

Climate change adaptation

- 5.10.16 ABC and KCC make no mention of climate change adaptation in their joint LIR [REP3-005]. The EA raises the matter in its Written Representation [REP3-008] where it considers that the FRA submitted by the Applicant with the application is incomplete, and that the Applicant still needs to demonstrate that flood risk will not be increased by this proposal incorporating the new climate change allowances (2016).
- 5.10.17 I have assessed this matter in the Water Environment and Flood Risk section of this chapter (Section 5.8), and will not repeat that assessment here. As a statement of the position at the end of the Examination in the SoCG between the Applicant and the EA at Deadline 9, the EA states that although complete evidence on flood risk was not provided in time for the EA to review it within the Examination period, on this occasion the EA is confident that suitable mitigation of flood risk is possible on this site [REP9-007]. The EA therefore removes its objection, subject to the Requirement recommended in its submission for Deadline 9, stated in the SoCG between the Applicant and the EA, being included in the dDCO which it has been as Requirement 14: Flood compensatory storage [REP9-007].

Carbon emissions

- 5.10.18 There were no issues arising during the Examination related to carbon emissions. ABC and KCC make no mention of carbon emissions in their joint LIR [REP3-005], and nor does the EA in its Written Representation [REP3-008] or its SoCG with the Applicant [REP9-007].

⁸⁸ Highways Agency Carbon Routemap, available online http://assets.highways.gov.uk/specialistinformation/knowledge-compendium/2013-2014-knowledgeprogramme/HACR_Opportunities%20for%20a%20national%20low%20carbon%20transport%20system.pdf

SUMMARY AND CONCLUSIONS

Climate change adaptation

- 5.10.19 I consider that the Applicant has considered climate change adaptation through the design and construction of the Proposed Development. The main issue relevant to climate change is the potential for increased flood risk, particularly given the water environment in the vicinity of the Proposed Development.
- 5.10.20 As discussed in the Water Environment and Flood Risk section of this chapter (Section 5.8), by the close of the Examination the Applicant has satisfied the EA that appropriate mitigation of flood risk is possible on this site, subject to an additional Requirement for flood compensatory storage being included in the dDCO. Requirement 14 addresses this matter in the recommended dDCO (Appendix D to this report).
- 5.10.21 I conclude that the risks of flooding and climate change adaptation have been adequately addressed, and I consider that the matter has been considered by the Applicant in accordance with paragraphs 4.36 to 4.47 of the NPSNN.

Carbon emissions

- 5.10.22 As a part of the programme of investment on the SRN, I am satisfied that the Proposed Development would be likely to fall within the level of annual CO₂ impacts on the scale envisaged over a 10 to 15 year period identified in the NPSNN at paragraph 3.8. It would be well within 0.1% of the annual carbon emissions allowed in the fourth carbon budget.

5.11 HEALTH

POLICY BACKGROUND

- 5.11.1 The NPSNN states at paragraph 2.2 that there is a critical need to improve national networks to address congestion. It states that improvements may also be required *"to address the impacts of the national networks on quality of life and environmental factors"*.
- 5.11.2 The impacts on health are specifically addressed in the NPSNN at paragraphs 4.79 to 4.82. In particular paragraph 4.79 states that national road networks have the potential to affect the health, wellbeing and quality of life of the population. The direct impacts listed include traffic, noise, vibration, air quality and emissions, light pollution, community severance, dust, odour, polluting water, hazardous waste and pests. Where relevant these direct impacts are considered in detail in other sections of this chapter.

- 5.11.3 The NPPF sets out the Government's plans and states that developers should mitigate and reduce to a minimum any adverse impacts on health and quality of life arising from noise from new developments.

APPLICANT'S APPROACH

- 5.11.4 Health impacts are not addressed as a topic in the ES, but the potential impacts of the Proposed Development on the issues identified in the NPSNN are considered within the individual chapters of the ES.
- 5.11.5 As part of its consultation response to the Applicant's Scoping Report⁸⁹, PHE makes a number of recommendations for the EIA. A standalone Health Impact Assessment (HIA) is not provided with the application, but following PHE's recommendations the Applicant did produce an evidential document, the Health Impact Assessment Navigation Document (HIAND), which signposts relevant content in the ES that demonstrates that a HIA has been undertaken [REP3-014 and APP-162].

Method of assessment

- 5.11.6 The assessment of health impacts in respect of the construction and operation of the Proposed Development is provided in the individual chapters of the ES, in particular:
- Chapter 5: Air Quality [APP-033];
 - Chapter 9: Geology and Soils [APP-037];
 - Chapter 10: Materials [APP-038];
 - Chapter 11: Noise and Vibration [APP-039];
 - Chapter 12: Effects on all Travellers [APP-040];
 - Chapter 13: Community and Private Assets [APP-041];
 - Chapter 14: Road Drainage and the Water Environment [APP-042]; and
 - Chapter 15: Combined and Cumulative Effects [APP-043].

Predicted effects and mitigation

- 5.11.7 The impacts of the Proposed Development are discussed under relevant sections of this chapter, together with the measures proposed in mitigation. I do not repeat my detailed reporting of those topics in this section, but provide a health-related summary in the next sub-section.

ISSUES ARISING

- 5.11.8 The health impact of the Proposed Development is of concern to some IPs. The Pilgrims Hospice expresses concern in respect of the impacts of noise and air pollution on its residents [RR-035]. The Village

⁸⁹ In February 2015

Alliance repeats the Hospice's concerns in respect of the air quality impact on patients, and proposes noise mitigation measures to protect the residents of Willesborough and Sevington [RR-044]. Councillor Paul Bartlett sets out concern in respect of the effect of operational noise on the Grade I Sevington Church [RR-033]. Other IPs express similar concerns in respect of construction and/ or operational noise and air quality [eg RR-015, RR-024 and RR-042].

- 5.11.9 PHE considers that the public health impacts likely to arise from the Proposed Development on air, land and water have been adequately considered in the HIAND [RR-037 and APP-162].
- 5.11.10 PHE states that the majority of the potential impacts on public health during the construction phase will be controlled by the implementation of a suitable and sufficient CEMP. PHE requests that, before development is granted, the ExA should confirm that both the EA and local authority are satisfied with the proposals for control, mitigation and monitoring contained within the oCEMP [RR-037 and REP6-018].
- 5.11.11 ABC agrees that the air quality measures in the oCEMP are appropriate and, subject to the strict implementation of the measures in the oCEMP through Requirement 3: CEMP in the recommended dDCO, raises no concerns in respect of construction noise [OD-036 and REP6-018]. Air quality is not within the EA's planning remit [REP3-007].
- 5.11.12 I have set out in Chapter 7 of this report the reasons why I am satisfied that the oCEMP [REP6-018] would provide sufficient mitigation measures.
- 5.11.13 However PHE notes that the Applicant's air quality assessment is dependent on a number of assumptions, for example related to traffic flows and traffic emissions. PHE's review of the air quality assessment is based on the assumption that the traffic modelling undertaken is both robust and validated. The air quality assessment indicates that concentrations of NO₂ are predicted to exceed air quality standards with or without the Proposed Development at some locations in the study area.
- 5.11.14 However, the Applicant states that no exceedances are predicted to be caused by the Proposed Development and any changes in NO₂ concentrations are predicted to be imperceptible [RR-037]. In the view of PHE, it would be prudent for the Applicant to evaluate the Proposed Development once it is operational. If air quality is found to be worsened by the Proposed Development, a scheme of mitigation should be developed and implemented in consultation with the relevant local authorities [REP3-038].
- 5.11.15 ABC agrees with PHE and considers that a Requirement for operational air quality monitoring should be inserted into the recommended dDCO [OD-036].
- 5.11.16 The Applicant does not agree with the proposals made by PHE and ABC in respect of operational air quality monitoring. In its view,

Chapter 5 of the ES demonstrates that the Proposed Development would not cause a significant impact on air quality in its operational phase [REP3-014].

- 5.11.17 I have set out in Section 5.7 of this chapter and ExA's Conclusions on the Case for Development in Chapter 7 of this report the reasons why I am satisfied that the Applicant's assessment of air quality impacts is robust and validated and that no likely significant effects would arise from the Proposed Development in this regard.

SUMMARY AND CONCLUSIONS

- 5.11.18 I am satisfied that in consideration of the evidence presented in the ES, as signposted in the HIAND, and in other submissions to the Examination, the Applicant's HIA is satisfactory.
- 5.11.19 My main considerations arise in respect of air quality impacts on the health of the surrounding populations, and the proposals by PHE and ABC for a scheme of operational monitoring to be secured in the dDCO. However in Chapter 7 of this report, I explain why I am satisfied with the Applicant's assessment of air quality impacts and why I agree with its conclusion that no likely significant effects would arise from the Proposed Development in this regard.
- 5.11.20 I am satisfied that the mitigation measures to control emissions described in the oCEMP for the construction phase are sufficient and secured in the recommended dDCO.
- 5.11.21 I am satisfied that the Proposed Development would provide sufficient mitigation to generally improve the noise environment for residential properties and community facilities in the vicinity of the Proposed Development during operation.
- 5.11.22 I am satisfied that construction noise would be mitigated as far as possible through the oCEMP and through s61 agreements under the Control of Pollution Act 1974 with relevant local authorities. As a result the Proposed Development would not have an impact on health as a result of any increase in noise.
- 5.11.23 Overall I consider that the health impacts of the Proposed Development have been assessed and that sufficient mitigation measures are proposed. The application therefore meets the tests set out in the NPSNN, in particular in paragraphs 4.79 to 4.82.

5.12 HISTORIC ENVIRONMENT

POLICY BACKGROUND

- 5.12.1 The NPSNN at paragraphs 5.120 to 5.142 recognises the potential for the construction and operation of national networks infrastructure to have adverse impacts on the historic environment. It is for the

Applicant to carry out an assessment of any likely significant heritage impacts.

- 5.12.2 Paragraph 5.124 of the NPSNN requires that non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments should be considered subject to the policies for designated heritage assets.
- 5.12.3 Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010 deals with listed buildings, Conservation Areas and scheduled ancient monuments in the context of applications for national infrastructure development.
- 5.12.4 This regulation states at 3(1) that in deciding an application which affects a listed building or its setting, the decision maker 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. For Conservation Areas, 3(2) states that the decision maker must have regard to the desirability of preserving or enhancing the character or appearance of that area. When deciding an application for development consent which affects or is likely to affect a scheduled monument or its setting, the decision maker must have regard to the desirability of preserving the scheduled monument or its setting (3(3)).

APPLICANT'S APPROACH

- 5.12.5 The Applicant's assessment of impacts during both the construction and operational phases of the Proposed Development is set out in the ES Chapter 6: Cultural Heritage [APP-034], supported by Appendix 6.1: Historic Environment Data (HED) [APP-168], and the appendices to the SoCG between the Applicant and Historic England (HiE) [REP4-005]. The HED document contains tables of designated assets and non-designated assets.

Method of assessment

- 5.12.6 The method of assessment was based on both desk study and walkover survey in accordance with the guidelines set out in the DMRB Volume 11⁹⁰, Section 3, Part 2 – Cultural Heritage; HiE's Conservation Principles, Policy and Guidance⁹¹; HiE's Good Practice Advice⁹² and various other sources identified in the ES [APP-034].
- 5.12.7 The assessment considers all heritage assets, designated and non-designated, within the study area - a 1 km radius for designated assets and 500 m for non-designated assets of the centre line of the Proposed Development. These include:

⁹⁰ <http://www.standardsforhighways.co.uk/DMRB/vol11/index.htm>

⁹¹ <https://www.historicengland.org.uk/advice/constructive-conservation/conservation-principles>

⁹² <https://historicengland.org.uk/advice/planning/planning-system/>

- scheduled monuments;
- listed buildings;
- Conservation Areas;
- registered parks and gardens;
- non-designated below-ground archaeological remains;
- locally listed and other historically important buildings; and
- historic landscapes [APP-034, Section 6.3].

5.12.8 A list of all the designated heritage assets and historic landscapes located within 1 km of the Proposed Development can be found in Table 1.1 in Appendix 6.1, and their locations are shown in Figure 6.1, [APP-168 and APP-091].

5.12.9 The assessment considers the construction and operational effects of the Proposed Development on the historic environment, including both temporary and permanent impacts, based on the value and sensitivity of the assets and the magnitude of the effects [APP-034, Section 6.3].

5.12.10 The SoCG between the Applicant and HiE states that HiE agrees with the assessment of impacts, proposed mitigation measures and conclusions regarding cultural heritage, with the exception of the conclusions in the ES regarding cumulative impacts associated with the Stour Park development [REP4-005, Items 3.1.1, 3.1.11 and 3.1.12]

Mitigation and compensation measures

5.12.11 The Applicant states that construction will be carried out using industry best practice and in accordance with the CEMP to mitigate any temporary adverse effects during construction, and that mitigation measures for the historic environment have been incorporated throughout the design and construction stages [APP-034]. These measures fall into two categories:

- controls imposed on construction activities (eg through the CEMP); or
- further mitigation, such as compensatory measures or enhancement measures, which include retaining aesthetics of the current (historic environment) landscape by reducing the impact on the setting of assets (Conservation Area, listed building, etc) and incorporating landscaping features and design features at the detailed design stage [APP-034].

5.12.12 Specific mitigation and compensation measures in the construction and operation phases are detailed in the ES [APP-034, Chapter 6, Tables 6.8, 6.9 and 6.10].

Predicted effects

5.12.13 The ES also details the predicted cultural heritage effects during both construction and operation [APP-034, Chapter 6, Tables 6.8, 6.9 and 6.10], and identifies the predicted residual effects of the Proposed Development [APP-034, Tables 6.11 and 6.12].

- 5.12.14 The ES reports that both construction and operation of the Proposed Development have the potential to have significant adverse effects on the setting of the Grade I listed St Mary's Church at Sevington, as well as the settings of the Grade II listed Court Lodge and Barn at Sevington, and the Grade II listed Ransley Cottage, Redbur and Redbur Barn on Kingsford Street [APP-034].
- 5.12.15 The Grade II listed milestone, which is recorded as being located within the Order limits, has been identified as missing and would therefore not be affected by the Proposed Development [APP-034].

ISSUES ARISING

- 5.12.16 HiE defers to ABC and the archaeological advisors at KCC to give detailed advice to the Examination on Grade II listed buildings, registered parks and gardens, Conservation Areas, and undesignated heritage, since they are best placed to advise on local historic environment issues and priorities, including access to data held in the Historic Environment Record [RR-018]. ABC defers to KCC in this regard [REP3-004].

Conservation Areas

- 5.12.17 There are two CAs in the study area – Lacton Green and Mersham. According to the Applicant, there is limited potential for a very slight impact on the setting of the Mersham CA during construction with negligible magnitude and slight significance [APP-034]. The mitigation measures are provided through the oCEMP, to be secured in the recommended dDCO through Requirement 3: CEMP [REP6-018, OD-033]. Otherwise there are no effects and no need for mitigation.

Archaeology

- 5.12.18 In respect of the ES and oCEMP, KCC states that comments on cultural heritage measures are brief, but in general acceptable. Requirement 9: Archaeology in the recommended dDCO secures the production of an Archaeological Framework Strategy (AFS) and sub-Written Schemes of Investigation in consultation with KCC's Heritage Conservation Department. KCC agrees that the AFS is fit for purpose [REP9-006].
- 5.12.19 KCC recommends that provision is made for an archaeological watching brief to monitor the wider location of the missing milestone, in case it is buried in hedgerows or fields nearby and can be retrieved during the construction of the Proposed Development. The Applicant agrees and the SoCG between the parties confirms that an archaeological watching brief will be implemented in accordance with Requirement 9 in the recommended dDCO [REP9-006, OD-033].

Grade I listed building - St Mary's Church, Sevington

- 5.12.20 HiE states that the Proposed Development would result in major change within the settings of multiple heritage assets, but clarifies

that its representations would focus on the impacts that the Proposed Development would have on the setting of the Grade I listed St Mary's Church at Sevington [RR-018].

- 5.12.21 In its relevant representation (RR) HiE expresses concern in respect of visual impacts (including lighting), noise, cumulative effects, and viability (ie visitor numbers and events). In HiE's opinion, the Proposed Development would result in harm to the significance of the church by contracting the agricultural land around it, and by changing the character of that landscape so that it becomes much more dominated by highways infrastructure [RR-018].
- 5.12.22 Councillor Paul Bartlett expresses concern that the pealing of the bells at St Mary's Church, a unique attribute of the Kent countryside, will be permanently lost from Sevington with the Proposed Development in operation, because the southern end of the A2070 link road will be within about 70 m of the church. Works at the southern end of the link road will cause additional noise from stop-starting vehicles (eg air brakes on HGVs) which will drown out the pealing [RR-033].
- 5.12.23 In the SoCG between the Applicant and KCC, KCC states that mitigation measures for St Mary's Church need to be agreed with HiE [REP9-006].
- 5.12.24 I address each of these concerns below, by topic area.

Visual impacts

- 5.12.25 HiE expresses concern that the Applicant provided no visual material with the application, such as photomontages or 3D modelling, to explain the visual impacts on St Mary's Church, without which it is hard to assess the harm that the Proposed Development might cause, as required by paragraph 5.129 of the NPSNN [RR-018].
- 5.12.26 In response to HiE's concern, the Applicant produced an additional photomontage (at Year 1 and Year 15) and cross-section to illustrate the visual effects of the Proposed Development on the setting of St Mary's Church. This is included in the SoCG between the parties [REP4-005, Appendix A.2]. The Applicant states that the church is not lit at night, so the impacts of the proposed lighting on the night time visual setting of the church will be minimal both during the construction and operation of the Proposed Development. Low-level lighting will be used on the footbridge and where possible on the link road and M20 Junction 10a. This will minimise the impact of the Proposed Development on the heritage asset [REP4-005].
- 5.12.27 At the close of the Examination, and arising from the additional material produced by the Applicant, HiE is content that the incorporation of planting (screening) and earth bunds within the design of the Proposed Development will reduce the seriousness of the harm to the church from the operation of the Proposed Development [REP4-005]. These measures would be secured through management

plans within the CEMP, itself secured through the recommended dDCO Requirement 3 (Appendix D to this document).

- 5.12.28 While there will be a negative impact on St Mary's Church, I am satisfied that the mitigation measures proposed by the Applicant to offset visual impacts are proportionate and acceptably minimise the harm to the church.⁹³

Noise

- 5.12.29 In response to HiE's concern about noise, the Application undertook additional assessment to consider noise and aural intrusion from the proposed works in the vicinity of the church. The results are provided in the SoCG between the parties and conclude that the assessment identifies the potential effects as negligible [REP4-005, Appendix A.3].
- 5.12.30 HiE agrees that the incorporation of bunds and acoustic barriers for the proposed link road and the reduction of the speed limit along the A2070 will reduce the impact of noise on the setting of the church below current levels during operation. HiE also agrees that the Proposed Development is located at a sufficient distance not to cause any vibration impacts [REP4-005].
- 5.12.31 In response to contextual concern expressed by Councillor Paul Bartlett, the Applicant reiterates the findings of its further noise assessment which predicts noise changes between -1dB and 1dB, which are negligible [REP4-005, Appendix A.3].
- 5.12.32 In respect of noise impacts, I am satisfied that the mitigation measures proposed by the Applicant would acceptably minimise any harm to St Mary's Church.

Cumulative effects

- 5.12.33 HiE agrees that the ES and its associated figures and technical appendices satisfactorily assess the potential impacts of the Proposed Development on cultural heritage, with the exception of the Applicant's assessment of the combined and cumulative effects of the Proposed Development and the Stour Park development. HiE notes that the ES methodology and conclusions on combined and cumulative effects rely on the environmental impact assessment produced for the Stour Park development. In HiE's opinion, the Stour Park ES (which HiE notes has not been agreed with itself) underestimates the adverse impact of the Stour Park development on the setting and significance of the Grade I listed St Mary's Church [REP5-025 and REP4-005]. Consequently, HiE considers that the combined and cumulative effects of the Proposed Development and the Stour Park development is greater than acknowledged in the Applicant's ES, and this was stated as not agreed in the SoCG [REP4-005].

⁹³ See also Section 5.13, paragraph 5.13.63

- 5.12.34 However HiE confirms that it is content with the Applicant's impact assessment for the Proposed Development and does not consider that there would be more than a straightforward combined impact if both developments were to be realised (ie there are not likely to be additional cumulative effects). HiE therefore does not request for the Applicant to provide additional assessment in this respect [REP5-025 and REP4-005].
- 5.12.35 Having considered HiE's opinion that any re-assessment would be unlikely to give rise to additional cumulative effects, I am satisfied that the mitigation measures proposed by the Applicant to mitigate harmful cumulative effects are proportionate and acceptably minimise any harm to St Mary's Church.

Viability

- 5.12.36 HiE considers that the Proposed Development has the potential to affect the on-going viability of St Mary's Church on the basis that the visual effects of the Proposed Development might make it less desirable as a venue for weddings and the types of other events from which the parish could generate an income for maintenance [REP5-025].
- 5.12.37 In response the Applicant states that the church is currently used two Sundays in every month, along with a morning service every Wednesday⁹⁴. The Applicant further states that, outside of these regular church services, in the last six months the church has been used for a single wedding and brass band carol concert [REP4-005].
- 5.12.38 Notwithstanding this, to protect the long term viability of the church a replacement footbridge will be constructed on a similar alignment to the existing footbridge to maintain the pedestrian and cycle access to the church. The new footbridge will be Equalities Act 2010 compliant, improving access across the A2070. A temporary pedestrian access route will be in place throughout the construction phase to enable the continued use of the church. Improved vehicle access onto Church Road from the A2070 has also been incorporated into the design of the Proposed Development [REP4-005].
- 5.12.39 There is harm to the significance of St Mary's Church arising from the Proposed Development, but HiE believes it is unlikely that the harm would reach the NPSNN threshold of substantial [RR-018]. HiE is satisfied that the seriousness of the harm has been reduced through the provision of screening (planting), bunds, acoustic barriers and the oCEMP, in accordance with paragraph 5.130 of the NPNS. The residual harm can therefore be weighed against the public benefits of the Proposed Development in accordance with paragraph 5.134 of the NPSNN [REP4-005].

⁹⁴ <http://www.willesborough.org.uk/>

5.12.40 I am influenced by the concern expressed by HiE in respect of the church's viability, but I am also encouraged by the breadth of mitigation measures incorporated by the Applicant to minimise any harm to the significance of the church.

Grade II listed buildings

5.12.41 Some IPs express concern in respect of impacts on Grade II listed properties in the vicinity of the Proposed Development, namely in RRs by Stuart Ramsay, Sharon Swandale and Paul Bartlett [RR-042, RR-040, RR-033]. In response the Applicant clarifies the proposed CA powers at the Grade II listed Ransley House and acknowledges the permanent visual impact of the Proposed Development on the setting of this asset [APP-034]. The Applicant also explains the mitigation measures secured through the dDCO and oCEMP, and confirms that no impacts on the Grade II listed Court Lodge are predicted [REP3-017].

5.12.42 I draw conclusions and make my recommendation about the case for CA powers in Chapter 7 of this report. In respect of the predicted permanent visual impact on Ransley House, this must be weighed in the planning balance. I am not persuaded that pursuant to the mitigation measures secured in the recommended dDCO and the oCEMP there would be any harmful impacts on Court Lodge or any other listed buildings as a result of the Proposed Development.

SUMMARY AND CONCLUSIONS

5.12.43 I find that the Applicant's assessment of impacts in the ES, along with the additional material appended to the SoCG with HiE, provides a fair representation of the effects of the Proposed Development on the historic environment.

5.12.44 In consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have also had regard to the desirability of preserving or enhancing the heritage assets affected by the Proposed Development in each case.

5.12.45 As a result I find that, with the added protection of the relevant Requirements in the recommended dDCO and the mitigation measures set out in the oCEMP, the impact on heritage assets affected by the Proposed Development would be minimised in accordance with paragraph 5.129 of the NPSNN.

5.12.46 Evidence of that minimisation allows me to apply the tests in paragraph 5.134 of the NPSNN, and in that regard I am satisfied that the public benefit of the Proposed Development would outweigh the harmful impact on the significance of the heritage assets assessed by the Applicant. I am also convinced by the Applicant's evidence which concludes that the viable use of St Mary's Church would not be compromised.

- 5.12.47 More detail on mitigation measures is in the consolidated table of environmental mitigation measures, which includes details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the dDCO [REP6-024].

5.13 LANDSCAPE AND VISUAL IMPACTS

POLICY BACKGROUND

- 5.13.1 Paragraphs 5.143 to 5.161 of the NPSNN address landscape and visual impacts, and require an assessment of any likely significant landscape and visual impacts of a proposal, which has regard to any landscape character assessment and associated studies. The effects during both construction and operation should be assessed, in terms of the effects on landscape components and character, and in terms of the visibility and conspicuousness of the Proposed Development.

APPLICANT'S APPROACH

- 5.13.2 In ES Chapter 7: Landscape, the Applicant has carried out a landscape and visual impact assessment (LVIA) of the Proposed Development [APP-035]. Chapter 7 is supported by figures 7.1 to 7.9 which show the visual envelope, landscape constraints and character areas, LVIA visual baseline, visual impacts, key receptor views, and photomontages [APP-093 to APP-119]. Both construction and operation of the Proposed Development are considered.

Method of assessment

- 5.13.3 The assessment follows the guidance set out in DMRB Volume 11⁹⁵ and IAN 135/10⁹⁶, the Guidelines for Landscape and Visual Impact Assessment 3⁹⁷ and An Approach to Landscape Character Assessment⁹⁸. The assessment identifies the landscape and visual baseline including value and sensitivity to change, prior to considering appropriate mitigation, the magnitude of change and resulting significance of effect [APP-035].
- 5.13.4 The landscape and visual baselines were established through a desk study and site survey [APP-035]. Current good practice indicates that a study area should extend to contain all areas in which visual impacts have the potential to occur based on topographical indications only. This is known as the Zone of Theoretical Visibility (ZTV). The Applicant uses GIS to run a ground model using topographical light imaging, detection and radar data and mapping, to identify the likely area

⁹⁵ <http://www.standardsforhighways.co.uk/ha/standards/dmrb/vol11/index.htm>

⁹⁶ <http://www.standardsforhighways.co.uk/ha/standards/ians/pdfs/ian135.pdf>

⁹⁷ Landscape Institute, 2012, Guidelines for Landscape and Visual Impact Assessment, 3rd edition

⁹⁸ <https://www.gov.uk/government/publications/landscape-character-assessments-identify-and-describe-landscape-types>

affected when considering intervening topography. This high level model was then refined on site to account for built form and vegetation to form the basis for the 'Visual Envelope' illustrated in Figure 7.1 [APP-093].

- 5.13.5 The study area extends beyond the ZTV in areas where the landscape character area extends beyond it at that location. To that end, the ES explains that the assessment covers the application site and a wider area of approximately 1 km to provide an insight into the effects of the Proposed Development on the surrounding landscape. The Kent Downs area of outstanding natural beauty (AONB), whilst outside of the study area, has also been considered in relation to a key viewpoint identified at the Devil's Kneading Trough (approximately 4 km from the application site) [APP-035]. This viewpoint was identified following consultation with ABC.
- 5.13.6 The Applicant goes on to consider the visual baseline, in terms of the ZTV and Visual Envelope, and visual receptors [APP-035]. There are 25 visual receptors identified during the baseline study and these include residential properties, PRow, roads, Pilgrims Hospice and St Mary's Church in Sevington [APP-035]. Only those receptors identified as falling within the Visual Envelope are taken forward for assessment. The Applicant identifies the locations of these visual receptors, distinguishing between 'visual receptors' and 'key visual receptors' [APP-096, Figure 7.4]. Photographs were taken from each receptor during winter and summer and are presented in Figure 7.8 [APP-100 to APP-108]. Night time views are also considered.
- 5.13.7 The Applicant has determined the significance of impact upon landscape character by considering the magnitude of change against the quality, value and sensitivity to change of the affected landscape [APP-035]. The significance of visual impacts has been determined by considering the sensitivity of the visual receptor to the proposed change against the magnitude of change [APP-035].
- 5.13.8 The ES identifies relevant designations including:
- three Conservation Areas;
 - numerous listed buildings, including the Grade I listed St Mary's Church at Sevington;
 - two scheduled monuments;
 - a Grade II listed registered park and garden; and
 - the Kent Downs AONB [APP-035].
- 5.13.9 The ES also identifies the application site as being located within one National Landscape Character Area 120 (Wealden Greensand). The Applicant identifies six local landscape character areas (LCAs) as falling within the 1 km study area defined for the purposes of the assessment [APP-035, APP-095].
- 5.13.10 In the SoCG between the Applicant and KCC, KCC states its agreement with the Environmental Masterplan, and defers to ABC on other

landscape matters [REP9-006]. In the SoCG between the Applicant and ABC, the status on the LVIA methodology is shown as agreed. ABC maintains that there are inadequacies in the LVIA assessment, although it has sought to address these concerns through the optimisation of landscape mitigation [OD-036, Item 3.2.7]. ABC states that it has reviewed the Environmental Masterplan Update Report and is content that previous concerns have now been addressed [OD-036, Item 3.2.7; REP8-026].

Mitigation and compensation measures

- 5.13.11 The Applicant provided with the application an Environmental Masterplan for the Proposed Development [APP-060 to APP-069]. This document sets out how the Applicant proposes to mitigate for adverse impacts associated with the Proposed Development. The Environmental Masterplan was updated three times in the course of the Examination [REP3-022, REP6-005 to REP6-015 and REP8-008 to REP8-017]. The Environmental Masterplan is secured in the recommended dDCO as a certified document within the ES by Article 44: Certification of Plans, etc.
- 5.13.12 The ES explains that during construction, impacts upon landscape character and visual amenity would be reduced through keeping a well-managed and tidy site and well-managed compounds. Unnecessary stockpiles would be avoided by ensuring that materials are delivered on an as-and-when basis. As far as possible, construction would be limited to daylight hours thereby reducing night time impacts. Temporary offices and welfare facilities within site compounds would be of a recessive colour to blend in with the local surroundings. Lighting would be kept to a minimum with options for infrared lighting or timers explored for compounds where practicable [APP-035]. These commitments would be secured through the recommended dDCO Requirement 3: CEMP, which includes the Landscape Environmental Management Plan (LEMP) as a management plan. The CEMP is subject to consultation with the LPA, LHA and EA.
- 5.13.13 Mitigation in relation to trees is detailed in the Arboricultural Implications Assessment (AIA) [APP-172]. The AIA was updated twice in the course of the Examination [REP4-026 and REP5-014], supported by respective arboricultural survey reports [REP4-027 and REP5-013]. An Arboricultural Method Statement would be produced to prevent damage to any vegetation which is to be retained [APP-035]. This is secured by recommended dDCO Requirement 3: CEMP, which includes the Arboricultural Method Statement as a management plan.
- 5.13.14 During operation, reinstatement planting is proposed as the main mitigation measure for potential effects from the Proposed Development. Local native species would be introduced in areas where vegetation removal is required to accommodate construction [APP-035]. The AIA identifies specific mitigation in relation to potential remediation measures post-works [REP5-014].

Predicted effects

- 5.13.15 The Applicant outlines the nature of the study area in the ES Chapter 7 [APP-035, Section 7.5]. Transport corridors (the M20, A20 and A2070) form dominant features within the study area. The Channel Tunnel Rail Link also traverses the landscape. Land use is varied, with the central core of the study area set to agriculture, with large scale open agricultural fields. Historic villages are found amongst the more rural agricultural scene, whilst to the north of Sevington, the A2070 forms the southern urban fringe of Ashford to the north.
- 5.13.16 The Applicant assesses the predicted effects on the landscape during construction and operation of the Proposed Development, in terms of effects on designated sites and the LCAs. No specific assessment is made in relation to the National LCA 120 (Wealden Greensand) as referenced in the ES [APP-035, paragraph 7.5.14 and Table 7.6]. However, no IP's raise any concerns in this respect in their submissions to the examination (including NE, KCC or ABC).
- 5.13.17 The potential effects on visual receptors during construction and operation are also assessed [APP-035].
- 5.13.18 With regard to the potential impact upon the six LCAs, the Applicant concludes that only one LCA would experience significant adverse effects during the construction of the Proposed Development and in design year 1 (LCA 3, Mersham Farmland). There would be no residual significant effects upon landscape character at design year 15 and beyond [APP-035].
- 5.13.19 The three Conservation Areas identified within the study area (Willesborough Lees, Lacton Green and Mersham) are outside of the ZTV and as such the ES concludes these would be unaffected by the Proposed Development [APP-035].
- 5.13.20 The Grade I listed St Mary's Church and nearby Grade II listed Court Lodge would experience significant adverse effects during construction and in design year 1, reducing to slight adverse (not significant) by design year 15. Grade II listed buildings on Kingsford Street would also experience significant adverse effects during construction and in design year 1, again reducing to slight adverse (not significant) as mitigation planting matures, reducing the visual prominence of the Proposed Development [APP-035]. Details of the change in views during construction and operation are detailed in the visual impact schedules [APP-096].
- 5.13.21 The ES concludes that neither of the two Scheduled Monuments within the study area would be directly affected by the Proposed Development or fall within the Visual Envelope [APP-035].
- 5.13.22 Kent Downs AONB, whilst outside of the study area, has been addressed within the visual assessment in relation to a key viewpoint identified at the Devil's Kneading Trough. Given the distance from site, and expansive nature of this long distance view, the Applicant

considers that the Proposed Development would be barely perceptible from this location [APP-035].

5.13.23 With regard to the potential impacts upon visual amenity, 16 receptors would experience significant adverse effects during construction of the Proposed Development, reducing to 12 in design year 1. When considering the establishment of mitigation planting by design year 15, only one visual receptor, PRoW AE175 (which meets the A20 north of the Willesborough Garden Centre and would directly intersect the Proposed Development), is considered to have a residual significant effect as a result of the Proposed Development [APP-035].

5.13.24 The ES confirms that there would be no change in the significance of effects from the Main Scheme when considering the Alternative Scheme during construction or operation. This applies to both landscape character and visual amenity [APP-035].

5.13.25 I now consider the issues arising from the Applicant's approach.

ISSUES ARISING

Representations by ABC and KCC

5.13.26 In its RR, ABC requests clarification from the Applicant in respect of its landscape and visual assessment. ABC's concerns include:

- the significance of landscape effects on Mersham Village and Brabourne Lees Mixed Farmland in design year 1 and design year 15 having been underestimated;
- the visual effects of the scheme in a number of cases having been underestimated;
- the visual prominence of, and lack of screening at, various acoustic fences which would be provided as part of the Proposed Development to mitigate noise impacts;
- inadequate and/ or uncharacteristic planting proposals (in particular at the Aylesford Stream valley);
- removal of established landscaping and whether substantial replacement and new planting would be provided in specific locations;
- inadequate site-specific replacement planting;
- need for clarity on the final details of proposed planting; and
- uncertainty in respect of impacts on the setting and character of St Mary's Church, Sevington [RR-001].

5.13.27 Further, ABC states that the areas likely to experience the greatest landscape effects are those adopted LCAs physically affected by the Proposed Development and those which lie immediately adjacent to it, eg Mersham Village and Brabourne Lees Mixed Farmland. ABC considers that the significance of landscape effects on these two landscapes in design year 1 and design year 15 have been underestimated by the Applicant [RR-001].

5.13.28 In relation to visual receptors ABC considers that the visual effects of the Proposed Development have in a number of cases been underestimated, either because they were not assessed because the additional effects of the alternative proposal were not properly articulated, or because ancillary aspects of the proposals were not sufficiently taken into account [RR-001].

Trees

5.13.29 The Arboricultural Survey Report indicates that no Tree Preservation Order (TPO) trees are affected, which ABC considers incorrect. The belt of woodland trees on the southern boundary of the Pilgrims Hospice is protected by TPO No.22, 1998. The trees are included within the wider area of W1 of the survey and are mentioned as being implicated in the AIA [RR-001].

5.13.30 ABC states that the belt of woodland trees is an important visual feature and provides screening to the Hospice from the busy A20 road. This will be of increasing importance with the construction of the Junction 10a link road. The loss of these trees is unacceptable on the grounds of visual amenity and needs to be addressed [RR-001].

5.13.31 ABC also cautions that there will be an adverse effect on the character of Highfield Lane as a result of the introduction of a turning loop [REP5-010]. This was not assessed as part of the Applicant's original LVIA. Mitigation planting in the Environmental Masterplan aims to retain a rural character to this lane. However, the introduction of the turning loop is likely to work against this and it is unlikely these effects can be effectively mitigated [OD-036].

5.13.32 In respect of landscape and visual impacts, the commentary made by ABC in its RR and expanded upon in its Written Representation (WR) reflects the finding of a report commissioned by ABC and KCC from the Temple Group comprising a review of the Applicant's ES [REP3-001].

Applicant's response

5.13.33 In response to the issues raised by ABC and KCC, the Applicant produces updates to the Environmental Masterplan in the course of the Examination [REP3-022, REP6-005 to REP6-015 and REP8-008 to REP8-017]. Each update is accompanied by an Environmental Masterplan Update Report (EMUR) which provides a narrative of the changes made to the Environmental Masterplan [REP3-022, REP6-023 and REP8-026, OD-026].

5.13.34 Updates to the EMUR report state that a meeting was held between the Applicant and ABC on 31 March 2017 to discuss the Council's RR, WR and oral representations made at the ISHs on 22 and 23 February 2017 [REP5-032]. The changes made as a result of ABC's representations and the meeting are detailed in section 2.2 of the EMUR, and include:

- adjustments to the noise barriers, footpaths and associated planting for screening to the north of Kingsford Street and adjustments to the proposed ramps leading to the Kingsford Street footbridge, including merging the bund adjacent to the footbridge with the footbridge earthworks;
- the addition of a low hedge and additional specimen trees along the A2070 boundary fence of the Replacement Land;
- changes to the treatment of two TPO tree groups, now to be retained instead of removed⁹⁹;
- additional screening in the form of specimen trees at the Church Road footbridge earthworks;
- additional screening in the form of specimen trees to mitigate views from the PRow to the north east of Bockham Lane looking back towards the new Kingsford Street footbridge;
- slight alterations to the shape of a small number of planting plots north of the new A2070 (eg curving planting plots around the edge of the proposed attenuation pond) in order to help screen views from the road [OD-026].

5.13.35 Following the Applicant's updates to the Environmental Masterplan, ABC is content that its concerns have been addressed [OD-036].

5.13.36 Both Mersham Village and Brabourne Lees Mixed Farmland and neighbouring Mersham Farmland remain visually disconnected from the Proposed Development in the vast majority of cases, with only limited connectivity to neighbouring landscapes, and therefore the overall character of these LCAs will not be significantly affected by changes in landscape features within the neighbouring LCA. There may be localised reductions in audible tranquillity, but this would be set in the context of the M20 and A20 immediately adjacent to the works site [REP3-017].

5.13.37 In relation to visual receptors, the Applicant states that the effects of the Main Scheme are considered to have been addressed sufficiently in line with DMRB guidance. Variations to the Main Scheme effects, associated with the Alternative Scheme, have been identified in the ES [REP3-017; APP-035, Chapter 7, paragraphs 7.7.36 and 7.7.37].

5.13.38 In the Applicant's position statement on the Highfield Lane turning loop, to be delivered outside of the DCO by KCC in advance of the opening of the Proposed Development, the proposed planting in the area where the turning loop would be built has been amended to wildflower and species rich grassland, as opposed to the previous design of native tree and shrub planting [REP5-010]. According to the Applicant's Environmental Masterplan Update Report, this will prevent any future design clashes with the KCC proposals [OD-026].

⁹⁹ Subject to Article 39 and Schedule 8 of the recommended dDCO

- 5.13.39 The felling of specific trees subject to TPOs is authorised by recommended dDCO Article 39 and Schedule 8.
- 5.13.40 Effects on heritage assets are reported in Section 5.12 of this Chapter.

Representations by Kent Downs AONB Unit

- 5.13.41 The Kent Downs AONB Unit (KDAU) states that it is likely that the Proposed Development will be visible from the AONB and requests for suitable landscape mitigation to be incorporated into the design [RR-027].
- 5.13.42 The KDAU considers it important to ensure that sufficient compensatory planting is provided, particularly on the east side of the realigned A20, where many existing trees and groups of trees would be lost to accommodate the new highways works. The loss of the trees has the potential to open up views of the highway infrastructure and the associated lighting in views from the AONB. In order to secure maximum early screening potential it is important to incorporate more specimen trees in the landscape design, particularly along the east side of the realigned A20 [REP3-026].
- 5.13.43 The KDAU also considers it important to secure more substantial tree planting along the south-west side of the proposed new link road to the A2070. This is required to assist in screening of the Stour Park Development, south of the link, which will be enabled as a result of the Proposed Development [REP3-026]. NE also raised this point in its response to FWQ 15.1 [PD-008, REP3-028]
- 5.13.44 This supplementary tree planting is required to ensure that the requirements of Section 85 of the Countryside and Rights of Way Act 2000 (CRWA 2000) are met. Consequently the additional tree planting would also help ensure compliance with several policies of the Kent Downs AONB Management Plan [REP3-026].
- 5.13.45 In order to assist in maintaining dark skies at night, the KDAU would also like to see careful design and the use of new technologies to minimise light pollution [REP3-026].

Applicant's response

- 5.13.46 Updates to the EMUR report state that a meeting was held between the Applicant and the KDAU on 22 March 2017. At the meeting the following was agreed:
- increased planting of screening to the north of the A20 (in the form of native trees and shrubs and specimen trees) would be included to reduce the visibility of the Proposed Development from the AONB;
 - the proposed planting along the A2070 is sufficient with the combined effect of planting currently proposed along the northern boundary of the Stour Park Development adjacent to the new A2070;

- a small number of the proposed tree and shrub species would be amended to reflect those found within the AONB [OD-026].

5.13.47 In response to the KDAU's concern about light pollution, the Applicant explains that lighting columns would range from 5 to 10m in height supporting LED lanterns for greater light control mounted at zero degree inclination to avoid upward light spillage. The new footbridges would be lit utilising LED handrail lighting. Kingsford Street would be lit by bollards along its length to reduce visual intrusion [REP3-017].

Representations by the Environment Agency

5.13.48 The EA recommends that some tree planting immediately adjacent to the water along the south side of the Aylesford Stream would be useful as this section of the watercourse has trees on the north side only. Shading watercourses from the south helps protect them from rising temperatures whereas trees immediately adjacent to the river help the river to meander [REP3-008].

Applicant's response

5.13.49 Subsequently, the Applicant supplemented the Environmental Masterplan with additional tree planting immediately adjacent to the water along the south side of the Aylesford Stream [OD-026].

5.13.50 Other design changes were made by the Applicant in the course of the Examination to mitigate landscape and visual impacts - for example the noise bund proposed in plot 2/4/b, to the rear of the properties on the A20, has been extended to provide greater screening of the view towards Junction 10a. Screening planting is shown on the bund extension [OD-026].

5.13.51 I am satisfied that the mitigation measures proposed by the Applicant in the ES Chapter 7: Landscape, refined through the Examination, meet the tests in the NPSNN paragraphs 5.143 to 5.161.

SUMMARY AND CONCLUSIONS

Landscape

5.13.52 The Applicant's assessment identifies significant adverse impacts on LCA 3 Mersham Farmland arising from the construction of the Proposed Development in design year 1. However, those impacts would be temporary, reducing as screening from tree planting becomes established. By design year 15 there would be no significant residual effects on landscape character.

5.13.53 Representations from ABC express concern that the findings of the Applicant's assessment had in its opinion underestimated landscape impacts. However, following the Applicant's updates to its Environmental Masterplan, ABC withdrew its concerns in this respect in the course of the Examination.

- 5.13.54 The Applicant has fulfilled the requirement for an assessment of the landscape impacts following industry standard guidelines, in accordance with NPSNN paragraph 5.144. I am satisfied that the Applicant's assessment includes reference to the relevant landscape character assessments and associated studies at Section 7.5 of the ES [APP-035] in order to assess landscape impacts relevant to the Proposed Development. In my opinion the Applicant's assessment of the significance of effects on the LCAs in the construction and operation phases, which would range from neutral to large adverse, is acceptable.
- 5.13.55 In consideration of the breadth and quality of the Applicant's landscape and planting proposals in the Environmental Masterplan, I find that the impact on the landscape is not so significant as to weigh against the Proposed Development, which is located in a landscape dominated by existing transport infrastructure.
- 5.13.56 Recommended dDCO Requirement 5: Landscaping, secures provision of the landscaping scheme, which must be based on the Environmental Masterplan and produced in consultation with the LPA, and implemented according to dDCO Requirement 6: Implementation and maintenance of landscaping.

Kent Downs AONB

- 5.13.57 I agree with the Applicant's assessment which concludes that the Proposed Development would be barely perceptible from Devil's Kneading Trough within the AONB.
- 5.13.58 Notwithstanding this, in response to representations made by the KDAU, the Applicant supplements the Environmental Masterplan with additional screening through the planting of trees to address the KDAU's areas of concern.
- 5.13.59 I am therefore satisfied that the tests in NPSNN paragraph 5.150 are met.

Visual impact

- 5.13.60 The Applicant's assessment identifies that there would be some significant adverse effects on some residential receptors within the visual envelope during the construction phase. When considering the establishment of mitigation planting by design year 15 however, only one visual receptor, PRow AE175, would have a residual significant effect as a result of the Proposed Development.
- 5.13.61 St Mary's Church in Sevington is an especially sensitive receptor and would experience significant adverse effects in the construction phases and in design year 1. However, the proposed landscape bund and acoustic fence would initially go some way toward screening the new link road and associated traffic, and by design year 15 screening planting will have developed sufficiently to result in a non-significant visual effect in relation to the church.

- 5.13.62 Many of the significant effects identified by the Applicant would occur in the construction phase, and would therefore be temporary. During operation, some visual effects will lessen as landscape planting matures. Moreover, in my opinion the Applicant's Environmental Masterplan, enhanced through the Examination and secured through Article 44 in the recommended dDCO, demonstrates considerable efforts in seeking to mitigate any harmful effects as far as possible.
- 5.13.63 More detail on mitigation measures is in the consolidated table of environmental mitigation measures, which includes details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the dDCO [REP6-024].
- 5.13.64 I am satisfied that, although there would be visual impacts anticipated from the construction and operation of the Proposed Development, these would be experienced in the context of an area already dominated by transport infrastructure, and would be reasonable and proportionate, consistent with NPSNN paragraphs 5.143 to 5.161.
- 5.13.65 Overall I conclude that in terms of landscape and visual impacts, the Proposed Development meets the requirements of the NPSNN, the NPACA 1949, and the CRWA 2000 in respect of the AONB.

5.14 POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES

POLICY BACKGROUND

- 5.14.1 The NPSNN addresses pollution control and other regulatory regimes in paragraphs 4.48 to 4.56, in which it states that issues relating to discharges or emissions from a proposed project may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes. Relevant permissions would need to be obtained for any activities within the development that are regulated under those regimes before the activities can be operated.
- 5.14.2 The NPSNN goes on to state that the ExA and SoS should focus on whether the development itself would be an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. They should assess the potential impacts of processes, emissions or discharges to inform decision making, but should work on the assumption that in terms of the control and enforcement, the relevant pollution control regime will be properly applied and enforced. Decisions under the PA2008 should complement but not duplicate those taken under the relevant pollution control regime.
- 5.14.3 The SoS should not refuse consent on the basis of regulated impacts unless there is good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.

APPLICANT'S APPROACH

- 5.14.4 The Applicant addresses various sources of pollution throughout the ES, notably Chapter 5: Air Quality, Chapter 8: Nature Conservation, Chapter 11: Noise and Vibration, and Chapter 14: Road Drainage and Water Environment [APP-033, APP-036, APP-039, APP-042].
- 5.14.5 The Applicant states proposed mitigation and compensation measures in each chapter of the ES. I have considered pollution impacts and their mitigation under each environmental topic within this chapter.
- 5.14.6 In response to my SWQs, the Applicant submitted a consolidated table of environmental mitigation measures at Deadline 6, which included details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the DCO [PD-012, Q2.01 (i); REP6-024].
- 5.14.7 The identified construction pollution sources and mitigations are primarily due to:
- dust created during construction, storm water run-off or accidental spillages from construction sites;
 - pollution to watercourses;
 - direct loss of habitats; and
 - contamination to offsite soils or aquifers.
- 5.14.8 The identified operational pollution sources and mitigations are primarily due to:
- continuing pollution of on-site soils;
 - run-off contaminated with vehicle emission particulates and grit-salt spreading residues, and major fuel/ chemical spillages following traffic accidents;
 - material resources and waste handled in a manner which poses a risk of harm to human health; and
 - reduced water quality due to inadequate emergency response procedures.
- 5.14.9 With regard to the method of securing the delivery of the mitigations, the Applicant refers to the oCEMP [APP-204, updated to REP6-018]. Requirement 3 of the dDCO requires a CEMP substantially in accordance with the oCEMP to be prepared in consultation with the relevant planning authority, the LHA and the EA, and for approval by the SoS prior to the commencement of any part of the Proposed Development. A range of subsidiary documents to the CEMP - management plans, working methods and mitigation measures - are also secured through Requirement 3, including the SWMP, MMP, Groundwater Monitoring Strategy, and Noise and Vibration Monitoring Strategy, as well as the TMP secured through Requirement 11. These have been considered in previous sections to this report.

Other consents

5.14.10 The Applicant identifies its overall approach to consents and agreements in its Consents and Agreements Position Statement [APP-020]. Under this approach, the Applicant envisages that the majority of consents will be secured through the DCO, and agreements through SoCGs. The Applicant recognises that "*certain consents will need to be pursued separately from the DCO*", and provides two instances:

- protected species licences as determined by surveys; and
- the Highways Act 1980 in respect of construction works (eg crane oversail licences, hoarding licences, etc).

5.14.11 Section 5 of the oCEMP: Consents, Commitments and Permissions [REP6-018], tabulates the consents that would need to be obtained by the principal contractor, which cover:

- protected species licences (badger, dormouse, great crested newt);
- water related licences (flood risk activity permit, land drainage, environmental permit for water discharge);
- noise consent (CoPA74); and
- waste related licences (carrier, disposal, hazardous waste).

5.14.12 I now consider the issues arising from the Applicant's approach.

ISSUES ARISING

5.14.13 I consider the polluting impacts on the various receptors - human beings, protected species, water courses, and air - due to the various sources under the environmental topics elsewhere in this report under the topic headings to which they are relevant, and will not cover them again here.

5.14.14 The required licences and consents, and the purposes for which they are required, are identified in Section 5 of the oCEMP [REP6-018]. The delivery of a CEMP which must be substantially in accordance with the oCEMP which is secured through recommended dDCO Requirement 3: CEMP. I am satisfied that these matters are adequately secured through this mechanism.

5.14.15 In accordance with the NPSNN paragraph 4.50, the ExA and SoS should work on the assumption that, in terms of the control and enforcement, the relevant pollution control regime will be properly applied and enforced.

SUMMARY AND CONCLUSIONS

5.14.16 I find that all pollution and environmental impacts would be subject to control through the recommended dDCO and the relevant pollution and environmental regulations, in accordance with NPSNN paragraphs 4.48 to 4.56.

5.15 SOCIO-ECONOMIC IMPACTS

POLICY BACKGROUND

- 5.15.1 Social and economic factors are referenced at numerous points in the NPSNN, notably:
- the need for development of national networks to better support social and economic activity - paragraphs 2.1 to 2.27;
 - the improvement of social and environmental impacts - paragraph 3.2 onwards;
 - access to open spaces - paragraph 5.162 onwards; and
 - impacts on transport networks - paragraphs 5.202 to 5.212.
- 5.15.2 The Government's vision and strategic objectives for the national networks are summarised in Section 2 of the NPSNN. They include providing support for economic activity and improving the overall quality of life.
- 5.15.3 The potential for economic, social and environmental benefits has to be weighed against any adverse impacts (NPSNN paragraph 4.3). Matters to be taken into account include:
- potential benefits, including the facilitation of economic development, job creation, housing and environmental improvement, and any long-term or wider benefits; and
 - potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.

APPLICANT'S APPROACH

- 5.15.4 The Applicant's main findings in respect of socio-economic impacts arising from the Proposed Development are considered within ES Chapter 13: Community and Private Assets [APP-041].
- 5.15.5 There is currently no DMRB guidance on the assessment of local and wider socio-economic impacts. However, potential socio-economic and economic development effects as a result of the Proposed Development (and their significance) have been considered using HM Treasury Green Book principles, and are drawn from the Applicant's Land Use and Economic Development Report [APP-193, Appendix 13.1]. The Land Use and Economic Development Report was prepared by the Applicant in response to specific comments raised by the SoS as part of the Scoping Opinion, as well as comments from Mersham & Sevington Parish Council.
- 5.15.6 Section 2 of the Land Use and Economic Development Report provides an overview of the socio-economic baseline conditions, and the impacts of the Proposed Development are assessed at Section 6 [APP-193].

- 5.15.7 I am satisfied that the Applicant provides an adequate assessment of the socio-economic impacts of the Proposed Development in Chapter 13 of the ES and its appendices, and do not repeat the findings of that assessment here.

ISSUES ARISING

Access to the Pilgrims Hospice during construction

- 5.15.8 I have considered access during construction under Traffic and Transport in Section 5.2 of this chapter. The Pilgrims Hospice (the Hospice), to the north of the application site, is an especially sensitive receptor which I consider warrants specific consideration in respect of the social impact of the proposed Temporary Possession (TP) powers and access arrangements during the construction period.¹⁰⁰
- 5.15.9 As part of its RR , the Hospice expresses concern that, during the construction period, access for visitors, relatives, staff and elderly volunteers will be severely restricted [RR-035]. Without these volunteers the Hospice will have no choice but to shut the site for the duration of the construction programme. If the Hospice closes the consequences for the National Health Service (NHS) would be dire as it would have to deal with all the patients that the Hospice could no longer house [RR-035]. The case for the Hospice is set out in Sections 5.2 and 5.11 of this chapter, and I do not repeat it here.
- 5.15.10 The Applicant acknowledges the challenge of ensuring access for emergency vehicles to the Hospice in each phase of the construction of the Proposed Development. This will be managed through ongoing liaison and communication with the Hospice as the work progress to ensure that all of the Hospice's requirements are met [REP6-033]. However, the Applicant does not provide a specific response in respect of general access to the Hospice elsewhere in its representations, and there is no meaningful record of private negotiations about access arrangements between the parties that are before the Examination.
- 5.15.11 The Hospice withdrew its objection to the proposed powers of TP on the final day of the Examination [OD-041]. That withdrawal is subject to a number of caveats which request for assurances to be made in respect of emergency vehicles, general access, working hours, noise, services/ utilities, lighting, the proposed footpath and tree screening.
- 5.15.12 I recognise that the Applicant will require the TP powers during the construction period, and that the exercise of those powers could significantly inconvenience persons who require access to the Hospice, unless effective mitigations are in place.
- 5.15.13 The Applicant did not have a chance to respond to the Hospice's late submission, and the absence of an agreed position between the

¹⁰⁰ See also Section 5.4 and Section 8.4 of this report

parties is unhelpful, but I am satisfied that the oCEMP [REP6-018] and draft TMP [REP6-033] set out appropriate and proportionate principles to ensure that emergency and general access to the Hospice would be safeguarded for the duration of the construction period, and that the carrying out of works during the construction period will at no point necessitate closure of the Hospice.

- 5.15.14 Moreover, the recommended dDCO instructs that the CEMP (in accordance with the oCEMP), Requirement 3 in the recommended dDCO, and the TMP, Requirement 11 in the recommended dDCO, must be approved by the SoS and the local highway authority, and that the Proposed Development must be constructed in accordance with those plans. I consider that these Requirements provide sufficient certainty to me that access to the Hospice will be safeguarded.

Social and economic effects

- 5.15.15 A number of IPs in their oral and written representations raise concerns about the effects of the Proposed Development on their communities – eg Paul Bartlett, Village Alliance, and North Willesborough Community Forum [REP3-029, REP5-029; REP3-034, REP5-034; REP3-039, REP5-028]. In particular, concern is expressed in respect of traffic levels, road safety, effects on NMU movements, air and light pollution, noise, the design of structures associated with the new junction, and visual impacts. I have considered these issues and the effects on communities in detail in earlier sections of this chapter.
- 5.15.16 ABC's adopted Core Strategy (2008) and Urban Sites and Infrastructure Development Plan Document (2012) both place significant weight on the need for the Proposed Development to be delivered in order for allocated sites to be built-out, and ABC has granted planning permission for several developments which rely to some degree on the Proposed Development coming forward [RR-002].
- 5.15.17 On 9 June 2016, ABC approved a consultation version of its emerging Local Plan to 2030. The emerging Local Plan relies on the delivery of Junction 10a to an even greater degree, as the Proposed Development will be fundamental to ABC's ability to demonstrate the deliverability of key proposed site allocations for housing and employment development. Without this ability ABC would expect for the emerging Local Plan to be found unsound, or much less suitable sites elsewhere in the borough would be required to be allocated instead [REP3-005].
- 5.15.18 The Proposed Development would create employment through its construction and would, through the additional capacity provided, enable development and growth, particularly in south Ashford. This would achieve a significantly positive impact on employment, allowing ABC to achieve delivery of its long-term plans, and would contribute positively to the ongoing regeneration of the town [REP3-005].
- 5.15.19 The Applicant estimates that in the construction period the Proposed Development would create an average of 205 jobs per year. Once the

development sites¹⁰¹ are fully occupied, the Proposed Development will have brought forward sufficient economic development to support a further 2,050 net additional jobs [APP-193].

- 5.15.20 The Proposed Development would require the CA and demolition of the commercial premises of the Wyevale Garden Centre (WGC), Sweatman Mowers, Kent Leisure Buildings, RCL Pools, and FS Partnership. WGC objects to the Proposed Development (and associated CA powers) which would require the removal of the business and the loss of a valuable trading site [RR-039].¹⁰²
- 5.15.21 The impact of the closure of the garden centre has been assessed in the Land Use and Economic Development Report which is reflected in Chapter 13 of the ES [APP-193, APP-041]. The Applicant acknowledges that the specific loss of the WGC and other businesses would comprise a major and therefore significant adverse effect, but states that the net impact on the area of the Proposed Development would be positive in terms of jobs and economic growth.
- 5.15.22 The NPPF (DCLG, 2012) states that it is a principle of UK planning policy to protect 'best and most versatile' (BMV) agricultural land¹⁰³, and paragraph 5.168 of the NPSNN sets out considerations for DCO applicants.
- 5.15.23 According to the Applicant, in total 26.19 ha of agricultural land would be lost, either temporarily or permanently, as a result of the Proposed Development. Land lost temporarily may be restored post-construction subject to the agreement of the landowner(s). Land which would be permanently removed from agricultural use amounts to 19ha, 18.39 of which is BMV land¹⁰⁴. Although the loss of BMV land cannot be effectively mitigated, the Applicant concludes that the effects of the Proposed Development on agricultural land are adverse but not significant during construction and operation [APP-041].
- 5.15.24 The Proposed Development would also affect seven individual farms during construction and operation. The Applicant considers that the effects of the Proposed Development would be adverse but not significant for seven farms during construction and operation, but significant adverse for one farm during construction and operation in spite of financial mitigation. The latter would be subject to TP powers over 6.05 ha of land and the permanent CA of 4.23 ha of land [APP-041]. In this case of this farm, 41% of the quantum of the farm's lands (10.28 ha) would be permanently acquired. To that end the Applicant concludes that it is likely that farm operations would no longer be commercially viable once the Proposed Development is in operation [APP-041].

¹⁰¹ Identified in the Land Use and Economic Development Report [APP-193]

¹⁰² See also Chapter 8 of this report

¹⁰³ In accordance with The ALC of England and Wales - Revised guidelines and criteria for grading the quality of agricultural land (MAFF, 1988)

¹⁰⁴ 0.36 ha Grade 1; 5.25 ha Grade 2; and 17.78 ha Grade 3a as set out in paragraph 13.6.15 [APP-041]

- 5.15.25 In terms of land loss of designated Open Space as used by the community, the Proposed Development would require temporary land-take of 0.17 ha during construction and permanent land-take of 0.16 ha during operation [APP-041, Table 13.14]. The Applicant considers this to represent a minor adverse but significant effect due to the sensitivity of the receptor. Under the Proposed Development, replacement open space land would be provided adjacent to the current open space land.¹⁰⁵
- 5.15.26 In terms of community severance, the Proposed Development would result in an adverse effect on NMUs during construction, but the Applicant considers that these are not significant after appropriate mitigation measures have been adopted as part of the Register of Environmental Actions and Commitments in the oCEMP (to be delivered through the CEMP in dDCO Requirement 3) and the TMP in dDCO Requirement 11 [APP-041, paragraph 13.8.29 - 13.8.30]. During operation, the Proposed Development is predicted to result in slight beneficial (although not significant) effects primarily due to the new Church Road footbridge, Kingsford Street footbridge and a new footpath on A20 Hythe Road.
- 5.15.27 In making my recommendation about the case for development at Chapter 7 of this report, I have weighed the adverse impacts on agricultural land and individual farms as well as community land and severance, in the overall planning balance.

SUMMARY AND CONCLUSIONS

- 5.15.28 A number of the areas considered by the Applicant and raised by IPs in respect of socio-economic impacts have been addressed in other sections of this chapter, namely: Traffic and Transport (Section 5.2); Road Safety (Section 5.3); Noise and Vibration (Section 5.4); Air Quality (Section 5.7), Water Environment and Flood Risk (Section 5.8); Biodiversity (Section 5.9); Historic Environment (Section 5.12); and Landscape and Visual Impacts (Section 5.13). Associated conclusions are drawn in each case and I do not duplicate consideration of them here.
- 5.15.29 The Proposed Development would provide significant potential to release land for development and support economic growth in the Ashford and the Kent economies. The junction improvements provided would address congestion and improve performance and network resilience in accordance with Section 2.2 of the NPSNN. This would lead to economic benefits to road users in terms of less wasted time and lower journey costs, as well as social benefits in terms of more pleasant journeys and less stress.
- 5.15.30 Insofar as it falls within the powers and duties of the Applicant to do so, I conclude that the Proposed Development would meet the aims of

¹⁰⁵ See Chapter 8 Section 8.7 of this report

the NPSNN in respect of the support of social and economic activity as sought by the relevant paragraphs.

- 5.15.31 I have drawn conclusions in respect of the impacts on the Pilgrims Hospice in Sections 5.2 and 5.11 of this chapter and the Case for Consent in Chapter 7, having satisfied myself that appropriate mitigations would be put in place through the robust consultation and licencing processes which would be secured in the CEMP and the recommended dDCO.
- 5.15.32 I am satisfied that the economic effects and private loss associated with the loss of agricultural lands to the Proposed Development are proportionate in the public interest, and that an appropriate scheme for financial compensation is in place in this regard. I am also satisfied that any adverse effects on NMUs during construction will be adequately mitigated through the oCEMP, as secured through Requirement 3 in the recommended dDCO. During operation, the Proposed Development will improve the NMU network both within, and in the vicinity of, the Proposed Development.

5.16 COMBINED AND CUMULATIVE IMPACTS

POLICY BACKGROUND

- 5.16.1 The NPSNN paragraphs 4.3 to 4.4 require the decision maker to take into account any longer-term and cumulative adverse impacts of a proposal.
- 5.16.2 The NPSNN gives guidance on the assessment of cumulative environmental effects in paragraphs 4.15 to 4.17, while paragraphs 4.82 and 5.223 deal with health, pollution, and water resources.

APPLICANT'S APPROACH

- 5.16.3 The Applicant undertakes an impact assessment of the combined and cumulative environmental effects of the Proposed Development in the ES Chapter 15: Combined and cumulative impacts [APP-043].
- 5.16.4 The assessment draws on guidance provided within the DMRB Volume 11¹⁰⁶: Assessment and Management of Environmental Effects, Section 2 Part 5, and the Planning Inspectorate's Advice Note Seventeen: Cumulative Effects Assessment relevant to Nationally Significant Infrastructure Projects¹⁰⁷ [APP-043].
- 5.16.5 The Applicant bases its assessment on two types of impact:

¹⁰⁶ <http://www.standardsforhighways.co.uk/DMRB/vol11/index.htm>

¹⁰⁷ <http://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/12/Advicenote-17V4.pdf>

- Combined effects from the Proposed Development (the inter-relationship between different environmental factors); and
- Cumulative effects from different projects with the Proposed Development [APP-043].

5.16.6 Chapter 15 is supported by Appendix 15.3: Assessment of combined effects, Appendix 15.4: Assessment of cumulative effects, and Appendix 15.5: Air Quality and Noise & Vibration Cumulative Effects [APP-201, APP-202 and APP-203].

Method of assessment

5.16.7 For combined effects, the significance of construction and operation phase environmental effects are brought forward from the chapters of the ES into matrices for the Main and Alternative Schemes, providing an overview of the potential effects on individual receptors. The significance of combined effects upon each environmental resource is then made, based upon the balance of scores and using professional judgement. Combined effects of moderate adverse and below, or beneficial and above, are considered significant [APP-043].

5.16.8 For cumulative effects, the assessment follows the four stages in the Planning Inspectorate's Advice Note 17:

- Stage 1: Establish the zone of influence and a long list of 'other developments';
- Stage 2: Identify a short list of 'other developments' for assessment;
- Stage 3: Gather information;
- Stage 4: Undertake assessment [APP-043].

5.16.9 A long list of 21 other developments is included in ES Chapter 15: Combined and cumulative impacts, of which 16 are carried forward into a short list [APP-043, Table 15.8].

5.16.10 Appendix 15.2: List of 'other developments' builds on the information in Table 15.8, identifying the long list of Proposed Developments identified at Stage 1 [APP-200]. It shows the sifting process undertaken to develop a short list at Stage 2, as advised in the Advice Note Seventeen.

Predicted combined and cumulative effects

5.16.11 The Applicant assesses the predicted combined and cumulative effects during construction and operation [APP-043, Sections 15.6 and 15.7].

5.16.12 With regard to the residual combined effect during the construction of the Proposed Development, the Applicant concludes that the impact is anticipated to be slight to moderate adverse overall across the various individual environmental topics, taking into consideration any proposed mitigation from the individual chapters of the ES, and is therefore not significant [APP-043, Section 15.6].

- 5.16.13 The residual combined effect during operation is anticipated to be slight adverse at year 1, and neutral at year 15, and therefore is not significant [APP-043, Section 15.6].
- 5.16.14 With regard to the cumulative residual effect during construction as a result of all of the 'other developments' with both the Main and Alternative Schemes, the Applicant concludes that a slight adverse effect overall is anticipated, largely as a result of the cumulative effects anticipated for cultural heritage, landscape, noise and vibration, and effects associated with community and private assets. As such, no further mitigation is required as there are no significant cumulative effects predicted [APP-043, Section 15.6].
- 5.16.15 With regard to the cumulative residual effect during operation as a result of all of the 'other developments' with both the Main and Alternative Schemes, the Applicant anticipates a neutral effect overall, largely due to the significant moderate beneficial effect anticipated for community and private assets, in combination with the other neutral and slight adverse, and therefore not significant, effects anticipated for all other environmental topics. As such, no further mitigation is required as there are no significant cumulative effects predicted [APP-043, Section 15.6].
- 5.16.16 I now consider the issues arising from the Applicant's approach.

ISSUES ARISING

- 5.16.17 The Applicant's approach is based on a sound methodology, and appears to have been applied well.
- 5.16.18 At the start of the Examination, I was unclear about the possible impact of Operation Stack and the proposed Operation Stack lorry park adjacent to junction 11 of the M20 and some 8 km south east of the Proposed Development, which was not specifically addressed by the Applicant's assessment.
- 5.16.19 In my FWQs, I ask ABC, KCC, NE and the EA in particular for their views on the Applicant's methodology in terms of the assessment of cumulative effects [PD-008, Q15.1]. ABC and KCC both state that they do not have any comments on the study area, and refer to the ABC and KCC joint LIR, which sets out a list of developments [REP3-004, REP3-024, REP3-005].
- 5.16.20 The EA states that, within the scope of its remit, it has no concerns on the cumulative effects assessment report as its main concerns are linked to drainage which will be captured under pollution prevention measures [REP3-007]. NE states that it agrees with the scope of the effects including the 2 km study area [REP3-028].
- 5.16.21 In my FWQs, I ask the Applicant why the Operation Stack lorry park has not been included within the other developments, given its proximity to the Proposed Development, and possible potential for significant cumulative effects with it [PD-008, Q15.2].

- 5.16.22 In its response, the Applicant states that the lorry park was not included in the 'other developments' because it was not included in the Traffic Model Uncertainty Log, and because it does not lie within 2 km of the Proposed Development [REP3-035]. The Applicant explains that the list of 'other developments' to be included in the assessment was agreed with one of ABC's Planning Officers, who was satisfied with the developments for inclusion and did not request any additional developments to be considered. The proposed lorry park did not fit within any of the three 'tiers' included within the Planning Inspectorate's advice.
- 5.16.23 In ABC's response to my FWQ Q15.2, ABC defers to KCC [PD-008, REP3-004]. In KCC's response, KCC states that part of the lorry holding area construction will involve new motorway signing for traffic control [REP3-024]. In its view, it is essential that timing of this is considered when any traffic management is in place on the M20 for construction of Junction 10a. In addition, KCC states that should Operation Stack come into operation during the construction of Junction 10a, the possible effect of traffic management must be considered. KCC also envisages that measures will be in place to ensure access and egress to the lorry holding area will be via M20 J11.
- 5.16.24 At the first ISH on the environment, I ask the Applicant to appraise the potential for cumulative effects between the Proposed Development and the lorry park. This was to provide sufficient comfort to the Examination that the potential for significant cumulative effects had been given due consideration [EV-006; EV-008 to EV011].
- 5.16.25 In response, the Applicant re-affirms its position on the exclusion of the lorry park from consideration [REP5-016] and states that a cumulative assessment of the lorry park would not assist the Examination. In its view, the low frequency of Operation Stack deployment, and the infrequent expected use of the lorry park, would mean that accommodating the lorry park in the modelling of operational effects of the Proposed Development would be such that its effects would be highly diluted, having negligible effect on the overall average conditions. The Applicant explains that it would be difficult to make assumptions regarding the frequency, severity, and nature of the effects, which would lead to a high level of uncertainty in outcomes.
- 5.16.26 In my SWQs, I ask the Applicant for the current status of the lorry park application, when work was due to start, when it was envisaged that lorry park spaces would be available, and why the lorry park was not considered a Tier 1 development with reference to the Planning Inspectorate's Advice Note 17, which the Applicant explains in Chapter 15 of the ES has guided its cumulative assessment [PD-012, Q15.01].
- 5.16.27 In its response, the Applicant states that the lorry park application is being progressed through the Highways Act 1980, although this is being contested through a judicial review [REP6-022]. The Applicant also states that construction has not started and will depend on the

outcome of the judicial review. Some spaces could be available in late 2018, but the full area would not be available until late 2019. In the Applicant's view, the use of the Highways Act means that the Tier 1 categorisation specified in the Planning Inspectorate's Advice note 17 guidance is not applicable. The Applicant restates its position from its oral submission following the ISH on the environment [REP5-016, EV-008 to EV011].

- 5.16.28 At the second ISH on the environment, I ask the Applicant whether its statement, that the lorry park would have negligible effect on the overall average conditions during operation of the Proposed Development, would be true should Operation Stack be required during construction of the Proposed Development, or whether there would be significant cumulative effects not presented in the ES [EV-016 to EV-019]. I also ask the Applicant to provide evidence for its assertion regarding the relatively low frequency of Operation Stack deployment, and for a copy of the report on the operational tests that, according to the Applicant, indicate that the potential effects of the lorry park will be much better accommodated with the Proposed Development in Place [REP6-022].
- 5.16.29 In its hearing summary, the Applicant provides some background to the history and usage of Operation Stack, and states that the position is the same for construction as it is for operation [REP8-027]. The Applicant asserts that, due to the likely very low frequency and duration of this event, the instigation of Operation Stack would not change the conclusions of the ES in relation to combined and cumulative effects during construction. According to the Applicant, an agreed protocol (which was not made available to the Examination) is in place with Kent Police so that if Operation Stack is deployed while the M20 Junction 10a is being constructed, there are procedures in place that will either remove traffic management where possible so the carriageway can be used for the Operation Stack purposes or that Kent Police will adjust the plans and the carriageway will not be used for stacking, ie a gap will be created.
- 5.16.30 With regard to the frequency of Operation Stack deployment, the Applicant provides data from 1998 to 2017, which shows that Operation Stack has been deployed an average of 10.55 days per year for the last 20 years for a variety of causes [REP8-027, REP8-035]. The peak years are 2008 (39 days), 2015 (31 days), and 2005 (27 days), with some years (2002, 2011, 2012, 2016 and 2017) experiencing no days of deployment. The Applicant also supplies a copy of the operational tests document, and states that Operation Stack deployment is more a matter of highway operations than cumulative developments [REP8-034].
- 5.16.31 In a submission on the last day of the Examination, the Village Alliance challenges the Applicant's position that the impact of Operation Stack should not be considered [OD-042]. Since the Applicant and other IPs did not have an opportunity to respond, I

cannot give this submission much weight, but the position is reflected in the forgoing narrative.

- 5.16.32 Taking all of the above into account, I note that the application for consent for the Operation Stack lorry park development is being pursued under the Highways Act 1980, although this is currently subject to judicial review.
- 5.16.33 Whatever the outcome, I accept the Applicant's case that the relatively low frequency of Operation Stack deployment, and the infrequent expected use of the lorry park, would mean that accommodating the lorry park in the modelling of operational effects of the Propose Development would mean that its effects would be diluted in terms of mean annual effects.
- 5.16.34 I also accept the Applicant's statement on the cumulative effects during construction in terms of the protocol that has been established with Kent Police, and the operational tests that appear to show that Junction 10a would improve the handling of Operations Stack deployments.

SUMMARY AND CONCLUSIONS

- 5.16.35 In conclusion, I consider that the methodology used by the Applicant for assessing combined and cumulative effects is sound, and was not specifically contested by the local authorities or statutory bodies. The other developments for inclusion as part of the cumulative assessment were also not contested by these parties.
- 5.16.36 At the start of the Examination, I was aware that the Operation Stack lorry park had not been specifically considered as part of the cumulative assessment undertaken by the Applicant. This was an issue I pursued throughout the Examination as I had concerns regarding the potential for likely significant cumulative effects. The Applicant, through submission of other information to the examination on the circumstances of Operation Stack asserts that there would be negligible effects on the overall average conditions during both the construction and operation of the Proposed Development. Having considered those submissions, I consider the Applicant's conclusions to be reasonable and that the Proposed Development is unlikely to result in significant cumulative environmental effects in conjunction with the proposed Operation Stack lorry park.
- 5.16.37 Overall, I find that the cumulative impacts of the Proposed Development and relevant other developments have been properly considered, in accordance with NPSNN paragraphs 4.3-4.4 and 4.15-4.17.

5.17 IMPACT ON THE GREEN BELT

- 5.17.1 The Proposed Development has no impact on the Green Belt [APP-021 and REP7-008]. In its Statement of Reasons, the Applicant states that none of the land within the DCO boundary is designated as Green Belt land [REP7-008, paragraph 4.11]. I have no reason to disagree.

6 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

6.1 INTRODUCTION, POLICY AND LEGISLATIVE CONTEXT

6.1.1 This chapter of my report sets out the analysis and conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS) as the competent authority in performing his duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended) ('the Habitats Directive') and the Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC) ('the Birds Directive'), as transposed in the UK through The Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations'). Natural England (NE) is the statutory nature conservation body.

6.1.2 The evidence presented during the Examination concerning likely significant effects on European sites¹⁰⁸ potentially affected by the Proposed Development both alone and in combination with other plans or projects is assessed. Consent for the Proposed Development may only be granted if, after 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.

6.2 THE APPLICANT'S ASSESSMENT

6.2.1 The Applicant provided an 'Assessment of Implications on European Sites (AIES), Habitats Regulations Assessment' with its application [APP-208]. The AIES considers both the Main and Alternative Schemes and contains a screening assessment. The Applicant concludes within the AIES that the Proposed Development would result in no likely significant effects on any of the European sites screened into the assessment, either alone or when considered in-combination with any other plans or projects.

6.3 RELEVANT EUROPEAN SITES AND THEIR QUALIFYING FEATURES/ INTERESTS

European sites considered

6.3.1 The Applicant identifies European sites for inclusion in the HRA having regard to the following criteria [APP-208, Table 5.2]:

- European sites within the Order limits;

¹⁰⁸ The term European sites in this context includes Special Areas of Conservation (SAC), Sites of Community Importance (SCI), candidate SACs (cSAC), possible SACs (pSAC), Special Protection Areas (SPA), potential SPAs (pSPA), and Ramsar sites. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see the Planning Inspectorate's Advice Note 10.

- European sites within 2 km of the Proposed Development;
- European sites within 30 km of the Proposed Development where bats are a qualifying interest; and
- European sites crossing, adjacent to, upstream or downstream of the Proposed Development.

6.3.2 Accordingly, the following seven sites were identified by the Applicant for inclusion in the screening assessment due to a hydrological link with the Proposed Development site:

- Stodmarsh Ramsar;
- Stodmarsh special protected area (SPA);
- Stodmarsh special area of conservation) (SAC);
- Thanet Coast and Sandwich Bay Ramsar;
- Thanet Coast and Sandwich Bay SPA;
- Thanet Coast SAC; and
- Sandwich Bay SAC.

6.3.3 In addition to the criteria set out above, paragraph 5.2.3 of the AIES also considers the potential for emissions to air to affect European sites located within 200 m of roads affected by the Proposed Development [APP-208]. Environmental Statement (ES) Figure 5.2 identifies the 'affected roads' and the 200 m buffer [APP-072]. Paragraph 5.2.3 of the AIES also states that, although air quality impacts on European sites at distances greater than 200 m from major roads will be considerably smaller, they could contribute to regional effects in combination with other plans and projects [APP-208]. On this basis, the AIES identifies the Wye and Crundale Downs SAC (located approximately 4.5 km from the Proposed Development) as being potentially vulnerable to air quality impacts and it is therefore screened in to the assessment.

6.3.4 The Applicant explains in the AIES that, following the Design Manual for Roads and Bridges (DMRB) methodology, further assessment of the potential effects on the Wye and Crundale Downs SAC was not considered necessary and that there would be no likely significant effects on this European site, either alone or in combination with other plans or projects [APP-208, Paragraph 6.2.5]. No specific mitigation measures are proposed in relation to effects on this site.

6.3.5 The Applicant has confirmed that the Proposed Development is not connected with or necessary to the management for nature conservation of the European sites considered in the assessment [APP-208, Paragraph 5.1.1]. The Applicant has not identified any potential impacts on European sites in other European Economic Area States within its AIES [APP-208].

6.3.6 The Applicant has provided screening matrices for the eight European sites in Appendix F of the AIES, which consider construction and operation of the Proposed Development [APP-208]. Decommissioning is not considered, with the Applicant stating that it is highly unlikely the Proposed Development would be decommissioned [APP-208].

- 6.3.7 The qualifying features/ interests for the eight European sites screened into the assessment are identified in the AIES [APP-208, Tables 5.3 to 5.10].
- 6.3.8 NE confirmed that, in its view, the Applicant has considered all of the relevant European sites and has identified the correct qualifying features/ interests for each of those European sites in its AIES [REP3-028].
- 6.3.9 I am satisfied that the Applicant has correctly identified all of the relevant European sites and their qualifying features/ interests for consideration within the HRA.

6.4 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE) RESULTING FROM THE PROJECT ALONE AND IN COMBINATION

- 6.4.1 The Applicant concludes that there would be no LSE on any of the eight European sites screened into the HRA as a result of the Proposed Development, either alone or in combination with other plans or projects. NE provides confirmation during the Examination that it agrees with the Applicant's conclusion [REP3-028].
- 6.4.2 As a result of the conclusion that there would be no LSE on any European sites, the Applicant has not undertaken an assessment of adverse effects on the integrity of European sites. In its response to my First Written Questions (FWQs), NE confirms its agreement that an appropriate assessment is not required [PD-008, Q8.3; REP3-028].

6.5 MATTERS CONSIDERED DURING THE EXAMINATION

- 6.5.1 I ask a number of questions on HRA matters in my FWQs [PD-008]. Aside from seeking confirmation of the scope and conclusions of the HRA (as reported earlier in this chapter), I wished to consider the mitigation measures proposed in relation to the HRA.

Mitigation measures

- 6.5.2 Chapter 7 of the AIES confirms that no specific mitigation would be required to safeguard the European sites [APP-208]. Notwithstanding this, paragraph 6.2.8 of the AIES explains that 'best practice measures' for pollution prevention and water management during construction have been identified, which would be implemented as part of the Construction Environmental Management Plan (CEMP) [APP-208]. These measures are set out in paragraph 6.2.8 of the AIES and in paragraphs 14.7.3 to 14.7.7 of the ES [APP-208, APP-042]. The Applicant states that no pollution pathways would be created between the construction site and watercourses due to these measures [APP-208].
- 6.5.3 In my FWQ 14.3(i), I ask the Applicant to clarify how all of the pollution prevention and water management measures identified in the AIES and the ES would be secured [PD-008]. The Applicant states that the delivery of these measures would be secured through Requirement

3 in the draft Development Consent Order (dDCO), which ensures that a CEMP is prepared substantially in accordance with the outline CEMP (oCEMP) and implemented accordingly [REP3-035, REP6-018]. The oCEMP contains specific measures in respect of pollution prevention and water management [REP6-018].

6.5.4 Based on the responses from the Applicant and NE to my FWQs, I did not consider it necessary to ask any further questions on HRA matters in my Second Written Questions [REP3-035, REP3-028, PD-008].

6.5.5 I am satisfied that the proposed mitigation is appropriate to ensure that the Proposed Development would not result in any likely significant effects on European sites, and that these measures are adequately secured in the recommended dDCO, in particular through the CEMP.

6.6 OVERALL HRA CONCLUSIONS

6.6.1 I have considered the information provided by the Applicant in its AIES and during the course of the Examination, combined with the views expressed by Interested Parties and in particular NE. I am satisfied that the information provided is sufficient to allow the SoS to conclude that likely significant effects on European sites during the construction and operation of the Proposed Development can be excluded for the project alone and in-combination with other plans or projects, provided the mitigation measures secured in the recommend dDCO are delivered. I therefore consider that the SoS can conclude there would be no adverse effects on the integrity of European sites, and therefore there is no need to consider alternative solutions to the delivery of the Proposed Development, imperative reasons of overriding public interest or the need for compensatory measures.

7 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1 INTRODUCTION

7.1.1 The designated National Policy Statement for National Networks (NPSNN) provides the primary basis for making decisions on development consent applications for national networks Nationally Significant Infrastructure Projects (NSIP) in England by the Secretary of State (SoS). My conclusions on the case for development consent set out in the application before me are therefore reached within the context of the policies contained therein.

7.2 MATTERS IN FAVOUR OF THE DEVELOPMENT

7.2.1 The M20 is the main strategic highway route between the M25, Channel Tunnel, and the Port of Dover. It is part of the European Route E15¹⁰⁹.

7.2.2 As part of the national roads network, the vision and strategic objectives identified in Section 2 of the NPSNN apply to the M20 Junction 10a proposal (Chapter 3, Section 3.2.2). The Proposed Development is of the sort identified in the NPSNN that would provide additional capacity to help reduce traffic congestion, improve journey times and support social and economic activity in accordance with the Government's vision and strategic objectives.

7.2.3 The M20 Junction 10a would meet the critical need identified in the NPSNN to address road congestion 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. The Proposed Development would provide the enhancement to a key strategic route needed to release a constraint to the economy and relieve the negative impacts on the quality of life which result from traffic congestion.

7.2.4 I am satisfied that the Proposed Development would be in accordance with the strategic aims of the NPSNN. It would be an enhancement of the existing motorway that would provide increased capacity in the Ashford area for which there is a critical need. The social and economic benefits of such provision are clearly identified in the NPSNN. The compelling need for the development of the national networks, to which the M20 Junction 10a would contribute, falls to be considered against the generic impacts of the Proposed Development in the terms set out in the NPSNN.

¹⁰⁹ <https://www.unece.org/fileadmin/DAM/trans/conventn/ECE-TRANS-SC1-384e.pdf>

7.3 THE IMPACTS OF THE PROPOSED DEVELOPMENT

7.3.1 The topics in this section are addressed in more detail in the relevant sections of Chapter 5.

Traffic and transport

7.3.2 With regard to traffic modelling and forecasting, I find that the Applicant has applied an appropriate and recognised methodology in accordance with the advice set out in the Design Manual for Roads and Bridges (DMRB). Although some Interested Parties (IP) challenge the Applicant's forecasts for future traffic growth, the Applicant demonstrates that its forecasts are robust. As a result, it has achieved a reasonable assessment of future traffic flows to enable an assessment of the additional capacity that would be provided by the Proposed Development and its likely benefits.

7.3.3 The Proposed Development¹¹⁰ provides for increased capacity for the M20 and other roads around Junction 10, and this would improve traffic flow and reduce journey times in accordance with Section 2 of the NPSNN, which seeks to address road congestion and to provide a national network which better supports social and economic activity.

7.3.4 With regard to the construction period, I have taken note of the concerns of the local authorities and residents in relation to the impact on the local road networks, which has resulted in appropriate amendments to the draft Development Consent Order (dDCO). I find that adequate protection would be secured through Requirement 3: Construction Environmental Management Plan (CEMP) in the recommended dDCO and the traffic management plan (TMP), secured through Requirement 11, to ensure that construction traffic impacts would be effectively mitigated in accordance with NPSNN paragraphs 4.28 to 4.35.

7.3.5 There would be some disruption to non-motorised users (NMUs) during construction, but these effects would be controlled and mitigated in a reasonable and proportionate manner in accordance with NPSNN paragraphs 5.180, 5.184 and 5.185 through careful management as provided through the CEMP and TMP.

7.3.6 With regard to the operation period, the additional capacity provided by the Proposed Development would mean that the motorway, the local authority highway networks overall, and thereby the community in the Ashford area would be likely to benefit from the implementation of the Proposed Development. The issues that arose during the Examination are all satisfactorily addressed and mitigated in accordance with NPSNN sections 2.21 to 2.27.

¹¹⁰ See Sections 2.1 and 5.1 of this report

Road safety

- 7.3.7 The Applicant has developed a Road Safety Audit (RSA), Safety Plan and Combined Safety & Hazard Log. There were no challenges to these documents. I am satisfied that the RSA was undertaken in accordance with recognised standards, and that the Applicant has provided an appropriate response to the recommendations.
- 7.3.8 The Village Alliance raises a concern regarding safety on the northbound M20, and I am satisfied with the Applicant's response regarding the road curvature and lines of visibility.
- 7.3.9 Through the design of the Proposed Development, amended as a result of the RSA and this Examination, I am satisfied that the Proposed Development would achieve a good level of safety, consistent with NPSNN paragraphs 4.60 to 4.66

Noise and vibration

- 7.3.10 During construction, noise impacts may be significant in some locations, but they would be temporary, and the Applicant specifies a range of mitigation measures. I am satisfied that these measures would be controlled through Requirement 3: CEMP in the recommended dDCO and its subsidiary management plans, and through s61 agreements under the Control of Pollution Act 1974 with relevant local authorities.
- 7.3.11 During operation, noise mitigation would be applied through the use of low noise road surfacing, noise barriers and bunds, as refined during the Examination. In response to the call from some IPs for noise monitoring to take place, the Applicant commits to producing a Noise and Vibration Monitoring Strategy as a management plan within the CEMP which must be consulted and approved as specified. I am satisfied with this approach, and with the Applicant's response to IPs' questions regarding the vibration effects on St Mary's Church in Sevington and some listed buildings.
- 7.3.12 I find that the Applicant has adopted a robust, consistent and proportionate approach for assessing the noise and vibration characteristics of the Proposed Development, and making proposals for mitigation. As a result, I am satisfied that the proposals accord with the NPSNN paragraphs 5.186 to 5.200.

Waste management and minerals handling

- 7.3.13 The Applicant would apply the principles of the waste hierarchy to the Proposed Development. The management of waste and materials is secured through the Site Waste Management Plan (SWMP) and Materials Management Plan (MMP), which are management plans within the CEMP, secured through Requirement 3 of the recommended dDCO. The CEMP is subject to consultation with Kent County Council (KCC) as the council responsible for waste management sites. In

response to issues raised by KCC on the safeguarding of minerals, the Applicant produced a Minerals Safeguarding Assessment.

- 7.3.14 I am satisfied that, as far as reasonably practicable, the design and construction of the Proposed Development meet the requirements of the NPSNN paragraphs 5.39 to 5.45 with regard to waste management and materials management.

Air quality

- 7.3.15 I am satisfied that the Applicant has undertaken its assessment of air quality impacts in accordance with published guidance and best practice through the DMRB and Interim Advice Notes (IANs), and has used a conservative long-term trends methodology to allow for uncertainties in traffic and air quality modelling as well as assumptions about the performance of vehicles.
- 7.3.16 With regard to the construction impacts of the Proposed Development, the Applicant submitted updated construction plans during the Examination. The relevant local highway authority, KCC, accepts that significant effects during construction are unlikely, and that a 50 mph restriction on the M20 during construction could lead to (small) reductions in air pollution.
- 7.3.17 I am satisfied that adequate mitigation would be achieved through the CEMP and TMP as secured through Requirements 3 and 11 in the recommended dDCO. The outline CEMP and a draft TMP have been developed in the course of the Examination, and are subject to consultation with the local authorities and approval by the SoS. I am satisfied that through this process the impacts on local communities during construction would be minimised and would be acceptable.
- 7.3.18 With regard to the operational impacts of the Proposed Development, Ashford Borough Council has not declared an Air Quality Management Area (AQMA) within the borough, but nevertheless makes a case, with some IPs, for air quality monitoring to be secured with an additional Requirement in the dDCO, similar to that used in the made DCO for the M4 Junction 3 to 12 Smart Motorway. However, the circumstances are different between the two schemes and the criteria used for the M4 Junction 3 to 12 Smart Motorway do not apply to the Proposed Development.
- 7.3.19 Since monitoring is already taking place on and near the M20, I see no need for a precautionary additional Requirement in this case. Overall, I am satisfied that the Proposed Development meets the tests in NPSNN paragraphs 5.3 to 5.15. I have made my conclusions based on the December 2015 Air Quality Plan and also tested the position against the draft Air Quality Plan published 5 May 2017. It will be for the SoS to satisfy themselves on the position against the final Air Quality Plan published on 26 July 2017.

Water environment and flood risks

- 7.3.20 The Water Framework Directive (WFD) assessment carried out by the Applicant is considered by the Environment Agency (EA) to be adequate, and I have no reason to disagree.
- 7.3.21 The final Flood Risk Assessment (FRA) received near the close of the Examination is also agreed by the EA as the statutory authority, subject to an additional Requirement in the dDCO. As a result, Requirement 14: Flood compensatory storage is included in the recommended dDCO.
- 7.3.22 Land and groundwater contamination has been properly considered and agreed with the EA, which called for enhancements to Requirement 3 and Requirement 8, to ensure that these matters are sufficiently mitigated and secured in the dDCO.
- 7.3.23 Overall I consider that the impacts on the water environment and flood risk have been adequately assessed and the mitigation measures proposed are sufficient. I am therefore of the opinion that the Proposed Development meets the tests set out in NPSNN paragraphs 5.90 to 5.115 (flood risk), including the Sequential and Exception Tests, and 5.219 to 5.231 (water quality and resources) and would comply with the WFD.

Biodiversity and ecological conservation

- 7.3.24 Biodiversity and ecological conservation are fully addressed by the Applicant in the ES, and both Natural England (NE) and the EA are satisfied with the assessment. I have no reason to disagree with the statutory authorities, and consider that biodiversity and ecological conservation issues have been sufficiently considered by the Applicant with appropriate mitigation secured in the recommend dDCO.
- 7.3.25 European Protected Species licences are required in respect of some species prior to the commencement of any development. NE has issued Letters of No Impediment with regard to draft mitigation licence applications in respect of dormouse, great crested newt and badger. Some IPs raise concerns with regard to great crested newts, but I consider that they have been properly treated with appropriate mitigation.
- 7.3.26 The impact on habitats has been addressed by the Applicant. With the mitigation measures secured through the recommended dDCO, I consider that the implementation of the Proposed Development would have only minor impacts on habitats.
- 7.3.27 I am satisfied that the Proposed Development meets the tests in NPSNN paragraphs 5.20 to 5.38.

Climate change adaptation and carbon emissions

- 7.3.28 With regard to climate change adaptation, I am satisfied that the risks of flooding and climate change adaptation have been taken into account and appropriately mitigated through the design of the Proposed Development and the Examination, and that the tests in NPSNN paragraphs 4.36 to 4.47 have been met.
- 7.3.29 With regard to carbon emissions, I am satisfied that the Proposed Development would be likely to fall well within the 0.1% of annual carbon emissions allowed in the fourth carbon budget in accordance with NPSNN paragraph 3.8.

Historic environment

- 7.3.30 The presence of construction activities and compounds within the landscape, and the loss of trees and other vegetation during the construction of the Proposed Development, would have a large/ very large adverse effect on some historic features, notably St Mary's Church at Sevington and some Grade II listed buildings. The impacts would be temporary, and in the case of St Mary's Church mitigated by an earth bund and trees. In these circumstances I find the impacts during construction to be proportionate to the scale of the development and acceptable.
- 7.3.31 During the operation of the Proposed Development, lower levels of impact are anticipated, together with some reduction in the number of locations and receptors affected once construction is complete, and construction equipment, materials and compounds removed or restored.
- 7.3.32 I find that the Applicant's assessment of the impact of the Proposed Development on the historic environment provides a fair representation of the effects. In consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have also had regard to the desirability of preserving or enhancing the heritage assets affected by the Proposed Development in each case. With the added protection of relevant Requirements in the recommended dDCO, the impact of the Proposed Development on the character and appearance of historic assets would meet the tests set out in the NPSNN paragraphs 5.120 to 5.142.

Landscape and visual impacts

- 7.3.33 During construction, there would be adverse effects on the landscape and visual amenity of a number of receptors, including the historic receptors discussed under Historic Environment in Chapter 5 of this report. Mitigation measures, including landscape bunds, and acoustic fences, would initially go some way towards screening the new link road and associated traffic.
- 7.3.34 During operation, the dominance of the M20 within the immediate surrounding area would be increased with the Proposed Development

in terms of both the landscape and visual amenity. However the impacts would be mitigated through provisions for the replacement and enhancement of vegetation and other design features wherever practicable, and by design year 15 screening planting will have developed sufficiently to result in a non-significant visual effect in relation to most receptors.

- 7.3.35 The Applicant enhances the Environmental Masterplan through the Examination, and demonstrates considerable efforts in seeking to mitigate any harmful effects as far as possible. I am therefore satisfied that the extent of the landscape and visual impacts that are anticipated from the construction and operation of the Proposed Development would meet the requirements of NPSNN paragraphs 5.143 to 5.161 and would be reasonable and proportionate.

Pollution control and other and environmental regulatory regimes

- 7.3.36 I find that all pollution and environmental impacts would be subject to control through the recommended dDCO and the relevant pollution and environmental regulations, in accordance with NPSNN paragraphs 4.48 to 4.56.

Socio-economic impacts

- 7.3.37 The junction improvements provided by the Proposed Development would address congestion and improve performance and network resilience in accordance with Section 2.2 of the NPSNN. They would also provide significant potential to support economic growth in the Ashford and the Kent economies. This would lead to economic benefits to road users in terms of less wasted time and lower journey costs, as well as social benefits in terms of more pleasant journeys and less stress.
- 7.3.38 However, the Proposed Development would have some negative impacts, in particular on the Pilgrims Hospice during construction.¹¹¹
- 7.3.39 In so far as it falls within the powers and duties of the Applicant to do so, I conclude that the Proposed Development would meet the aims of the NPSNN in respect of the support of social and economic activity as sought by the NPSNN paragraphs 2.1 to 2.27, 3.2 et seq, 5.162 et seq and 5.202 to 5.212.

Combined and cumulative effects

- 7.3.40 All relevant combined and cumulative impacts of the Proposed Development have been satisfactorily addressed in the ES. I am satisfied that provision is made for any cumulative effects arising from the construction of other major infrastructure projects within the same

¹¹¹ See also Sections 5.2, 5.11, 5.13 and 5.15 of this report

geographical area and time frame in accordance with the NPSNN paragraphs 4.3 to 4.4, 4.15 to 4.17, 4.82 and 5.223.

Green Belt

7.3.41 The Proposed Development does not impact on the Green Belt.

7.4 HABITATS REGULATIONS ASSESSMENT

7.4.1 With regard to the Habitats Regulation Assessment (HRA), the Applicant undertook an Assessment of Implications on European Sites on which NE has been consulted. As a result of the screening exercise, the Applicant concludes that there would be no likely significant effects on any European sites, and NE supports this conclusion. I am satisfied that the Proposed Development meets the tests in the NPSNN paragraphs 4.22 to 4.25.

7.5 THE BALANCE OF ISSUES

7.5.1 The NPSNN paragraph 4.2 advises that, subject to the provisions of s104 of the Planning Act 2008, the starting point for the determination of an application for a national networks NSIP is a presumption in favour of development.

7.5.2 In reaching my conclusions on the case for the Proposed Development, I have had regard to the NPSNN as the relevant national policy statement (NPS), the National Planning Policy Framework (NPPF), the joint Local Impact Report (LIR) and all other matters which I consider are both important and relevant to the SoS's decision. I have further 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. I have concluded that, in all respects, this will not be the case.

7.5.3 Bringing the above conclusions together, I note the Government's strong policy support for schemes that seek to deliver a well-functioning Strategic Road Network (SRN). The M20 Junction 10a would help to deliver this policy.

7.5.4 I have considered the potential impacts of the Proposed Development and the concerns raised by those who made submissions on the application. My conclusions are that there would be some harmful effects, in particular during the construction phase in terms of noise, air quality and visual amenity. However, these would be temporary and mitigated as far as possible through controls secured through the recommended dDCO and other legislation.

7.5.5 In terms of the operation of the Proposed Development, I have identified some limited impact in terms of the landscape and visual amenity, much of which would be mitigated over time through the planting of new vegetation. Impacts in terms of the water environment, flooding, waste management and biodiversity would be neutral or mitigated through controls secured through the

recommended dDCO. The impact on the historic environment would be largely neutral, although some receptors, notably St Mary's Church Sevington, would be adversely affected by the Proposed Development.

- 7.5.6 I am satisfied that, with the proposed mitigation measures, the Proposed Development would not have a significant effect on air quality or the noise environment. With the exception of the Pilgrims Hospice during construction, the impact on health would be largely neutral, with some potential for improvement as a result of the introduction of speed limits and additional noise mitigation measures.
- 7.5.7 There would be no impact on the Green Belt with regard to openness and harm by reason of inappropriate development.
- 7.5.8 All the impacts that I have identified fall to be considered together in the context of the Proposed Development as a whole. In particular, this consideration should be undertaken against the identified benefits of the Proposed Development in relation to the SRN and the Proposed Development's significant supporting role in economic terms, to which I attach substantial weight.

7.6 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT

- 7.6.1 In my judgement, the strategic benefits of the Proposed Development are such that they outweigh the impacts that I identify in relation to the construction of the Proposed Development, and the effects on landscape and visual amenity during operation.
- 7.6.2 I find that the potential harm that I have identified is outweighed by the benefits of the Proposed Development in meeting Government policy as set out in the NPSNN.
- 7.6.3 Having regard to the lack of any viable alternative location for the M20 Junction 10a, I consider that there is no alternative means by which the delivery of a well-functioning SRN could be achieved for the M20 in the vicinity of Ashford.
- 7.6.4 I also see no reason for HRA matters to prevent the making of the Order.
- 7.6.5 I therefore conclude that, for the reasons set out in the preceding chapters and summarised above, development consent should be granted. This conclusion applies to both the Main and Alternative Schemes.

8 COMPULSORY ACQUISITION AND RELATED MATTERS

8.1 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

8.1.1 The request for Compulsory Acquisition (CA) and Temporary Possession (TP) powers is made through the inclusion of Part 5 Powers of Acquisition in the Applicant's final draft Development Consent Order (dDCO) [OD-033]. The following provisions are included:

- Article 21: Compulsory acquisition of land;
- Article 24: Compulsory acquisition of rights;
- Article 26: Private rights over land;
- Article 28: Acquisition of subsoil or airspace only;
- Article 30: Rights under or over streets;
- Article 31: Temporary use of land for carrying out the authorised development; and
- Article 32: Temporary use of land for maintaining the authorised development [REP7-008].

8.1.2 The majority of the land required to deliver the Proposed Development, including the Alternative Scheme, is currently in agricultural use, including managed grassland and land used for crops (about 66% of the Order land). A significant proportion of the land required to deliver the Proposed Development comprises land forming part of the existing highway network (about 34% of the Order land). The remainder of the land required to deliver the Proposed Development (up to 2% of the Order land) is in a number of uses, including the following:

- Open Space land;
- land forming part of the Wyevale Garden Centre;
- four other commercial properties (Sweatman Mowers, Kent Leisure Buildings, RCL Pools and FS Partnership);
- one residential property, known as Highfield Bungalow;
- part of the Pilgrims Hospice site [REP7-008].

8.1.3 The proposed CA of the Open Space land is subject to the tests in s131 and s132 of the PA2008. The recommended dDCO (Appendix D to this report) would engage both s131 and s132 of the Planning Act 2008 (as amended) (PA2008) because the CA of part of the Open Space land is required to deliver the Proposed Development, and the compulsory creation of a new right is also required to deliver the Proposed Development [REP7-008].

8.1.4 The application is accompanied by a Statement of Reasons (SoR) [APP-021], a Funding Statement [APP-022], a Book of Reference (BoR) [APP-023], Land Plans [APP-006] and Special Category Land

Plan [APP-015]. A certificate of compliance with s56 of the PA2008¹¹² and a certificate of compliance with s59 of the PA2008, together with a schedule of changes to the BoR, were provided following the acceptance of the application [OD-002]. Revised versions of the SoR [REP7-008], Funding Statement [REP8-022], BoR [REP6-016 and REP8-024] and Land Plans [OD-010; REP6-039 to REP6-041] were submitted during the Examination to reflect various changes and other corrections.

- 8.1.5 TP powers are sought by virtue of Articles 31 and 32 of the dDCO. In respect of Article 31(a)(i), Schedule 7 lists the plots of land of which temporary possession may be taken (columns 1 and 2) for the purpose specified in relation that land (column 3). Under Article 31(a)(ii) the Applicant would also be authorised to take temporary possession of any other Order land in respect of which no notice of entry or declaration had been made.
- 8.1.6 In respect of Article 32, the Applicant would also, among other things, be authorised to take temporary possession of any land within the Order limits if such possession was reasonably required for the purpose of maintaining the authorised development.
- 8.1.7 Appended to my First Written Questions I publish two tables [PD-008]. Table 1 lists all of the objections to CA and TP received at that time, and Table 2 lists objections from those with a potential category 3 interest within the meaning of s57(4) of the PA2008.
- 8.1.8 In response to Table 1 the Applicant provides to the Examination a Compulsory Acquisition Negotiations Status Report [REP3-016]. The report was updated four times in the course of the Examination, the latest version being received to Deadline 9 in the Examination Timetable [REP9-008]. The Applicant confirms that it has reviewed all the parties in Table 2 in relation to whether or not they would have a category 3 interest [REP3-021].

8.2 THE PURPOSES FOR WHICH THE LAND IS REQUIRED

- 8.2.1 CA and TP powers are required to enable the Applicant to construct, operate and maintain the Proposed Development as set out in Schedule 1 of the recommended dDCO (Appendix D to this report).
- 8.2.2 The Order land is required for all of the works in Schedule 1 of the recommended dDCO, the main groups of which are:
- the creation of a new interchange (Junction 10a) on the M20, east of Junction 10, which will incorporate a new 2-lane dual carriageway link road to the existing A2070 Southern Orbital Road (Bad Munstereifel Road);

¹¹² Under s58 of the PA2008

- a new pedestrian and cycle bridge over the M20 to the east of the new Junction 10a, providing a link between Kingsford Street on the south side of the motorway to the A20 on the north side;
- a new footbridge to replace the existing non-compliant footbridge over the A2070 at Church Road;
- a new retaining wall at Kingsford Street; and
- associated development [APP-001].

8.2.3 Through Article 27 the dDCO applies, with modifications, the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981.

8.3 THE REQUIREMENTS OF THE PA2008

8.3.1 Section 120(5)(a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s117(4) provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. The recommended dDCO (Appendix D to this report) seeks to apply s120(5)(a), so it is provided in the form of a statutory instrument.

8.3.2 CA powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are met.

8.3.3 Section 122(2) provides that the land must be required for the development to which the development consent relates, or be required to facilitate or is incidental to the development, or be replacement land which is to be given in exchange for the Order land under s131 or s132. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate¹¹³.

8.3.4 Section 122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those persons whose land is affected. In balancing public interest against private loss, CA must be justified in its own right, but this does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the Proposed Development. There must be a need for the Proposed Development to be carried out and there must be consistency and coherency in the decision-making process.

8.3.5 Section 123 requires that one of three conditions is met by the proposal¹¹⁴. I am satisfied that the condition in s123(2) is met because

¹¹³ Planning Act 2008: guidance related to procedures for compulsory acquisition (DCLG, 2013)

¹¹⁴ (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met. (2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

the application for development consent includes a request for CA of the land to be authorised.

8.3.6 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must be explored;
- the Applicant must have a clear idea of how it intends to use the land and to demonstrate that adequate funds are likely to be available; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

8.3.7 TP may itself be an alternative to CA. The powers for TP for carrying out the Proposed Development are set out in Article 31 of the recommended dDCO (Appendix D to this report). Article 31(5) provides for compensation for TP. Article 32 gives powers of TP for maintenance during the period defined in Article 32(11). Separately, in respect of TP it is also necessary to consider any interference with interests under the Human Rights Act 1998 and this is done later in this chapter for each case.

8.3.8 During the Examination through amendments to the BoR the Applicant made the following changes in respect of the CA and TP powers proposed in the dDCO:

- CA at plots 4/16/e, 4/16/f, and 4/16/g was removed from the dDCO to reflect the relocation of an ecological mitigation pond to plot 4/11/d;
- plot 4/1/bb was added to correct an administrative error in relation to the boundary of plot 4/12/a;
- the size of plot 2/4/b was reduced to correct an administrative error in relation to the plot boundary comprising the Order limits adjacent to Highfield Mews;
- the size of plot 2/1/g was reduced to correct an administrative error in relation to the boundary between it and plots 2/5/a, 2/6/a and 2/8/a;
- three new plots 2/5/aa, 2/6/aa and 2/8/aa were added to correct the administrative error in relation to the boundary between plot 2/1/g and plots 2/5/a, 2/6/a and 2/8/a, but no additional powers are sought over these plots [REP6-025].

These changes are reflected in the final updated Land Plans [OD-010 (Sheet 1 and Sheet 3), REP6-039, REP6-040 and REP6-041] and the final updated BoR [REP8-024].

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision

(4) The condition is that the prescribed procedure has been followed in relation to the land

8.4 HOW THE EXAMINING AUTHORITY (EXA) EXAMINED THE CASE FOR CA

8.4.1 Two tranches of written questions were posed to the Applicant and Affected Persons in respect of CA and TP in my First Written Questions and Second Written Questions [PD-008, PD-012]. Compulsory Acquisition Hearings (CAH) were held on 23 February 2017 and 18 May 2017 [EV-012; EV-020 and EV-021].

The Applicant's case for CA

8.4.2 The policy background to the application is set out in the updated Case for the Scheme [OD-007]. The National Policy Statement for National Networks (NPSNN) at paragraph 2.2 states that "*there is a critical need to improve the national networks to address road congestion*". According to the Applicant, the need for improvements to the M20 and surrounding network in the Ashford area has been recognised for over a decade:

- November 2003 - the Proposed Development was added to the Government's Targeted Programme of Improvements, and the Highways Agency was instructed to develop and appraise options for a new Junction 10a;
- June to September 2008 - public consultation was held for three options;
- March 2010 - the preferred route/ option was announce;
- 2010/ 2011 - the 'preferred scheme' was developed as part of preliminary design;
- May 2011 - progress was halted due to lack of Government funding;
- December 2013 - M20 Junction 10a was announced as one of nine schemes with committed funding as part of spending review 2013.

8.4.3 The Proposed Development objectives are identified in paragraph 1.1.9 of this report, and the Applicant assesses the performance of the Proposed Development against these objectives in its final updated SoR [REP7-008]. In achieving these, the Proposed Development would make a significant contribution to the fulfilment of UK Government policy and objectives in relation to transport.

8.4.4 The whole of the Order land is required for the purposes of the Proposed Development, or is required to facilitate or is incidental to it, or is replacement land which is to be given in exchange for the Order land under s131 and s132 of the PA2008. The CA of the Order land, or of interests or rights over the Order land, the imposition of restrictive covenants and TP powers are therefore required. Without the Order lands the Proposed Development cannot be delivered [REP7-008].

8.4.5 The Applicant has explored alternative options for the Proposed Development and, following public consultation, selected the most appropriate option. The Applicant concludes that none of the

alternative options would obviate the need for the CA and TP of land. The land is no more than is reasonably required for the construction, operation, maintenance and mitigation of the Proposed Development and the limits of the land have been drawn as tightly as possible so as to avoid unnecessary land-take [REP7-008].

- 8.4.6 Government guidance about CA¹¹⁵ recognises that, in some cases, it may not always be practicable for an Applicant to acquire each plot of land by agreement. Where this is the case, the CA Guidance confirms that it is reasonable to include provision authorising CA covering all the land required at the outset. It also recognises that in some cases it may be preferable, or necessary, to acquire land compulsorily rather than by agreement [REP7-008].
- 8.4.7 The Applicant has sought (and continues to seek) to acquire the necessary interests in the Order land through private treaty [REP3-016, REP5-015, REP6-021, REP7-011 and REP9-008]. However, acquisition by agreement may not be achievable in all cases, or in any event within the timescales necessary to ensure that the programme for the construction of the Proposed Development would be met. There are also cases where the ownership of land, or of interests in or rights over land, is unknown, and where it would therefore not be possible to acquire the interest or right except by way of CA [REP7-008].
- 8.4.8 The specific purposes for which land subject to CA and TP powers is proposed in order to deliver the Proposed Development are set out in Appendix A of the updated SoR [REP7-008]. The tables at Appendix A describe the purpose for which each plot of land is required in order to deliver the Proposed Development, and demonstrate that the land over which powers of CA and TP are sought is no greater in extent than is necessary for the delivery of the Proposed Development. Having considered the Applicant's evidence, and through my examination of the relationship between the Order lands and the works in Schedule 1 of the recommended dDCO (Appendix D to this report), I find that the Proposed Development satisfies the tests in s122(2) of the PA2008.
- 8.4.9 In terms of s122(3) of the PA2008, I have reached the conclusion (see Chapter 7 of this report) that the Proposed Development would meet the need identified in paragraph 2.23 of the NPSNN for "*junction improvements, new slip roads and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion*". NPSNN paragraph 2.16 states that traffic congestion constrains the economy and impacts negatively on quality of life. I find that there is therefore a compelling case in the public interest for CA and TP powers to implement the Proposed Development and that the public benefit derived from the CA

¹¹⁵ Planning Act 2008: guidance related to procedures for compulsory acquisition (DCLG, 2013)

outweighs the private loss that would be suffered by those persons whose land is affected.

- 8.4.10 The Proposed Development would also contribute to the delivery of local strategic development as set out in the development plans of Ashford Borough Council (ABC) and Kent County Council (KCC). Through the process of environmental impact assessment (EIA), the Proposed Development has addressed the potential for environmental impacts and I have concluded in Chapter 7 of this report that development consent should be granted for the proposed M20 Junction 10a [OD-007 and REP3-005].

Availability and adequacy of funds

- 8.4.11 The estimated capital cost for the construction of the Proposed Development is £104.4 m. This estimate includes all costs to deliver the Proposed Development, from options development through to the opening for traffic. It includes an allowance for compensation payments relating to the CA of interests in, and rights over, land and the TP and use of land. It also takes into account potential claims under Part 1 of the Land Compensation Act 1973, Section 10 of the Compulsory Purchase Act 1965 and s152(3) of the PA2008 [REP8-022].
- 8.4.12 The Government's commitment to funding the Proposed Development is set out in Investing in Britain's Future (June 2013)¹¹⁶. At Annex A (Table A.6) the Government stated that it was committed to funding the Proposed Development subject to finalisation of options and agreement being reached on developer contributions. This commitment was confirmed in the December 2013 National Infrastructure Plan¹¹⁷, page 107 [REP8-022].
- 8.4.13 The Proposed Development will be partially funded by HM Treasury to the extent of £50 to £100 m, in line with the Road Investment Strategy (RIS1) plan commitments. The South East Local Enterprise Partnership Accountability Board confirmed in February 2017 the award of £19.7 m to deliver the Proposed Development, and £16 m will be provided from local developer contributions [REP8-022].
- 8.4.14 The Department for Communities and Local Government (DCLG) has agreed to forward fund the £16 m contribution from local developers subject to a funding agreement between the Homes and Communities Agency (HCA) and ABC, which will provide for the repayment of the £16 m to the HCA from developer contributions over the period to 2030. This agreement has been signed by both parties and it is

¹¹⁶

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209279/PU1524_IUK_new_template.pdf

¹¹⁷

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263159/national_infrastructure_plan_2013.pdf

expected that DCLG will release funds across two financial years with a first contribution released by the end of November 2017 at the latest [REP8-022].

- 8.4.15 The present intention is that, if the Alternative Scheme is selected, the Stour Park developer would contribute to the cost of the Proposed Development, but because of the nature of the works involved in the provision of the Alternative Scheme, the work would be carried out by the Applicant as part of the construction of the Proposed Development. There is therefore a cost saving to all parties in including the Alternative Scheme in the dDCO, even though the Applicant cannot commit to constructing the Alternative Scheme without first securing the developer's funding contribution [REP7-008].
- 8.4.16 The Applicant confirms that funding for the Alternative Scheme will need to be secured before it exercises any powers of CA and TP in accordance with Article 21 of the dDCO. If the Stour Park developer does not provide funding before this, the Alternative Scheme will not be implemented [REP3-021]. Whilst it is not beyond doubt that the Stour Park developer contributions will be forthcoming, I am convinced that there is a reasonable prospect of this happening. Notwithstanding this, I am satisfied that the financial commitment from the HCA means that adequate funds will be available for release at the appropriate time.
- 8.4.17 The extent of CA and TP powers sought by the Applicant is the same for both the Main Scheme and the Alternative Scheme. On this basis, and notwithstanding the funding arrangements for the Alternative Scheme, in light of the secured funding for the Main Scheme I am persuaded that it is certain that funds will be available for CA and TP and for compensation for the lifetime of the acquisition, construction and implementation processes.

8.5 THE OBJECTORS' CASES

- 8.5.1 I set out below the cases for those who made objections to the CA or TP of their land and/ or interests. I do not include those whose objections were withdrawn. The position in respect of CA negotiations at the end of the Examination is provided by the Applicant in its final Compulsory Acquisition Negotiations Status Report [REP9-008]. This document sets out the position for each affected interest in respect of each of the plots which are included in the final BoR [REP8-024].

Katherine Covell, Joanne Covell-Burger, Emma Jones (as beneficiaries of the estate of Marianne Clunies-Ross deceased) and Mark Aspinall, Carol House and Jeremy Smith

Plots 2/2/a, 2/2/b, 3/2/a, 3/2/b

Case for the objectors

- 8.5.2 The original objection and subsequent representations were made by David Lowe on behalf of the Executors of Marianne Clunies-Ross and

Others [RR-008, REP3-006, REP6-002 and OD-019]. In a representation dated 3 May 2017 I was informed by Mr Lowe that the administration of the estate had been completed and the deceased's interest in the land bequeathed and transferred in equal shares to Katherine Covell, Joanne Covell-Burger and Emma Jones (as beneficiaries of the estate) [OD-023]. They are therefore considered to be the owners of the land along with Mark Aspinall, Carol House and Jeremy Smith who had each been identified as part-owners from the outset.

- 8.5.3 The objectors hold the freehold interest in land which would be required to deliver the Alternative Scheme [REP9-001]. They fully support the Proposed Development, subject to the Applicant agreeing to provide as part of the Alternative Scheme a fourth arm on the north side of the Stour Park Roundabout (Work no. 2B in the dDCO). This will ensure that the land in the objectors' ownership is accessible [RR-008]. The objectors are seeking for the Applicant to provide a token 'stub end' which - according to them - should not be difficult to incorporate as part of the Alternative Scheme bearing in mind that a works exit is already shown as leading off the north side of Work no. 2B [REP3-006].
- 8.5.4 The objectors state that without provision for a fourth arm off the Stour Park Roundabout the Alternative Scheme fails to make adequate advance provision for all potential access requirements necessary to maximise the adjoining area and avoid a significant block of land being landlocked [OD-019]. The objectors did not submit representations to the Examination seeking for land in their interest to be furnished with access if the Applicant progresses with the Main Scheme.
- 8.5.5 Further, the objectors suggest that plot 3/16/c is acquired by the Applicant and then transferred to the objectors as part of a land purchase/ exchange arrangement [RR-008].
- 8.5.6 The objectors also explain that a culvert forming part of the Proposed Development (to the west of FP AE337A) will be connected to the Aylesford Stream to the north across land which is sought to be compulsorily acquired from the objectors. The Applicant has stated that this drainage feature is incorporated to provide surface water outfall from the proposed Stour Park Development, and is completely separate from the highway drainage system. In effect, according to the objectors, the Applicant is compulsorily acquiring land for the Proposed Development, then having acquired it granting rights over it to a private developer (Friend's Life Ltd (FLL)) to facilitate a private commercial development on an adjoining site [REP6-002]. The Applicant is intending to use CA powers for something that is different from the purpose for which those powers will be granted. This is unjust and inequitable and would hamper the objectors' negotiating position for any future development of the objectors' land [REP8-004]. Unless a restrictive covenant blocking the construction of the outfall pipe intended to serve the Stour Park Development is applied, their objection is sustained [REP8-003].

8.5.7 In respect of plot 2/2/a there is no objection to the land being used temporarily by the Applicant, but the objectors state that it seems inequitable that the contractors will only be required to pay a rent based on agricultural values. TP of this plot should be excluded from the CA powers in the dDCO and dealt with through open negotiations for commercial rent values [REP8-004].

Applicant's response

8.5.8 The Applicant states that the Alternative Scheme is dependent on a financial contribution from the developer of the Stour Park Development. If funding is not provided the Stour Park Development will not be delivered. The application for the Main Scheme cannot be amended to include a potential provision for an unconfirmed alternative option. If the objectors wish to progress a development in the future then access to a potential roundabout can be the subject of a planning application to ABC [REP3-017].

8.5.9 In relation to the culvert, it is correct that in order to secure removal of FLL's objection the Applicant has agreed to grant an easement for a drainage pipe from the Stour Park Development to the Aylesford Stream. This would cross plot 3/16/b (sought to be permanently acquired from FLL) and plot 3/2/b (sought to be permanently acquired from the objectors in this case). A plan showing the culvert was submitted at Deadline 8 [REP8-007].

8.5.10 The Applicant states that the easement referred to above may have a value but that is a matter of compensation which should not be debated in the Examination. The Applicant has not manipulated its scheme boundary to assist FLL. The Applicant's plans have been continuously and thoroughly reviewed and the use of each plot of land proposed to be used or acquired under the dDCO has been justified. It is entirely normal when a scheme is disturbing the existing 'status quo' for negotiations to take place with affected landowners and for the Applicant to try to minimise the impact on affected landowners. The Applicant has not formulated the scheme to achieve a collateral purpose. All the land involved is being acquired outright [REP8-028].

8.5.11 As a more general point it is never the case that land which has been compulsorily acquired is restricted from being used for other purposes in addition. Otherwise crossing railway lines, for example, all of which were built using Compulsory Purchase Orders, would not be possible [REP8-028].

8.5.12 In respect of plot 2/2/a, the land is required temporarily for use as a site compound area and will therefore not be removed from Schedule 7 of the dDCO. Mr Lowe's argument does not dispute whether the temporary use of the land is justified, and there is no alternative use of this plot. Mr Lowe's request relates to compensation, which will be assessed under the compensation code, and is not a matter for the Examination [REP8-028].

ExA's conclusions

- 8.5.13 In respect of the proposed CA of plots 2/2/b, 3/2/a and 3/2/b, I find that in each case the powers sought are necessary for the implementation of the Proposed Development and that there is a compelling case in the public interest. The proposed CA therefore meets the tests in s122 of the PA2008. This is the case and my conclusion irrespective of whether the Alternative Scheme and the Stour Park Development are realised. Any financial disadvantage to the objectors is a matter of compensation and therefore is not applicable to the statutory tests in the PA2008.
- 8.5.14 In respect of the proposed TP of plot 2/2/a, it is not necessary for the Applicant to demonstrate a compelling case in the public interest. TP powers are not CA powers and accordingly the tests under s122 and s123 of the PA2008 are not applicable. However, the use of TP power must be justified in order to enable the Proposed Development to be implemented and maintained, the inevitable interference with human rights must be justified, and there must be adequate compensation provisions in place for those whose land is affected.
- 8.5.15 On the basis of the information before the Examination I regard the TP of lands in the objectors' interest as necessary for the Proposed Development. The Applicant has appropriately demonstrated measures to minimise land-take and I am satisfied that no more land than is required is sought to be temporarily possessed. I also find that the interference with the use of and rights over the land required for TP to be proportionate and justified in the public interest.
- 8.5.16 Human Rights considerations are presented in section 8.8 of this report, and I am satisfied that in this case the TP powers that have been requested are needed to deliver, maintain and remove the development. I am satisfied that there are adequate compensation provisions in place in Articles 31 and 32 of my recommended dDCO (Appendix D to this report) for the TP powers that are required. I conclude that in this case the TP powers that are being sought by the Applicant should be granted.

Wyevale Garden Centre Holdings Limited

Plots 2/4/a, 2/4/b, 4/9/a

Case for the objector

- 8.5.17 Wyevale Garden Centre Holdings Limited owns the freehold title in Wyevale Garden Centre (WGC), Hythe Road, Willesborough, Ashford, Kent, TN24 0NE. WGC is located between the M20 and A20, approximately 750m from Junction 10 of the M20 [RR-039].
- 8.5.18 The Proposed Development would be located directly where WGC is situated currently and it would therefore not be possible for WGC to continue its business if CA and TP powers are granted and the Proposed Development is realised. A valuable trading site will be lost

to the Proposed Development and there will be a significant negative impact on local employment [RR-039].

Applicant's response

- 8.5.19 The impact of the closure of the garden centre has been assessed in the Land Use and Economic Development Report [APP-193], as reflected in Chapter 13 Community and Private Assets of the Environmental Statement [APP-041, APP-130 and APP-193 to 195]. The net impact on the area of the Proposed Development is a positive one in terms of jobs and economic growth. The specific loss of the garden centre is acknowledged as a significant adverse effect [REP3-017].

ExA's conclusions

- 8.5.20 CA of plots 2/4/a and 4/9/a and TP of plot 2/4/b is required to deliver the Proposed Development, which is in the public interest. I find that the powers sought are both proportionate and justified in the public interest. The CA and TP of these plots meet the tests in s122 of the PA2008. WGC is a willing seller [REP9-008].

Pilgrims Hospice

Plots 2/5/a, 2/5/aa

Case for the objector

- 8.5.21 The Applicant seeks TP powers over lands forming the access road to the Ashford Pilgrims Hospice [REP6-040 and REP8-024].
- 8.5.22 The Pilgrims Hospice is situated on Hythe Road to the North West of the Wyevale Garden Centre. It is a peaceful sanctuary for dying and very ill people, managing the end of life for over 2,500 local people per year. According to the objector, the Hospice's gardens, which face directly onto Hythe Road, are a vital resource for the wellbeing of patients, visitors and residents. Having motorway traffic brought into the vicinity of the Hospice will decimate the peaceful setting and severely disrupt the end of life experience of thousands of local residents [RR-035].
- 8.5.23 Ward bedrooms are on the first floor of the Hospice, facing the gardens and overlooking Hythe Road. According to the objector, the additional noise, congestion and fumes will mean that it will be almost impossible to open the doors onto the bedroom balconies, depriving patients of the garden amenity. The gardens cannot be moved. A large part of the Hospice's car park, and its only entrance, is going to be compulsorily acquired for a construction compound. The noise that will emanate from the compound over possible 24 hour working will significantly impact the Hospice. The loss of the car park will severely restrict access for visitors, relatives and staff; including elderly volunteers. Without these volunteers the Hospice will have no choice but to shut the site for the duration of the construction programme. If

the Hospice closes the consequences for the National Health Service (NHS) would be dire as it would have to deal with all the patients that the Hospice could no longer house [RR-035].

Applicant's response

- 8.5.24 A satellite site compound will be located at the Wyevale Garden Centre site but it will not be used for plant and machinery. It will be used mainly as offices and will therefore be very similar to how the site currently operates [REP6-022 and REP5-012]. The operation of the site compound will be subject to measures laid out by the local environmental health officer. The Applicant's contractors will also be required to apply for the Considerate Constructors Scheme (CCS). Part of the focus of the CCS is on respecting the community [REP3-017].
- 8.5.25 The main site compound, which will inevitably be used to store and operate plant and machinery, will be situated off the existing A2070 away from the Hospice [REP3-017].
- 8.5.26 Noise impacts on the Pilgrims Hospice are assessed in Chapter 11; Noise and Vibration, Volume 6.1 of the Environmental Statement [APP-039, APP-121 to APP-127, and APP-187]. This assessment concludes that levels of noise from the A20 once the Proposed Development is operational are expected to reduce. The Applicant has also incorporated a 2 m high acoustic bund to the rear of Summerhill Place, adjacent to the M20 Junction 10a eastbound off-slip [REP3-017].
- 8.5.27 The Applicant has established a relationship with the AP to ensure that the impact of the works on the Pilgrims Hospice is minimised wherever possible. A number of noise control measures are set out in the outline Construction Environmental Management Plan (oCEMP) [REP6-018] and the Applicant will discuss any s61 application¹¹⁸ made to ABC with the Hospice [REP6-022].

ExA's conclusions

- 8.5.28 The Hospice does not explicitly object to the TP of land in its interest, but the substance of its representations has led to consensus that an objection is made.
- 8.5.29 Progress in respect of negotiations between the parties is tracked through the five iterations of the Applicant's Compulsory Acquisition Negotiations Status Report [REP3-016, REP5-015, REP6-021, REP7-011 and REP9-008]. Notably Pilgrims Hospice made representations on the final day of the Examination stating that it was willing to withdraw its generic objection to the TP powers, but the withdrawal was subject to my careful consideration of a number of issues,

¹¹⁸ Under the Control of Pollution Act 1974

itemised below, to ensure that suitable conditions are included in any consent [OD-041]:

- (1) Emergency vehicles – there must be uninterrupted access available in and out of the Hospice at all times;
- (2) General access – the access onto the A20 must not be unnecessarily blocked and the Hospice must be provided with at least 14 days' notice of a planned closure. This will ensure that any planned deliveries can be rescheduled, alternative parking arrangements can be made and where possible patient and visitor numbers can be controlled;
- (3) Working hours – any works within the vicinity of the Hospice must be completed between the hours of 7am and 6:30pm and where possible weekend working should be restricted. The only exception to this is whilst the works to the access are being completed;
- (4) Noise – it is agreed that noise monitoring will be completed a number of times prior to the commencement of the works and it is essential that parameters are set to ensure that noise levels do not become unreasonable;
- (5) Services/ utilities – the Hospice must be provided with a minimum of 14 days' notice, should there be any works undertaken to the various services supplying the Hospice;
- (6) Lighting – any additional lighting installed as part of the works that will impact on the Hospice, whether temporary or permanent should be low level and not projected towards the Hospice;
- (7) Footpath – it is the intention that a temporary pedestrian path is installed upon the Hospice site, and whilst there are no real objections to this running alongside the carpark it needs to have a suitable surface, be lit and segregated from the Hospice by a suitable fence;
- (8) Trees – the treeline against the A20 provides the Hospice with much needed screening; where possible the trees should be retained and any trees removed should be replaced.

8.5.30 Clearly this does not constitute an unconditional withdrawal of the objection to TP powers. I therefore consider the Hospice's objection to be extant at the close of the Examination.

8.5.31 In the main the issues listed in paragraph 8.5.29 are of the type that I would have expected the parties to reach agreement about in the course of the Examination, and secured, for example, in the oCEMP. Since the objector's final representations were submitted on the last day of the Examination, there was insufficient time for the Applicant to respond. Notwithstanding this, many of the issues are addressed in Chapter 5 of this report and I have made my recommendation in respect of whether development consent should be granted in Chapter 7.

8.5.32 In respect of the issues listed in the representation made by the Hospice on the final day of the Examination, I am satisfied that the conditions sought by the Hospice would all be satisfied though the

CEMP and TMP, as secured through Requirements 3 and 11 of the recommended dDCO [OD-041, OD-033].

- 8.5.33 I am particularly mindful of the sensitive characteristics of the Hospice as a receptor, but the Proposed Development is a nationally significant project with significant support in national policy. Moreover any interference with the Hospice's operations would be for a prescribed and temporary period and compensation would be available for any losses which could be experienced. There are major economic and social benefits which would arise from the provision of Junction 10a and the need to deliver the Proposed Development is such that I find that the public benefit would outweigh the interference with private interests in a way that is both proportionate and justified in the public interest.
- 8.5.34 On the basis of the information before the Examination I regard the TP of lands in the objector's interest as necessary for the Proposed Development. The Applicant has appropriately demonstrated measures to minimise land-take and I am satisfied that no more land than is required is sought to be temporarily possessed. I also find that the interference with the use of and rights over the land required for TP to be proportionate and justified in the public interest.
- 8.5.35 Human Rights considerations are presented in section 8.8 of this report, and I am satisfied that in this case the TP powers that have been requested are needed to deliver, maintain and remove the temporary works. I am satisfied that there are adequate compensation provisions in place in Articles 31 and 32 of my recommended dDCO (Appendix D to this report) for the TP powers that are required. I conclude that in this case the TP powers that are being sought by the Applicant should be granted.

Friends Life Limited (FLL)

***Plots 3/16/a, 3/16/b, 3/16/c, 3/16/d, 3/16/e, 3/16/g,
4/16/a, 4/16/b, 4/16/c, 4/16/d***

Case for the objector

- 8.5.36 FLL holds the freehold interest in lands comprising the above plots. The lands are designated by Policy U19 in the ABC Urban Sites and Infrastructure Development Plan Document 2012, and are subject to an as yet undecided 2015 outline planning application for an employment-led mixed use scheme over approximately 48 hectares ('The Stour Park Development') [REP3-009].
- 8.5.37 ABC resolved to grant the above planning permission in May 2016 subject to the completion of a s106 agreement and referral to the Secretary of State (SoS). Highways England has no objection to the planning application for the Stour Park Development, and the SoS is being consulted on the resolution. Following the SoS's confirmation that it does not intend to intervene, the s106 agreement will be completed and this will allow ABC to issue a planning permission. As

soon as the planning permission is available a copy will be provided to the Examining Authority [REP3-009].

8.5.38 FLL supports the Proposed Development in principle but objects to the proposed CA of its land on the grounds that it is unnecessary and would significantly prejudice FLL's ability to deliver the development of the site. The Stour Park Development is of strategic importance to the Borough and is one of things which the proposed M20 Junction 10a is intended to support [RR-016].

8.5.39 FLL's initial objection applied to all plots in which it holds freehold interest. The objection in respect of each plot fell into one of the following categories:

- (a) Land which FLL acknowledges is required for the Proposed Development but for which there is an alternative to CA or TP and FLL is prepared to negotiate the transfer of the land or rights to use the land;
- (b) Land which FLL does not agree is required to deliver or facilitate the Proposed Development;
- (c) Land that is required for the Proposed Development but which a lesser area could be subjected to CA or TP powers to achieve the same effect [REP3-009].

8.5.40 In the course of the Examination FLL withdrew its objection to the proposed CA of plot 4/16/d, acceding that the land would be required to deliver the Proposed Development. Additionally plots 4/16/e, 4/16/f and 4/16/g, which were originally comprised within FLL's objection, were removed from the CA powers in the dDCO [REP3-009].

8.5.41 An 'Agreed Joint Statement of Highways England and Friends Life Limited' (the Agreed Statement), which deals exclusively with FLL's objection to CA and TP, was progressed throughout the Examination [REP5-006, REP6-030, REP8-036 and OD-040]. The latest version was submitted on the final day of the Examination, demonstrating - according to the objector - significant progress in negotiations between the two parties [OD-040]. However the final update to the Agreed Statement between the parties does not in my opinion comprise an unequivocal withdrawal of FLL's objection to CA and TP powers, and a late representation from FLL suggesting that its objection would be withdrawn before the close of the Examination was not followed through [OD-040]. At the close of the Examination FLL's objection to the CA and TP powers at plots 3/16/a, 3/16/b, 3/16/c, 3/16/d, 3/16/e, 3/16/g, 4/16/a, 4/16/b and 4/16/c remained extant.

8.5.42 FLL chose not to appear at either of the CAHs which were held in the course of the Examination [EV-012, EV-020 and EV-021].

Applicant's response

8.5.43 The Applicant responds to FLL's objection on a plot-by-plot basis, reasserting the need for the CA or TP powers sought to deliver the Proposed Development in each case [REP3-017 and REP4-021].

8.5.44 In the course of the Examination discussions between the parties progressed in a positive manner and the areas of agreement are reflected in the final Agreed Statement [OD-040]. Those areas of agreement are enabled through a number of specific measures incorporated by the Applicant which resolve the concerns cited by FLL. The areas of agreement of as follows:

- **Plot 3/16/a:** FLL initially objected to the extent of CA at this plot. The land is required by FLL for car parking in conjunction with its future development of Batts Farmyard [RR-016 and REP3-009]. The parties now agree that the car parking cannot be accommodated because Highways England requires the land for dormouse mitigation [REP8-036];
- **Plot 3/16/b:** FLL initially objected to the CA of this plot because the land is required for a balancing pond to serve the Stour Park Development. FLL stated that it was willing to transfer this land to the Applicant subject to FLL being able to discharge into the balancing pond that will be created by the Applicant [RR-016 and REP3-009]. The Applicant has agreed to grant an easement to FLL for a drainage pipe over the plot, enabling discharge to the shared balancing pond [REP8-036];
- **Plot 3/16/c:** FLL initially objected to the TP of this plot on the basis that it has been planted with wild flora to provide ecological mitigation for the Stour Park Development. The Applicant's compound can be easily located on neighbouring open land to the west of the plot. This plot is no longer required and should therefore be removed from land to be compulsory acquired [RR-016 and REP3-009]. The Applicant has agreed to relocate its temporary construction compound and to use the plot in connection with the Southern Gas Networks gas main diversion only [REP8-036];
- **Plot 3/16/d:** FLL initially objected to TP powers and the creation of new rights at this plot [RR-016]. However, following the receipt of further information FLL acknowledges that the plot is required for the Proposed Development [REP3-009]. FLL has no objection to the Applicant's use of this plot subject to the Applicant informing FLL of the Applicant's construction timetable/ programme [REP8-036];
- **Plot 3/16/e:** FLL initially objected to the CA of this plot as it has been planted with wild flora to provide ecological mitigation in relation to the Stour Park Development [RR-016]. The parties have now agreed to share the use of this plot for the purposes of environmental mitigation [REP8-036];
- **Plot 3/16/g:** FLL initially acknowledged that it would be necessary for the Applicant to temporarily acquire the plot and acquire rights permanently [REP3-009]. FLL has no objection to the Applicant's use of this plot [REP8-036];
- **Plot 4/16/a+b:** FLL initially objected to TP powers and the creation of new rights at these plots on the basis that the land is not required for the Proposed Development. More comprehensive environmental mitigation is proposed by FLL as part of the Stour Park Development. Use of this land by the Applicant would

prejudice the future development of Sevington (East), circa 100 acres of land to the east of Highfield Lane running across to Blind Lane and Kingsford Street, and which is also envisaged in the local plan for future development [RR-016 and REP3-009]. FLL now has no objection to the Applicant's use of these plots subject to the provision of a pre and post schedule of condition and the restoration of the land following the Applicant's works [REP8-036].

- **Plot 4/16/c:** FLL initially objected to the CA of this plot as the land is required under a s106 agreement to provide a turning loop to enable vehicles to exit Highfield Lane. KCC has agreed to progress the turning loop at the cost of FLL. CA of this plot is therefore unnecessary [RR-016 and REP3-009]. FLL is obliged under a separate planning agreement to transfer part of this plot to KCC eight weeks after FLL being granted planning permission for the proposed Stour Park Development. The Applicant has made an agreement direct with KCC in relation to this plot in order to provide reassurance that the Applicant will not act to interfere with the delivery of the proposed turning loop in this location. The Applicant has also included amendments to the dDCO to provide further reassurance to KCC [REP8-036]. The planning agreement between FLL and KCC was not supplied to the Examination, and the SoS may wish to request sight of it.

8.5.45 It is not the intention of the Applicant to seek to remove any plots from the proposed CA and TP powers in its final dDCO. Nor is it the Applicant's intention to remove any of the interests owned by FLL, whether or not a private agreement is reached between the parties. It is essential that these plots remain subject to the powers included in the dDCO. Any agreement reached with FLL may or may not limit the exercise of the relevant powers of CA and TP. In adopting this approach, the Applicant's position aligns with that typically adopted by other nationally significant infrastructure projects (NSIP) applicants which seek CA and TP powers, and so it is not expected that this approach should be considered to be controversial [REP4-021 and REP8-036].

ExA's conclusions

8.5.46 In the Rule 8 letter I requested for a signed Statement of Common Ground (SoCG) between the parties to be produced to Deadline 3 in the Examination Timetable [PD-007, Annex C]. The requested SoCG was not submitted to the Examination by the deadline set, but a first iteration of the Agreed Statement [REP5-006] was submitted to the first CAH on 23 February 2017 [EV-012]. The Agreed Statement would stand in place of a SoCG [REP6-022].

8.5.47 In spite of the reported progress between the parties, as formalised in the final Agreed Statement [OD-040], at the end of the Examination FLL had not withdrawn its objection to the proposed CA and TP of land in which it holds the freehold interest. I must therefore consider the objection to be extant.

- 8.5.48 Nor had planning permission for the Stour Park Development been issued in time for it to be provided to the Examination. However, because FLL's funding contribution has not yet been secured and the Applicant therefore cannot commit at this stage to constructing the Alternative Scheme, the Applicant is not seeking powers of CA over the additional land that would be required to construct the Alternative Scheme¹¹⁹. It is therefore not subject to the tests in s122 of the PA2008.
- 8.5.49 In respect of the proposed TP of FLL's land at plots 3/16/c, 3/16/d, 3/16/g, 4/16/a and 4/16/b, it is not necessary for the Applicant to demonstrate a compelling case in the public interest. However, on the basis of the information before the Examination I regard the TP of lands in FLL's interest as necessary for the Proposed Development. The Applicant has appropriately demonstrated measures to minimise land-take and I am satisfied that no more land than is required is sought to be temporarily possessed. I also find that the interference with the use of and rights over the land required for TP to be justified in the public interest.
- 8.5.50 In respect of the proposed CA of FLL's land at plots 3/16/a, 3/16/b, 3/16/e, 3/16/g, 4/16/a, 4/16/b and 4/16/c, I find that in each case the powers sought are necessary to the implementation of the Proposed Development which is in the public interest and therefore the CA meets the tests in s122 of the PA2008.

Mr Stuart John Ramsay

Plot 4/19/a

Case for the objector

- 8.5.51 Mr Ramsay operates a kennel and cattery business from his residential property Ransley House, Kingsford Street, Mersham. The business has served the local community for over 35 years. Any CA of land in Mr Ramsay's interest could reduce the area of his property, used in part for storage and animal exercise, to the extent that it would render the business inoperable in its current form. The proposed road layout would also increase traffic through the village of Mersham adversely affecting access to Mr Ramsay's home and business at peak times [RR-042].

Applicant's response

- 8.5.52 The total land take represents 61.7% of the total area of land owned by Mr Ramsay and while the area to be taken by the Proposed Development does not include the residential property or key facilities of the cattery and kennels, the area is considered important to the effective running of the business [REP3-017].

¹¹⁹ As identified on Sheet 3 of the Land Plan as plot no. 3/16/f [OD-010]

- 8.5.53 Because of the permanency and extent of the land take (almost two thirds of the total plot is required) and the lack of alternative equivalent premises adjacent or nearby, the receptor is considered to be of high sensitivity and the magnitude of the impact is considered to be high [REP3-017].
- 8.5.54 Compensation at market rate will be offered to Mr Ramsay for the loss of property to mitigate some of the effects. However, the residual effect on the business is considered to be significant [REP3-017].

ExA's conclusions

- 8.5.55 The CA powers sought by the Applicant are necessary for the implementation of the Proposed Development. The impact of the proposed powers will have a significant impact on the operation of Mr Ramsay's business. However I am satisfied that in this case the public benefit derived from the CA of plot 4/19/a outweighs the private loss that would be suffered by Mr Ramsay. The tests in s122 of the PA2008 are therefore met.

8.6 PROTECTIONS OF INTERESTS: THE CASE UNDER S127 AND S138

- 8.6.1 Sections 127 and 138 of the PA2008 are engaged in this case in relation to Southern Gas Networks (SGN). Article 33 of the recommended dDCO (Appendix D to this report), amongst other things, enables the CA of Statutory Undertaker's (SU's) land or rights and provides for the removal or repositioning of SU's equipment. Article 34 makes provision for interference with the apparatus and rights of SUs in stopped up streets.
- 8.6.2 SGN made representations to the Examination, and is a SU. Schedule 9 to the recommended dDCO (Appendix D to this report) includes provisions for the protection of interests of SUs that would potentially be affected by the Proposed Development. These have been negotiated between the Applicant and the SUs before or during the Examination. In my opinion Schedule 9 is the comprehensive solution to SGNs representations.
- 8.6.3 Schedule 8 of the dDCO submitted with the application (Schedule 9 in the recommended dDCO) provided Parts 1 to 4 for the protection of the interests of Electricity, Gas, Water and Sewerage undertakers; Operators of Electronic Communications Code Networks; National Grid; and the Environment Agency (EA) [APP-018]. In the Applicant's final dDCO [OD-033] the Protective Provisions Schedule becomes Schedule 9, and Part 3 of that Schedule, for the protection National Grid, has been removed. I set out below any unresolved issues in respect of these provisions.

Part 1: for the protection of electricity, gas, water and sewerage undertakers

- 8.6.4 The Statement of Common Ground (SoCG) between the Applicant and SGN establishes agreement between the parties that the Protective Provisions in the form attached to the dDCO are appropriate and acceptable and satisfactorily provide for the protection of SGN's apparatus. No representations were made to the Examination from any other electricity, gas, water or sewerage undertakers and I am therefore not aware of any dispute in respect of the drafting of these provisions.

Part 2: for the protection of operators of electronic communications code networks

- 8.6.5 No representations were received from operators of electronic communications code networks. I am therefore not aware of any dispute in respect of the drafting of these provisions.

Part 3: for the protection of the Environment Agency

- 8.6.6 The EA and the Applicant are in disagreement regarding three points in relation to the Protective Provisions and the EA seeks amendments to Part 3 of the Schedule [REP8-005 and REP8-006]. This disagreement is established in the signed SoCG between the parties [REP9-007].

The case for the EA

- 8.6.7 The EA strongly disagrees with the Applicant's proposed wording of 20(3)(b)¹²⁰ which states "*shall be deemed to have been given*". It should read "*shall be deemed to have been refused*". This is to reflect a change in legislation. Flood defence consents were formally issued under the Water Resources Act 1991 (WRA91) and were deemed to be given, but flood risk activity permits under the Environmental Permitting (England & Wales) Regulations 2016 have superseded flood defence consents under the WRA91. Flood risk activity permits are deemed to be refused. The Protective Provisions need to align with the change in legislation to reflect deemed refusal. For the same reasons, 22(1)(a)¹²¹ will also need to be amended to include "*or deemed to have been approved or settled*" [REP8-005 and REP8-006].
- 8.6.8 The EA also requests the inclusion of the word "*partial*" in 23(6)(b)¹²² so as to read "*any partial obstruction*". This would provide the EA with comfort that the Applicant could only partially obstruct the drainage work which will still allow a coffer dam to be built, as required. While there is an argument that the Applicant would not be able to partially

¹²⁰ Paragraph 2(3)(b) in the EA's preferred protective provisions [REP8-006]

¹²¹ Paragraph 4(1)(a) in the EA's preferred protective provisions [REP8-006]

¹²² Paragraph 5(5)(b) in the EA's preferred protective provisions [REP8-006]

or fully obstruct the drainage works without the EA's prior approval, in reality the EA is highly unlikely to agree to anything more than a partial obstruction [REP8-005 and REP8-006].

- 8.6.9 The EA also requests the inclusion of its preferred indemnity at paragraph 27¹²³ of Part 3 of the Schedule. The EA has recently undertaken a review of its standard Protective Provisions and argues for the adoption of the preferred indemnity to ensure consistency [REP8-005 and REP8-006].

Applicant's response

- 8.6.10 The Applicant rejects the amendments proposed by the EA for the following reasons:
- Paragraph 20(3)(b) and paragraph 22(1)(a) - Consent should be deemed to be given if no response is received from the EA. The two month response period is generous, and the Applicant cannot accept the risk of the Proposed Development being delayed due to the failure of the EA to respond. The dDCO should be considered on its own merits and not by reference to other general legislation;
 - Paragraph 23(6)(b) - The Protective Provisions mean that the EA must approve plans for specified works and they must be carried out to the EA's satisfaction which should offer sufficient protection to the EA;
 - Paragraph 27 - An indemnity is not required due to the obligation in paragraph 27(1) for the Applicant to repay to the EA any costs, charges, expenses, damages and losses reasonably incurred by the EA [REP8-027].

ExA's conclusions in respect of protection of interests

- 8.6.11 In respect of Part 3 of Schedule 9 of the recommended dDCO (Appendix D to this report), I have considered each area of dispute between the EA and the Applicant. In consideration of paragraphs 20(3)(b) and paragraph 22(1)(a), I consider that the appeal provisions at Schedule 6 of the Environmental Permitting (England & Wales) Regulations 2016 (the EP Regs) mean that there would not be any unreasonable risk posed to the delivery of the Proposed Development. I am therefore convinced by the arguments put forward by the EA and agree that the drafting should reflect the contemporary statutory position arising from the EP Regs.
- 8.6.12 In consideration of paragraph 23(6)(b), I am convinced by the Applicant's argument that its proposed drafting provides sufficient protection to the EA. Although, as the EA states, it would be highly unlikely for it to agree to anything more than a partial obstruction to a

¹²³ Paragraph 10 in the EA's preferred protective provisions [REP8-006]

drainage work, the fact that the EA will be required to approve the associated plans should provide it with sufficient certainty in my view.

- 8.6.13 In respect of paragraph 27, the progression of standard Protective Provisions establishes a useful starting point for negotiations and will undoubtedly be welcomed by future NSIP applicants. However, I am convinced by the Applicant's argument and in my view the obligation in paragraph 27(1) means that it not necessary or proportionate to include a separate indemnity in this case.
- 8.6.14 There is no dispute in respect of any of the provisions provided elsewhere in Schedule 9. In the absence of dispute, I have considered the drafting of the Protective Provisions and I am satisfied that Schedule 9, in the form attached to my recommended dDCO (Appendix D to this report), overcomes any potential issues relating to SUs' land (PA2008 s127) or to the rights and apparatus of SUs (PA2008 s138). In particular, with regard to the statutory tests in s127 and s138, I am satisfied that the arrangements with SGN meet the tests in 127(3)(b) and 127(6)(b) and 138(4), since provision would be made for the diversion of SGN's gas main within the Order limits.¹²⁴

8.7 SPECIAL CATEGORY LAND: THE CASE UNDER S131 AND S132

- 8.7.1 The Applicant is seeking powers of CA and TP in respect of open space. Plots 3/14/a and 3/14/b are open space within the meaning of s131 and s132 of the PA2008 [REP8-024; REP7-008, Appendix B].
- 8.7.2 At Plot 3/14/a the Applicant seeks powers of TP and use of permanent new rights to construct, operate and maintain the Church Road overbridge and related works and mitigation measures, including access. In respect of the TP powers sought, provision of replacement land is obviated because the land is being possessed for a temporary purpose.
- 8.7.3 At Plot 3/14/b the Applicant seeks CA for all rights and interests and replacement land is offered at plots 3/1/b, 3/1/c and 3/1/d [REP8-024].
- 8.7.4 Plots 3/14/a and 3/14/b are located adjacent to the A2070, immediately south of Church Road and north of Barrey Road. The quantum of open space extends over an area of approximately 21,379 m² but the area of open space within the Order limits is approximately 3,326 m². The open space is owned and maintained by ABC [REP7-008, Appendix B].
- 8.7.5 The part of the open space land that is required for the Proposed Development currently contains Church Road footbridge over the A2070, a non-motorised user (NMU) route connecting the west and

¹²⁴ See also paragraphs 9.7.3, 9.7.6 and 9.7.13 of this report

east areas of Church Road to Sevington and a wooded area which is overgrown and almost impossible to access by the public for recreation [REP7-008, Appendix B].

- 8.7.6 In order to ensure that it is not necessary for the dDCO to be subject to special parliamentary procedure, s131(3) and s132(2) of the PA2008 must be satisfied, and these subsections bring other subsections into play as discussed below. Also, in accordance with s131(3)(b) and s132(2)(b), the preamble to the Articles of the recommended dDCO refers to s131(4) and s132(3).

Section 131 – the Applicant’s case

- 8.7.7 In respect of Plot 3/14/b the criteria in subsection 131(4) of the PA2008 are met, because:

- (1) replacement land will be given in exchange for the land to be compulsorily acquired;
- (2) the replacement land will be vested in the prospective seller of the land to be compulsorily acquired, being ABC; and
- (3) the replacement land will be subject to the same rights, trusts and incidents as attach to the land to be compulsorily acquired [REP7-008].

- 8.7.8 Article 36 of the dDCO provides that plot 3/14/b is not to be discharged from rights, trusts and incidents to which it was previously subject until the SoS has certified that a scheme for the provision of the replacement land has been implemented [REP7-008].

- 8.7.9 The proposed replacement land satisfies the requirements for replacement land in s131(12) of the PA2008 and in the CA Guidance, for the following reasons:

- (1) The replacement land (5,887 m², including 718 m² of cycle track and footpath) is not less in area than the land to be acquired (1,738 m²). Following construction of the Proposed Development, there would be a net gain in open space land of approximately 4,149 m²;
- (2) With regard to proximity, the replacement land is adjacent to the existing open space that would be retained;
- (3) Access to the open space for most non-motorised users would be improved through the addition of stairs from the footbridge to the existing open space and the replacement land. The existing footbridge does not feature stairs. This makes the route by which users access the open space lengthy, as users currently have to follow the footbridge path all the way to the end before being able to access the open space;
- (4) The new footbridge would be Disability Discrimination Act 1995 and Equality Act 2010 compliant, improving access for disabled users;
- (5) The footpath that runs alongside the A2070 will also provide access to the open space [REP7-008].

Section 132 – the Applicant’s case

- 8.7.10 In respect of Plot 3/14/a the criteria in subsection 132(3) of the PA2008 are met, in that the right of access to and over the land for maintenance purposes would not burden the open space land in such a way that would make it less advantageous to ABC as owner or to the public using the land [REP7-008]. There are no s132(3)(b) persons.

ExA’s conclusions in respect of special category land

- 8.7.11 In respect of the TP powers sought at Plot 3/14/a, I am satisfied that the TP of the open space land is necessary for the Proposed Development.
- 8.7.12 In respect of the new rights sought at Plot 3/14/a, in consideration of s132(3) of the PA2008 I am satisfied that when burdened with the Order rights, the land will be no less advantageous than it was before to the persons in whom it is vested (ABC), or any other person entitled to rights, or the public. The recommended dDCO should therefore not be subject to special parliamentary procedure.
- 8.7.13 In respect of the new rights sought at Plot 3/14/a, I am satisfied that the tests in s132(3) are satisfied.
- 8.7.14 As regards the replacement land offered at plots 3/1/b, 3/1/c and 3/1/d, I am convinced that the land satisfies the tests in s131(4) and 131(12) and in the CA Guidance. The replacement land is not less in area and would be no less advantageous as replacement land for the corresponding land and rights being compulsorily acquired. Special parliamentary procedure is therefore not required under s131(2) of the PA2008. That conclusion is reinforced by ABC’s withdrawal of its objection to the provision of plots 3/1/b, 3/1/c and 3/1/d as replacement land [REP8-002].

8.8 HUMAN RIGHTS ACT 1998 AND EUROPEAN CONVENTION OF HUMAN RIGHTS (ECHR) CONSIDERATIONS

- 8.8.1 Article 1 of the First Protocol of the ECHR is concerned with the rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property could be interfered with. It is clearly engaged because a number of interests are proposed to be acquired and rights are to be imposed on land. In addition to CA, land would also be used temporarily. In my judgment the CA and TP of land is justified as the public benefit would outweigh the loss of private interests in a way that is proportionate to the circumstances.
- 8.8.2 There are human rights implications with regard to the objectors in Section 8.5 of this report. There are also human rights implications with regard to Mrs Gosbee, W C Gosbee, Christopher Duke, Kathy Vermont and L P Vermont who are the occupiers/tenants of Highfield Bungalow [REP8-024] and will be deprived of their homes if CA powers are granted. None of these persons however objected to the proposed CA of Highfield Bungalow. The owner of Highfield Bungalow, Mr

Christopher Clark, also does not object to the proposed CA powers and has Heads of Agreement in place with the Applicant [REP9-008]. In view of the importance of the Proposed Development to the delivery of Government policy, and the significant economic and social benefits that would arise, I find that, taking account of the compensation to be made available, the public benefit outweighs the interference with private interests in a way that is both proportionate and justified in the public interest.

8.8.3 Article 6 of the ECHR, which entitles those affected by CA powers to a fair and public hearing of their objections, is also engaged. The requirements of this Article have been fully met through compliance with the procedures of PA2008 and associated regulations, by allowing all interested persons to participate in the Examination, and because in reaching my conclusions I have had regard to all representations made in writing and orally.

8.8.4 Article 8 of the ECHR, which relates to the right of the individual to respect for his private and family life and his home, is also engaged. I find that the public benefit outweighs the interference with private interests in a way that is both proportionate and justified in the public interest.

8.9 THE EXA'S OVERALL CONCLUSIONS IN RESPECT OF CA AND TP

8.9.1 My approach to the question of what CA powers I should recommend to the SoS to grant has been to seek to apply the relevant sections of the PA2008, notably s122, s123, s127, s131, s132 and s138, the CA Guidance and the Human Rights Act 1998¹²⁵. Furthermore, in the light of the representations received and the evidence submitted, I have considered whether a compelling case has been made in the public interest, balancing the public interest against private loss.

8.9.2 I have considered the proposals set out in the Applicant's final dDCO [OD-033] and BoR [REP8-024], as supported by the updated SoR [REP7-008]. I am satisfied that the Applicant has sought to minimise the CA of land or rights wherever possible, and is taking steps to minimise impact on the interests of the owners, occupiers and users of land where TP is sought.

8.9.3 I have identified above those plots to which objections remained at the close of the Examination, and concluded in respect of each objector as to whether or not the powers sought through the Applicant's final dDCO are necessary and proportionate in each case. I have identified those cases in which there would be a significant impact on the owners, occupiers or users of the land and assessed whether or not such impact is justified as a result of the public benefit that would accrue from the Proposed Development and which I have identified throughout this report.

¹²⁵ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

8.9.4 I understand, however, that the dDCO deals with both the Proposed Development itself and CA powers. The case for CA powers cannot properly be considered unless and until I have formed a view on the case for the development overall, and the consideration of the CA issues must be consistent with that view.

8.9.5 I have shown in the conclusions drawn in Chapter 7 that I have reached the view that development consent should be granted. The question therefore that I address here is the extent to which, in the light of the factors set out above, the case is made for CA and TP necessary to enable the development to proceed.

Alternatives and adequacy of funding

8.9.6 Alternatives to the Proposed Development are addressed in detail by the Applicant, and I refer to these earlier in my consideration of the Applicant's case for CA. I am satisfied that the Proposed Development is both necessary and proportionate in terms of delivering significant public benefit through Government policy, and in terms of demonstrating value for money.

8.9.7 I consider that there are no reasonable practicable alternatives to the Proposed Development for which development consent is required, or for engineering elements within the Proposed Development. Consequently, there are no reasonable practicable alternatives to the land required for the Proposed Development and for which CA and/or TP is proposed. Where representations have been made by interested parties querying the design of the Proposed Development, I am convinced by the Applicant's submissions which are founded on a sound evidence base.

8.9.8 In respect of funding, the Government is clearly committed to delivering the Proposed Development through the Applicant, and estimated preparation costs are well within the budget committed to in RIS1. The requisite local developer contributions will be forward-funded by DCLG subject to a signed funding agreement between the HCA and ABC [REP8-022]. Having regard to the CA Guidance in respect of adequacy and security of financial resources, I am satisfied that adequate funding would be available to enable the exercise of the CA powers proposed within the 5-year period following the order being made¹²⁶, if the SoS decides to grant development consent.

The ExA's recommendation on granting of CA and related powers

8.9.9 As a consequence of the Examination process, I am satisfied that the Proposed Development is for a legitimate purpose; that it will provide important infrastructure in support of major economic objectives; that there is a likelihood of sufficient funding being available within the 5-

¹²⁶ Article 23 in the recommended dDCO

year period following the order being made; that the lands and rights associated with each plot to be subjected to CA powers have been identified for a clear purpose; and that TP powers are justified and proportionate.

- 8.9.10 In respect of the conditions set out in s122(2) of the PA2008, I am satisfied that all of the land in respect of which CA is sought is required for the development to which the development consent relates, or is required to facilitate it or is incidental to that development, or is replacement land which will be given in exchange for the order land under s131 and s132 of the PA2008.
- 8.9.11 In respect of the test set out in s122(3) of the PA2008, I am also satisfied that, in the case of all of the land in respect of which CA is sought, there is a compelling case in the public interest for the land to be acquired compulsorily as there are no achievable alternatives to meet the objectives sought and the public benefit outweighs the loss to private interests or the restrictions imposed on those interests.
- 8.9.12 In respect of the TP powers sought, it is not necessary for the Applicant to demonstrate a compelling case in the public interest. TP powers are not CA powers and accordingly the tests under s122 and s123 of the PA2008 are not applicable. However, I am satisfied that in each case the powers are justified in order to enable the Proposed Development to be implemented and maintained, that the interference with human rights is justified, and that the recommended dDCO (Appendix D to this report) puts adequate compensation provisions in place.
- 8.9.13 Schedule 9 of the recommended dDCO (Appendix D to this report) would overcome any potential issues relating to SUs' land (PA2008 s127) or to the rights and apparatus of SUs (PA2008 s138).
- 8.9.14 In respect of the tests set out in s131 and s132, replacement land would be provided which would be no less advantageous to ABC, or to persons with any other rights, or to the public.
- 8.9.15 As far as human rights are concerned, I am satisfied that the Examination has ensured a fair and public hearing; that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.
- 8.9.16 In my judgement there is a compelling case in the public interest for the CA of the land and rights sought for the Proposed Development. As far as TP is concerned, I am satisfied that the land is required and that the associated provisions for return and reinstatement are appropriately secured.

8.9.17 With regard to the incorporation of other statutory powers pursuant to s120(5)(a) of the PA2008, I am satisfied that as required by s117(4) of the PA2008 the recommended dDCO (Appendix D to this report) has been drafted in the form of a statutory instrument, and that no provision of the recommended dDCO contravenes the provisions of s126 of the PA2008 which preclude the modification of compensation provisions relating to CA of land, except to the extent necessary to apply the provision to the CA of land authorised by the Order, and preclude the exclusion of the application of such compensation provisions.

9 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1 INTRODUCTION

9.1.1 The Applicant submitted a draft Development Consent Order (dDCO) as part of the application for development consent [APP-018]. This dDCO was then revised a number of times in the course of the Examination. Unless otherwise stated, I refer to dDCO numbering as per the Applicant's final submitted dDCO Rev H [OD-033].

9.2 THE EXAMINING AUTHORITY'S (EXA) EXAMINATION OF THE DRAFT DCO

9.2.1 I raise questions on the content of the dDCO in my First Written Questions (FWQs) [PD-008, Q20.1 to 20.30]. The Applicant responds to those questions and also submits Revision C to the dDCO in clean and tracked changes versions [REP3-020, REP3-011, REP3-012].

9.2.2 At the first Issue Specific Hearing (ISH) into the dDCO in February 2017, I determine the status of the dDCO by asking the Applicant to go sequentially through the dDCO [EV-013]. The Applicant submits its written summary of the hearing as well as dDCO Revision D [REP5-020, REP5-007, REP5-008].

9.2.3 I raise further questions on the content of the dDCO in my Second Written Questions (SWQs) [PD-012, Q20.1 to 20.14]. The Applicant responds to those questions at Deadline 6 [REP6-022], and submits dDCO Revision E at Deadline 7 [REP7-004 to REP7-006].

9.2.4 At the second ISH into the dDCO in May 2017, I raise further questions [EV-016, EV-022]. The Applicant submits its written summary of the hearing as well as dDCO Revision F [REP8-029, REP8-018 to REP8-020].

9.2.5 At Deadline 9, the Applicant submits its dDCO Revision G in the form of a clean version, tracked changes between Revision G and Revision A, and tracked changes between Revision G and Revision F [REP9-001 to REP9-003]. This was followed by Revision H [OD-033], the final validated version, which contained no substantive changes.

9.3 STRUCTURE OF THE dDCO

9.3.1 The dDCO comprises seven Parts and nine Schedules as follows:

Parts 1 to 7

9.3.2 *Part 1: Preliminary* - contains Article 1 to Article 4, providing for citation, commencement, interpretation, disapplication of legislative provisions, and maintenance of drainage works. There was discussion

around interpretation and disapplication of legislative provisions, and amendments were made during the Examination.

- 9.3.3 *Part 2: Principal powers* - sets out within Article 5 to Article 10 the development consent granted by the Order; maintenance of the authorised development; planning permission; limits of deviation; benefit of the Order; and consent to transfer the benefit of the Order. There was discussion as to the extent of the powers sought. In particular, Article 8: Limits of deviation has been amended by the Applicant as a result of the Examination.
- 9.3.4 *Part 3: Streets* – Article 11 to Article 17 set out powers under the New Roads and Street Works Act 1991, together with powers to carry out street works; undertake construction and maintenance of new, altered or diverted streets; classify roads; undertake the permanent and temporary stopping up and restriction of streets; secure access to works; and establish clearways. Article 11: Application of the 1991 Act¹²⁷, Article 12: Construction and maintenance of new, altered or diverted streets, and Article 13: Classification of roads etc, were amended during the Examination. I consider these Articles in more detail in Summary of Changes below, Section 9.4.
- 9.3.5 *Part 4: Supplemental powers* – Article 18 to Article 20 deal with discharge of water; protective work to buildings; and authority to survey and investigate land. No amendments were made during the Examination.
- 9.3.6 *Part 5: Powers of Acquisition* – Article 21 to Article 36 contain powers in relation to acquisition and possession of land. These Articles provide for the Compulsory Acquisition (CA) of land and the incorporation of the mineral code, with a time limit of five years from the date that the Order is made to issue notices to treat or make a general vesting declaration. They include provision for CA of rights, public rights of way, the power to extinguish and suspend private rights over land, the acquisition of subsoil or air space only, and the acquisition of parts of certain properties. They also include rights under or over streets, temporary use of land for carrying out and maintenance of the authorised development, provisions in relation to rights and land of Statutory Undertakers, and for Special Category Land. Article 21: CA of land, Article 24: CA of rights, and Article 27: Application of the 1981¹²⁸ Act were amended as a result of the Examination. I consider these Articles in more detail in Summary of Changes below, Section 9.4.
- 9.3.7 *Part 6: Operations* – Article 37 to Article 39 deal with operations. Article 38: Felling or lopping of trees and removal of hedgerows was amended, and Article 39: Trees subject to tree preservation orders

¹²⁷ The New Roads and Street Works Act 1991

¹²⁸ The Compulsory Purchase (Vesting Declarations) Act 1981

was added during the Examination and gives effect to Schedule 8. I consider these Articles in more detail in Summary of Changes below.

- 9.3.8 *Part 7: Miscellaneous and general* – Article 40 to Article 47 deal with issues relating to application of landlord and tenant law, Operational Land, defence to proceedings in respect of statutory nuisance, Protective Provisions, certification of plans etc, service of notices, arbitration, and traffic regulation. Article 43: Protective provisions gives effect to Schedule 9. Article 44: Certification of plans etc. was amended during the Examination.

Schedules

- 9.3.9 *Schedule 1: Authorised development* - lists the works comprising the Proposed Development.
- 9.3.10 *Schedule 2: Requirements* -
- Part 1 lists the Requirements which set out the processes and procedures to be applied in implementing the Proposed Development including requirements to obtain further consents, agreements or approvals; and
 - Part 2 sets out the procedure for the discharge of Requirements by the Secretary of State (SoS).
- 9.3.11 *Schedule 3: Classification of roads etc.* - lists the roads that will be subject to various classifications pursuant to Article 13. It also includes speed limits and traffic regulation measures (relevant to Article 13 and Article 17), and footpaths, cycle tracks and footways to be constructed and opened for use.
- 9.3.12 *Schedule 4: Permanent stopping up of highways, etc* - lists streets that are to be permanently stopped up with and without substitutes, Public Rights of Way (PRoW) that are to be extinguished, pursuant to Article 15 and Article 25.
- 9.3.13 *Schedule 5: Land in which only new rights etc. may be acquired* - lists this land pursuant to Article 24.
- 9.3.14 *Schedule 6: Modification of compensation and CA enactments for creation of new rights* - pursuant to Article 24.
- 9.3.15 *Schedule 7: Land of which temporary possession may be taken* - pursuant to Article 31(1)(a)(i). Article 31(1)(a)(ii) allows the undertaker to take temporary possession of land not listed in Schedule 7.
- 9.3.16 *Schedule 8: Trees subject to tree preservation orders* - in respect of which the undertaker may exercise powers pursuant to Article 39.
- 9.3.17 *Schedule 9: Protective provisions* - brought into effect by Article 43 - sets out provisions for the protection of interests of various parties. It is in three Parts - Part 1: Electricity, gas, water, and sewerage

undertakers; Part 2: Operators of electronic communications code networks; Part 3: Environment Agency (EA).

9.3.18 *Schedule 10: Environmental Statement documents to be certified* - a new Schedule added by the ExA to ensure that the final versions of documents amended during the Examination are certified pursuant to Article 44.

9.4 SUMMARY OF CHANGES MADE BY THE APPLICANT

9.4.1 A number of changes were made to the dDCO by the Applicant during the Examination, although no change was made which would result in a Proposed Development that was materially different from the application as submitted. I list the main changes below. I do not include amendments made to correct typographical errors.

9.4.2 The Applicant submitted a tracked changes version that shows changes between the application dDCO (Revision A) and the version at Deadline 9 of the Examination (Revision G) [APP-018, REP9-002]. In summarising the changes, I refer to the differences between these two versions.

Articles

9.4.3 *Article 2: Interpretation* - at Article 2(1) the definition of "*the environmental masterplan*" has been added in recognition of its key role.

9.4.4 *Article 3: Disapplication of legislative provisions* - at Article 3(2) the requirement for an Environmental Permit has been amended to relate to carrying out a flood risk activity or a water discharge activity, with definitions of those terms.

9.4.5 *Article 8: Limits of deviation* - this Article has been amended to include the local highway authority (LHA) as a consultee.

9.4.6 *Article 11: Application of the 1991 Act*¹²⁹ - at Article 11(3) s73A, s73B, s73C and s78A have been removed from the list of inapplicable provisions of the 1991 Act, since they are not in force.

9.4.7 *Article 12: Construction and maintenance of new, altered or diverted streets and other structures* -

- Article 12(3) has been amended to provide that the footpath to be provided on plots 3/1/b and 3/1/d, shown on the Land Plans and the Rights of Way and Access Plans, must be maintained by the Undertaker from its completion [APP-006, OD-010 (Sheet 1

¹²⁹ The New Roads and Street Works Act 1991

and Sheet 3), REP6-039, REP6-040, REP6-041; APP-008, REP4-006, REP6-047, REP6-048; REP7-007];

- Article 12(4) has been amended to provide that the whole of a bridge constructed under this Order must be maintained by and at the expense of the Undertaker (rather than some parts of it being maintainable by the LHA).

- 9.4.8 *Article 13: Classification of roads, etc* – Article 13(5) has been added to provide that from the date on which the roads described in Part 4 (unclassified roads) of Schedule 3 (classification of roads, etc.) are complete and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.
- 9.4.9 *Article 21: Compulsory acquisition of land* – Article 21(3) has been amended to require the Undertaker to give notice in writing to the LHA (as well as the relevant planning authority), as to which alternative option it intends to construct, before exercising CA powers over land.
- 9.4.10 *Article 24: Compulsory acquisition of rights* – Article 24(6) has been amended to require the Undertaker to give notice in writing to the LHA (as well as the relevant planning authority) before exercising CA of rights over land.
- 9.4.11 *Article 27: Application of the 1981 Act*¹³⁰ - Article 27(4), (5) and (6) as they appear in the application dDCO Revision A have been deleted, since s3 of the Act (in which these paragraphs substituted some wording) has been repealed [APP-018]. Also s5(1) has been repealed and hence reference to it has been deleted from this Article.
- 9.4.12 *Article 38: Felling or lopping of trees and removal of hedgerows* – Article 38(2) has been amended to require the Undertaker to take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010 or any successor acts.
- 9.4.13 *Article 39: Trees subject to tree preservation orders* - a new Requirement additional to the dDCO Revision A has been included [APP-018].
- 9.4.14 *Article 43 (Revision A): Crown rights* - Article has been deleted from the application dDCO Revision A, since no Crown land is affected by the application [APP-018].
- 9.4.15 *Article 44: Certification of plans, etc* - final revision details have been added for all certified documents.
- 9.4.16 I conclude that the Articles as stated in the Applicant’s final dDCO [OD-033] are appropriate and they are carried forward unchanged in

¹³⁰ Compulsory Purchase (Vesting Declarations) Act 1981

my recommended dDCO (Appendix D to this report), except as stated in Section 9.5 below.

Schedule 1 - Authorised Development¹³¹

- 9.4.17 *Work No. 3:* this has been amended to reflect revised and additional sheet numbering with regard to the work plans.
- 9.4.18 *Work No. 4:* this has been amended to include the area, 5,169 m², of replacement Open Space Land to be provided, which was previously not stated.
- 9.4.19 *Work No. 6:* this has been amended to include the length of the new cycle/ footbridge of approximately 55 m, which was previously not stated.
- 9.4.20 *Work No. 8:* this has been amended to remove the incorrect duplicate reference to the replacement of the Church Road footbridge, which is already contained within Work No. 8.

Schedule 2, Part 1 - Requirements

- 9.4.21 Through the course of the Examination there was an ongoing process of discussion and refinement of the Requirements. A number of Requirements made no provision for consultation with appropriate parties, such as the local planning authority (LPA) and the EA, and this is addressed in the Applicant's final dDCO [OD-033].
- 9.4.22 I set out below the background to specific Requirements where particular issues have been raised and changes made.
- 9.4.23 *Requirement 1: Interpretation* - definitions have been added for County Archaeologist, Ecological Clerk of Works, Handover Environmental Management Plan (HEMP), and Landscape Environmental Management Plan (LEMP). The definition of the Stour Park site has been amended for consistency and clarity.
- 9.4.24 *Requirement 3: Construction Environmental Management Plan (CEMP)* – this has been amended to include the following -
- the LHA and the EA are now included as consultees for the CEMP, prior to approval by the SoS, as the CEMP is developed during the construction of the authorised development;
 - provision is made for measures to be added to the CEMP and HEMP to take account of, and accommodate, any turning loop constructed or under construction by the LHA on plot 4/16/c¹³² [APP-006, REP6-039, REP6-040, REP6-041];

¹³¹ See Sections 2.1 and 5.1 of this report for a description of the Proposed Development

¹³² See Chapter 5, Section 5.2: Traffic and Transport, of this report

- the list of management plans has been extended to secure the development of a Groundwater Monitoring Strategy, and Noise and Vibration Monitoring Strategy (NVMS) as additional management plans; and
- provision is made for the conversion of the CEMP into the HEMP upon completion of construction of the authorised development, including provision for any turning loop on plot 4/16/c, and for the authorised development to be operated and maintained in accordance with the HEMP [OD-033]

9.4.25 *Requirement 4: Details of consultation* – this is a new Requirement, additional to the application dDCO Revision A [APP-018]. This provides that, with respect to any Requirement which requires details to be submitted to the SoS for approval, the details must be accompanied by a summary report setting out the consultation undertaken by the undertaker.

9.4.26 *Requirement 5: Landscaping* - this has been amended to include the LHA as a consultee, and provision under Requirement 5(3) for the landscaping scheme to be based on the environmental masterplan and to take account of and accommodate any turning loop at plot 4/16/c [APP-006, REP6-039, REP6-040, REP6-041].

9.4.27 *Requirement 8: Land and groundwater contamination* - this was extensively discussed during the Examination, particularly between the Applicant and the EA. As a result Requirement 8 has been retitled and amended to include:

- a new sub-paragraph (1) to ensure that no part of the authorised development may commence until a contamination risk assessment in respect of controlled waters has been produced in consultation with the EA, approved by the SoS, and implemented accordingly¹³³ [OD-033]; and
- a new sub-paragraph (2) to ensure that the steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the contamination risk assessment must be implemented as part of the authorised development;
- sub-paragraph (3) has been amended to reflect contaminated materials including impacted groundwater.

9.4.28 *Requirement 9: Archaeology* – this was extensively discussed during the Examination, particularly between the Applicant and Ashford Borough Council (ABC) and Kent County Council (KCC) [REP3-004, REP3-023, REP5-026, REP7-003, REP9-006]. As a result, Requirement 9 has been amended to include:

- an archaeological framework strategy for the investigation and mitigation of areas of archaeological interest to be produced, with provision for sub-written schemes of investigation for each area

¹³³ See Chapter 5, Section 5.8: Water Environment and Ecological Conservation, of this report

and each phase, to be consulted and approved before commencement of the authorised development;

- a programme of archaeological reporting, post excavation and publication;
- mitigation for any discovered archaeological remains; and
- suitable resources and provisions for long-term storage of the archaeological archive¹³⁴ [OD-033]; and
- the LHA and County Archaeologist have been added as consultees.

9.4.29 *Requirement 10: Protected species* - this has been amended to include provision for any protected species which were not previously identified in the Environmental Statement (ES) or nesting birds to be reported to the Ecological Clerk of Works instead of Natural England (NE)/ the relevant planning authority, and for the written scheme for protection and mitigation to include these species and nesting birds.

9.4.30 *Requirement 12: Detailed design* - this has been amended to include the LHA as a consultee.

9.4.31 *Requirement 13: Surface and foul water drainage* - this has been amended to include the LHA and the EA as consultees.

9.4.32 *Requirement 14: Flood compensatory storage* - as a result of dialogue between the Applicant and the EA on the Flood Risk Assessment, a new Requirement, additional to the original Revision A of the dDCO, has been added at the request of the EA to secure against flood risk¹³⁵ [APP-018, OD-033].

9.4.33 *Requirement 16: Alternative A2070 options* - this has been amended to add that the LHA, as well as the relevant planning authority, must not be notified of the undertaker's intention to construct the A2070 Option B (the Alternative Scheme) for the purposes of Article 21 (CA of land) and Article 24 (CA of rights) unless a planning permission has first been granted for the development of the Stour Park site.

Schedule 4 - Permanent stopping up highways and private means of access, etc

9.4.34 Public Right of Way AE339 - the extent of stopping up has been amended for PRoW AE339 for clarity.

Schedule 5 - Land in which only new rights etc may be acquired

9.4.35 Land plans sheets 2 to 4 - the wording has been amended to reflect more accurately the purposes for which rights over land may be required.

¹³⁴ See Chapter 5, Section 5.12: Historic Environment, of this report

¹³⁵ See Chapter 5, Section 5.8: Water Environment and Ecological Conservation, of this report

Schedule 6 - Modification of compensation and compulsory purchase enactments for creation of new rights

9.4.36 Paragraphs 4, 5, 7 and 8 - the wording has been amended for clarity.

Schedule 7 - Land of which temporary possession may be taken

9.4.37 Land plans sheets 2 to 4 - the wording has been amended to reflect more accurately the purposes for which Temporary Possession may be taken, and the parts of the authorised development to which this applies [REP6-039 to REP6-041].

Schedule 8 - Trees subject to tree preservation orders

9.4.38 This is a new Schedule pursuant to Article 39, which specifies the work to be carried out with regard to TPO No. 15 1997 (ABC) and TPO No. 22 1998 (ABC).

Schedule 9 - Protective Provisions

9.4.39 Part 3 (of application dDCO Revision A [APP-018]): for the protection of National Grid - this section has been deleted since National Grid does not have any apparatus within the order limits [REP7-007].

9.4.40 Part 3 (of Applicant's final dDCO Revision H [OD-033]): for the protection of the EA - this has been amended according to the Applicant "*To accommodate as much as possible the Environment Agency's new 'standard' Protective Provisions*" [REP8-021]. Three areas remained not agreed between them at the end of the Examination. These are discussed in Chapter 8 of this report, paragraphs 8.6.6 to 8.6.14.

9.4.41 In summary and with reference to the paragraph numbering in the Applicant's final dDCO [OD-033]:

- (1) The EA disagrees with the Applicant's proposed wording of 20(3)(b) which states "*shall be deemed to have been given*", which it believes should read "*shall be deemed to have been refused*", to reflect a change in legislation;
- (2) The EA requests the inclusion of the word "*partial*" in 23(6)(b) so as to read "*any partial obstruction*", which would provide the EA with comfort that the Applicant could only partially obstruct the drainage work; and
- (3) The EA requests the inclusion of its preferred indemnity at paragraph 27.

9.4.42 In its Deadline 8 submission, the EA's preferred wording is at paragraphs 2(3)(b), 5(5)(b), and 9 and 10 respectively for the three areas of disagreement [REP8-006].

9.4.43 In respect of paragraph 20(3)(b), I find in favour of the EA and agree that the drafting should reflect the contemporary statutory position arising from the EP Regs.

- 9.4.44 In respect of paragraph 23(6)(b), I am convinced by the Applicant's argument that its proposed drafting provides sufficient protection to the EA.
- 9.4.45 In respect of paragraph 27, I am convinced by the Applicant's argument and in my view the obligation in paragraph 27(1) means that it not necessary or proportionate to include a separate indemnity in this case.
- 9.4.46 The wording in my recommended dDCO Schedule 9 Part 3 (Appendix D to this report) reflects these decisions¹³⁶.

9.5 SUMMARY OF CHANGES MADE BY THE EXAMINING AUTHORITY

- 9.5.1 This section records proposed changes made by me in the recommended dDCO at Appendix D to this report to the Applicant's final dDCO [OD-033] as submitted at the end of the Examination.
- 9.5.2 Contents - Schedule 10: Environmental Statement documents to be certified has been added.
- 9.5.3 Preamble (page 4) - square brackets have been removed from [single appointed person]; wording has been tightened with regard to special category land and special category rights.

Articles

- 9.5.4 *Article 2: Interpretation* - in Article 2(1) the definition of "environmental statement" has been amended to reflect the fact that the documents comprising the environment statement are now specified in a new Schedule 10.
- 9.5.5 *Article 27: Application of the 1981 Act* – Article 27(4) and (5) have been amended to reflect the fact that the whole of section 5 (earliest date for execution of declaration) and section 5A (time limit for general vesting declaration) have been omitted to reflect legislation.
- 9.5.6 *Article 31: Temporary use of land for carrying out the authorised development* – Article 31(3)(b) has been amended to remove brackets in "section (4)".
- 9.5.7 *Article 44: Certification of Plans* – Article 44(1)(f) has been amended to remove the document reference, since the ES is now specified in Schedule 10.

¹³⁶ See paragraph 9.5.13 of this report

Schedule 2 Requirements

- 9.5.8 *Requirement 3: CEMP* - 3(2)(a) has been amended to replace "CEMP" with "*construction environmental management plan*" for consistency with Article 44(1)(c), and "*article 43*" with "*article 44*" for accuracy. 3(2)(f) has been amended to delete Traffic and Transport Plan, since this is covered by the Traffic Management Plan secured by Requirement 11: Traffic Management.
- 9.5.9 *Requirement 8: Land and Groundwater contamination* - 8(3) has been amended to add "*and sub-paragraphs (4) and (5) will apply*" at the end for clarity.
- 9.5.10 *Requirement 11: Traffic Management* - 11(1) has been amended to add the phrase "*substantially in accordance with the draft traffic management plan*" for consistency.
- 9.5.11 *Requirement 13: Surface and foul water drainage* - 13(2) has been amended to secure consultation with the relevant planning authority, the LHA and the EA.
- 9.5.12 *Requirement 16: Alternative A2070 options* - 16(2) has been amended to include either or both of Article 21 and Article 24 for clarity.
- 9.5.13 Schedule 9 Protective Provisions Part 3 - 20(3)(b) has been amended to replace "*given*" by "*refused*"¹³⁷.
- 9.5.14 Schedule 10 Environmental statement documents to be certified - this Schedule has been added.
- 9.5.15 Explanatory Note - "*article 43*" has been replaced by "*article 44*" for accuracy.

9.6 SCHEDULE 2, PART 2 - PROCEDURE FOR DISCHARGING REQUIREMENTS

Applications made under Requirements

- 9.6.1 Details of the information that must be given to the SoS about the consultation that has taken place, with respect to any Requirement which requires details to be submitted to the SoS for approval, is specified in Requirement 4 of the recommended dDCO. The relevant consultees are included in the Requirements where appropriate. Detailed approvals would not be sought from the LPA as normal, but from the SoS for Transport, and there would be no appeal mechanism if refused. This is the standard procedure for Highways England (HE) schemes under the Highways Act 1980.

¹³⁷ See paragraphs 9.4.41 to 9.4.46 of this report

- 9.6.2 The dDCO Schedule 2 Part 2 paragraphs 17 and 18 specify the procedure for the discharge of Requirements (Appendix D to this report). Under paragraph 17(1), this procedure applies where an application has been made to the SoS for any consent, agreement or approval in respect of a Requirement included in the DCO. Time periods are specified for the SoS to give notice of his or her decision on the application.
- 9.6.3 Under paragraph 17(2) the default position in the event that the SoS does not determine an application within these time periods is that the SoS is deemed to have given consent.
- 9.6.4 Under paragraph 17(3), if the application is accompanied by a report that considers it likely that the subject matter of the application is to give rise to any materially new or materially worse environmental effects in comparison with the authorised development as approved, then the application is taken to have been refused by the SoS at the end of the period specified in paragraph 17(1).
- 9.6.5 Under paragraph 18, provision is made for further information to be requested by the SoS in relation to any part of the application made under this Schedule, and the time period specified for the SoS to give notice of his or her decision on the application will have effect from the day immediately following that on which further information has been supplied by the undertaker.
- 9.6.6 I consider that this mechanism for the discharge of Requirements is appropriate.

Register of Requirements

- 9.6.7 Pursuant to the dDCO Schedule 2 Part 2 paragraph 19, the Undertaker must, as soon as practicable following the making of the Order, establish and maintain a register of the Requirements that provide for further approvals to be given by the SoS, in an electronic form suitable for inspection by members of the public.
- 9.6.8 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 SoS has been applied for or given, and provide an electronic link to any document containing any approved details. The register must be maintained by the Undertaker for a period of three years following completion of the authorised development.
- 9.6.9 The provision made for the SoS as discharging authority does not affect the ability of the LPA or other parties to seek to enforce breaches of the DCO under Part 8 of PA2008.
- 9.6.10 I consider that this mechanism for the register of Requirements is appropriate.

9.7 OTHER LEGAL AGREEMENTS/ RELATED DOCUMENTS

The Applicant and Southern Gas Networks (SGN)

Side agreement between the Applicant and SGN

- 9.7.1 The Statement of Common Ground (SoCG) between the Applicant and SGN states that the Protective Provisions between the two parties are "*in the form attached to an agreement between Highways England and SGN*" [REP6-020]. At the second ISH on the environment, I asked the Applicant and SGN to state the position with regard to this agreement, and how it would be reflected in the dDCO [EV-016 QI.05; EV-017 to EV-019].
- 9.7.2 In its summary of the hearing, the Applicant states that the "*purpose of having a side agreement is that it is not intended that the Protective Provisions in the form attached to the side agreement between the Applicant and SGN will be transferred to the dDCO. Since the hearings, that agreement has now been completed and dated 25 May 2017*" [REP8-027, Item I.05].
- 9.7.3 At the close of the Examination, I had not seen this side agreement, and it is not clear to me whether the intention of the side agreement was to invoke Schedule 9 Part 1 paragraph 1 of the dDCO, thereby replacing all or part of Part 1 as far as SGN only is concerned [OD-033]. The SoS may wish to ask to see the side agreement to confirm that it is indeed in place, and that SGN is content that it has adequate protection.

The Applicant and Friends Life Limited (FLL)

- 9.7.4 In Chapter 8: Compulsory Acquisition and Related Matters, Section 8.5, I outline the discussion during the Examination between FLL (the Stour Park Developer) and the Applicant.
- 9.7.5 The latest version of an 'Agreed Joint Statement of Highways England and FLL' (the Agreed Statement), which deals exclusively with FLL's objection to CA and TP, was submitted on the last day of the Examination, and states the progress in negotiations between the two parties [OD-040]. In its covering letter, FLL confirms its agreement to the statement provided, and states that as soon as the agreement with Highways England has been completed FLL would be able to write further to confirm that its objection has been withdrawn [RR-016, OD-040].
- 9.7.6 However, at the close of the Examination FLL's objection remained extant. The SoS may wish to establish the status of the agreement, and determine whether FLL's objection to CA and TP is now withdrawn.

Offset area outside the Order limits

- 9.7.7 The SoCG between the Applicant and SGN states that a 9 m offset area that is outside the Order limits is subject to separate discussions with the Stour Park developer, FLL [REP6-020]. This offset area is a strip of land needed for access during the Proposed Development for the purpose of installing a diverted high pressure gas main. The route of the gas main was identified following subsequent work after the submission of the application, and is now close to the red line boundary although within the Order limits. The offset area was not identified with the application as required for CA or TP within the Proposed Development, and was not identified as such during the Examination.
- 9.7.8 At the second ISH on the environment, I asked the Applicant and SGN to state the position with regard to this offset area and to identify any impediments [EV-016 QI.05; EV-017 to EV-019].
- 9.7.9 In its summary of the hearing, the Applicant states that FLL has agreed to provide the necessary land rights to SGN for the 9 m offset area outside of the Order limits, and that there is no reason to think that FLL will not grant the necessary rights or that the agreement will not be finalised and completed between the Applicant and FLL. SGN is aware of this position and is in direct discussions with both the Applicant and FLL in this regard [REP8-027].
- 9.7.10 In the final 'Agreed Joint Statement of Highways England and FLL', submitted on the last day of the Examination, FLL states that it *"has agreed to grant the necessary rights and interests to Southern Gas Networks to accommodate the small area included within the 9 metre buffer for the gas main diversion that is outside of the Order limits subject to an agreed construction statement and programme and providing an undertaking to return the site to a condition satisfactory to Friends Life and providing a suitable indemnity in favour of Friends Life"* [OD-040].
- 9.7.11 However, the covering letter to the Agreed Joint Statement, also received on the last day of the Examination, states: *"As soon as the agreement with Highways England has been completed I will be able to write further to confirm that my clients' objection (RR-016) has been withdrawn"*, indicating that the Agreed Joint Statement is not yet finalised.
- 9.7.12 This was the position at the close of the Examination. In the absence of a finalised agreement between the Applicant and FLL, there remains the possibility that agreement may not be reached, and I therefore need to assess the impact of the possible failure to reach agreement on the access rights to the offset land outside of the Order limits to allow the diversion works to be carried out. In this eventuality, SGN on behalf of the undertaker would be unable to divert its high pressure gas main in the location currently envisaged. The SoS would then have to assess whether there were any other routes for the diverted

gas main within the Order limits, or whether some other planning provision might be made.

- 9.7.13 Given the position stated at the close of the Examination, I have no reason to believe that the Applicant will not complete the agreement, and I do not believe that this matter represents a material issue with regard to the making of the DCO. Nevertheless, the SoS may wish to establish the status of the agreement between the Applicant and FLL, and confirm that SGN is content with the position, both for installation of the diverted gas main and its maintenance.

10 SUMMARY OF FINDINGS AND CONCLUSIONS

10.1 SUMMARY OF CONCLUSIONS

10.1.1 In relation to s104 of Planning Act 2008 (PA2008) I conclude in summary:

- That making the recommended draft Development Consent Order (dDCO) would be in accordance with the National Policy Statement for National Networks (NPSNN), any relevant development plans and other relevant policy, all of which have been taken into account in this report;
- That I have had regard to the joint Local Impact Report from Ashford Borough Council (ABC) and Kent County Council (KCC), in making my recommendation;
- That whilst the Secretary of State (SoS) is the competent authority under the Habitats Regulations, I find that, in my view, the proposal would not adversely affect European sites, species or habitats, and I have taken these into account in reaching my recommendation;
- That in regard to all other matters and representations received, I found no important and relevant matters that would individually or collectively lead to a different recommendation to that below;
- That with the mitigation proposed through the recommended dDCO, there is no adverse impact arising from the Proposed Development that would outweigh its benefits; and
- That there is no reason to indicate that the application should be decided other than in accordance with the relevant National Policy Statement.

10.1.2 I have considered the case for, and objections to, the Compulsory Acquisition (CA) and Temporary Possession (TP) of lands required in order to implement the Proposed Development. I find that the powers requested are necessary to enable the Applicant to complete the Proposed Development. In addition, I have concluded that there is a compelling case in the public interest, that the Applicant has a clear idea of how it intends to use the land, and that funds are available for the implementation.

10.1.3 I have 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.

10.1.4 However, with the weight of national policy in favour of the Proposed Development, I find that the wider public interest outweighs any interference with the human rights of the owners and residential occupiers affected by CA and TP of lands. I find that the interference in their human rights would be proportionate and justified in the public interest.

10.1.5 With the changes that I put forward in my recommended dDCO at Appendix D to this report, I am satisfied that the Proposed Development meets the tests in s104 of PA2008.

10.2 RECOMMENDATION

10.2.1 My findings and conclusions on important and relevant matters are set out in this report under s83 of the PA2008. In considering my recommendations the SoS for Transport may wish to satisfy themselves on the following points:

- any updated Air Quality Plan that may come into force during the SoS decision making period (Chapter 5, paragraph 5.7.57);
- the planning agreement between Friends Life Limited (FLL) and KCC regarding plot 4/16/c (Chapter 8, paragraph 8.5.44);
- the side agreement between the Applicant and Southern Gas Networks (SGN), providing protection for SGN, is now in place (Chapter 9, paragraph 9.7.3);
- the status of the agreement between the Applicant and FLL, whether FLL's objection to CA and TP is now withdrawn, and whether agreement has been reached to enable SGN to install and maintain its diverted high pressure gas main using a 9 m offset area that is outside the Order limits (Chapter 9, paragraphs 9.7.6 and 9.7.13).

10.2.2 Subject to the above, I recommend that the SoS for Transport makes the M20 Junction 10a Development Consent Order 2017 in the form attached at Appendix D to this report.

APPENDICES

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APPENDIX A: THE EXAMINATION

The list below contains the main events which occurred, and procedural decisions taken, during the Examination.

Date	Examination Event
2 December 2016 (am)	Preliminary Meeting
2 December 2016 (pm)	Open Floor Hearing (OFH)
9 December 2016	Issue by Examining Authority (ExA) of: <ul style="list-style-type: none"> • Examination Timetable Publication of: <ul style="list-style-type: none"> • ExA's First Written Questions (FWQ)
9 December 2016	Deadline 1 Deadline for receipt by the ExA of: <ul style="list-style-type: none"> • Written summaries of oral submissions put at OFH held on 2 December 2016
4 January 2017	Deadline 2 Deadline for receipt by the ExA of: <ul style="list-style-type: none"> • Notification of wish to speak at a Compulsory Acquisition Hearing (CAH) • Notification of wish to speak at a subsequent OFH • Notification of wish to attend the Accompanied Site Inspection (ASI) on 21 February 2017 • Notification of Statutory Parties of wish to be considered as an Interested Party (IP) • Comments by any IPs on the Applicant's draft itinerary for the ASI on 21 February 2017
16 January 2017	Deadline 3 Deadline for receipt by the ExA of: <ul style="list-style-type: none"> • Comments of Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Written Representations (WRs) by all IPs • Summaries of all WRs exceeding 1500 words • Local Impact Report(s) from any local authority • Statements of Common Ground requested by the

Date	Examination Event
	<p>ExA</p> <ul style="list-style-type: none"> • Responses to the ExA's FWQs • Applicant's first revised draft Development Consent Order (dDCO) • Comments by any IPs on Applicant's response to ExA's procedural decision dated 21 September 2016 • Any further information requested by the ExA under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 ('the Exam Rules')
23 January 2017	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Notification of date, time and place of hearings to be held on 22, 23 and 24 February 2017 • Notification of the time and meeting place for the ASI to be held on 21 February 2017 <p>Publication of:</p> <ul style="list-style-type: none"> • Itinerary for ASI on 21 February 2017
3 February 2017	<p>Deadline 4</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on Local Impact Report(s) • Comments on responses to ExA's FWQs • Comments on any further information requested by the ExA to Deadline 3 • Any further information requested by the ExA under Rule 17 of the Exam Rules
21 February 2017	ASI
22 February 2017	Issue Specific Hearing (ISH) on environmental and other issues
23 February 2017 (am)	CAH
23 February 2017 (pm)	ISH on the dDCO
24 February 2017	OFH

Date	Examination Event
(am)	
3 March 2017	<p>Deadline 5</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Written summaries of oral submissions put at hearings held on 22, 23 and 24 February 2017 • Applicant's second revised dDCO • Comments on any further information requested by the ExA and received to Deadline 4 • Any further information requested by the ExA under Rule 17 of the Exam Rules
20 March 2017	<p>Publication of:</p> <ul style="list-style-type: none"> • ExA's Second Written Questions (SWQs)
10 April 2017	<p>Deadline 6</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Response to ExA's SWQs • Comments on any further information requested by the ExA to Deadline 5 • Any further information requested by the ExA under Rule 17 of the Exam Rules
18 April 2017	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> • Request for further information from the Applicant
19 April 2017	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> • Notification of date, time and place of hearings to be held on 17 and 18 May 2017
2 May 2017	<p>Deadline 7</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on responses to ExA's SWQs • Comments on any further information requested by the ExA and received to Deadline 6 • Any further information requested by the ExA under Rule 17 of the Exam Rules
17 May 2017	ISH on environmental and other issues
18 May 2017 (am)	ISH on the dDCO
18 May 2017 (pm)	CAH

Date	Examination Event
26 May 2017	<p>Deadline 8</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Written summaries of oral submissions put at hearings held on 17 and 18 May 2017 • Comments on any further information requested by the ExA and received to Deadline 7 • Any further information requested by the ExA under Rule 17 of the Exam Rules
31 May 2017	<p>Deadline 9</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on any further information requested by the ExA and received to Deadline 8 • Any further information requested by the ExA under Rule 17 of the Exam Rules
2 June 2017	Close of Examination

APPENDIX B: EXAMINATION LIBRARY

TR010006: M20 Junction 10a Examination Library Index	
Category	Reference
<u>Application Documents</u> As submitted and amended version received before the Preliminary Meeting. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<u>Adequacy of Consultation Representations</u>	AoC-xxx
<u>Relevant Representations</u>	RR-xxx
<u>Procedural Decisions and Notifications from the Examining Authority</u> Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
<u>Events and Hearings</u> Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
Representations (by Deadline)	
<u>Deadline 1</u> Deadline for receipt by Examining Authority (ExA) of: <ul style="list-style-type: none"> Written summaries of oral submissions put at Open Floor Hearing held on 2 December 2016 	REP1-xxx
<u>Deadline 2</u> Deadline for receipt by ExA of: <ul style="list-style-type: none"> Notification of wish to speak at a Compulsory Acquisition Hearing (CAH) Notification of wish to speak at a subsequent Open Floor Hearing (OFH) Notification of wish to attend the Accompanied Site Inspection (ASI) on 21 February 2017 Notification by Statutory Parties of wish to be 	REP2-xxx

<p>considered an Interested Party (IP)</p> <ul style="list-style-type: none"> • Comments by any IPs on the Applicant's draft itinerary for the ASI on 21 February 2017 	
<p><u>Deadline 3</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Written Representations (WRs) by all Interested Parties • Summaries of all WRs exceeding 1500 words • Local Impact Report(s) from any local authority • Statements of Common Ground requested by ExA • Responses to ExA's First Written Questions (FWQ) • Applicant's first revised draft Development Consent Order (dDCO) • Comments by any IPs on Applicant's response to ExA's procedural decision dated 21 September 2016 • Any further information requested by the ExA under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the Exam Rules) 	<p>REP3-xxx</p>
<p><u>Deadline 4</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on Local Impact Report(s) • Comments on responses to ExA's FWQs • Comments on any further information requested by the ExA and received to Deadline 3 • Any further information requested by the ExA under Rule 17 of the Exam Rules 	<p>REP4-xxx</p>
<p><u>Deadline 5</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Written summaries of oral submissions put at any hearings held on 22, 23 and 24 February 2017 • Applicant's second revised dDCO • Comments on any further information requested 	<p>REP5-xxx</p>

<p>by the ExA and received to Deadline 4</p> <ul style="list-style-type: none"> Any further information requested by the ExA under Rule 17 of the Exam Rules 	
<p><u>Deadline 6</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> Responses to ExA's Second Written Questions (SWQ) Comments on any further information requested by the ExA and received to Deadline 5 Any further information requested by the ExA under Rule 17 of the Exam Rules 	REP6-xxx
<p><u>Deadline 7</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> Comments on responses to ExA's SWQs Comments on any further information requested by the ExA and received to Deadline 6 Any further information requested by the ExA under Rule 17 of the Exam Rules 	REP7-xxx
<p><u>Deadline 8</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> Written summaries of oral submissions put at hearing held on 17 and 18 May 2017 Comments on any further information requested by the ExA and received to Deadline 7 Any further information requested by the ExA under Rule 17 of the Exam Rules 	REP8-xxx
<p><u>Deadline 9</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> Comments on any further information requested by the ExA and received to Deadline 8 Any further information requested by the ExA under Rule 17 of the Exam Rules 	REP9-xxx
<p><u>Other Documents</u></p> <p>Includes additional representations, s56, s58 and s59 certificates, transboundary documents etc</p>	OD-xxx

TR010006: M20 Junction 10a**Examination Library****Application Documents**

APP-001	<u>1.1 - Introduction to the Application</u>
APP-002	<u>1.2 - Covering Letter and Schedule of Compliance</u>
APP-003	<u>1.3 - Application Form</u>
APP-004	<u>1.4 - Copies of Newspaper Notices</u>

Plans

APP-005	<u>2.1 - Location Plan including Cover Sheet</u>
APP-006	<u>2.2 - Land Plans</u>
APP-007	<u>2.3 - Works Plans</u>
APP-008	<u>2.4 - Rights of Way and Access Plans including Cover Sheet and Key Plan</u>
APP-009	<u>2.5 - Permanent Speed Limit Orders Plans</u>
APP-010	<u>2.6 - General Arrangement Plan including Cover Sheet and Key Plan</u>
APP-011	<u>2.7 - Classification of Roads Plan including Cover Sheet and Key Plan</u>
APP-012	<u>2.9 - Engineering Section Drawings including Cover Sheet</u>
APP-013	<u>2.10 - Traffic Regulation Measures Plans</u>
APP-014	<u>2.11 - Outline Drainage Works including Cover Sheet and Key Plan</u>
APP-015	<u>2.12 - Special Category Land Plan including Cover Sheet</u>
APP-016	<u>2.13 - Red Line Boundary Plan including cover sheet</u>
APP-017	<u>2.14 - Nationally Significant Infrastructure Project Definition Plan including Cover Sheet</u>

Draft Development Consent Orders and Compulsory Purchase Information

APP-018	<u>3.1 - Draft Development Consent Order</u>
APP-019	<u>3.2 - Explanatory Memorandum to Draft Development Consent Order</u>
APP-020	<u>3.3 - Consents and Agreements Position Statement</u>
APP-021	<u>4.1- Statement of Reasons</u>
APP-022	<u>4.2 - Funding Statement</u>

APP-023	4.3 - Book of Reference
APP-024	5.1 - Consultation Report
APP-025	5.2 Consultation Report Appendix A
APP-026	5.3 - Consultation Report Appendix B
APP-027	5.4 - Consultation Report Appendix C
APP-028	5.5 - Consultation Report Appendix D
Environmental Statement (ES)	
APP-029	ES 6.1 - Chapter 1 - Introduction
APP-030	ES 6.1 - Chapter 2 - The Proposed Scheme
APP-031	ES 6.1 - Chapter 3 - Consideration of Alternatives
APP-032	ES 6.1 - Chapter 4 - EIA Methodology
APP-033	ES 6.1 - Chapter 5- Air Quality
APP-034	ES 6.1 - Chapter 6 - Cultural Heritage
APP-035	ES 6.1 - Chapter 7 - Landscape
APP-036	ES 6.1 - Chapter 8 - Nature Conservation
APP-037	ES 6.1 - Chapter 9 - Geology and Soils
APP-038	ES 6.1- Chapter 10 - Materials
APP-039	ES 6.1 - Chapter 11 - Noise and Vibration
APP-040	ES 6.1- Chapter 12 - Effects on All Travellers
APP-041	ES 6.1 - Chapter 13 - Community and Private Assets
APP-042	ES 6.1 - Chapter 14 - Road Drainage and the Water Environment
APP-043	ES 6.1 - Chapter 15 - Combined and Cumulative Effects
APP-044	ES 6.1 - Chapter 16 - Conclusions and Summary Tables
APP-045	ES 6.1 - Chapter 17 - Environmental Management
APP-046	ES 6.1 - Chapter 18 - Glossary
APP-047	ES 6.1- Chapter 19- List of Abbreviations

APP-048	<u>ES 6.2- Figure 1.1 Location Plan</u>
APP-049	<u>ES 6.2 - Figure 2.1 The Main Scheme</u>
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APP-051	<u>ES 6.2 - Figure 2.3 Environmental Constraints Plan</u>
APP-052	<u>ES 6.2 - Figure 2.4a. Rights of Way and Access Plans</u>
APP-053	<u>ES 6. 2 - Figure 2.4b Rights of Way and Access Plans</u>
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APP-055	<u>ES 6.2- Figure 2.4d Rights of Way and Access Plans</u>
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APP-057	<u>ES 6.2 - Figure 2.5b The Main Scheme Lighting</u>
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APP-061	<u>ES 6.2 - Figure 2.6b Environmental Master plan for the Main Scheme</u>
APP-062	<u>ES 6.2 - Figure 2.6c Environmental Master plan for the Main Scheme</u>
APP-063	<u>ES 6.2 - Figure 2.6d Environmental Master plan for the Main Scheme</u>
APP-064	<u>ES 6.2 - Figure 2.6e Environmental Master plan for the Main Scheme</u>
APP-065	<u>ES 6.2 - Figure 2.6f Environmental Master plan for the Main Scheme</u>
APP-066	<u>ES 6.2 - Figure 2.6g Environmental Master plan for the Main Scheme</u>
APP-067	<u>ES 6.2 - Figure 2.7a Environmental Master plan for the Alternative Scheme</u>
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APP-159	<u>ES 6.3 - Appendix 2.2 - Indicative Planting Schedule</u>
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APP-161	<u>ES 6.3 - Appendix 4.2 Response to Scoping Opinion</u>
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APP-172	<u>ES 6.3 - Appendix 7.3 Arboricultural Implications Assessment</u>
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APP-174	<u>ES 6.3 - Appendix 7.5 Photomontage Methodology</u>
APP-175	<u>ES 6.3 - Appendix 8.1 Extended Phase 1 Report</u>
APP-176	<u>ES 6.3 - Appendix 8.2 Hedgerow Report</u>
APP-177	<u>ES 6.3 - Appendix 8.3 - Protected Species Report – Bats -Part 1 of 2</u>
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APP-179	<u>ES 6.3 - Appendix 8.4 - Protected Species Report – Birds</u>
APP-180	<u>ES 6.3 - Appendix 8.5 - Protected Species Report – Dormouse</u>
APP-181	<u>ES 6.3 - Appendix 8.6 - Protected Species Report – GCN</u>
APP-182	<u>ES 6.3 - Appendix 8.7- Protected Species Report – Reptiles</u>
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APP-186	<u>ES 6.3 - Appendix 10.1 Carbon Calculations</u>
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APP-188	<u>ES 6.3 - Appendix 12.1 - Driver Stress Significance Criteria</u>
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APP-193	ES 6.3 - Appendix 13.1 Land Use and Economic Development Report
APP-194	ES 6.3 - Appendix 13.2 ALC Report
APP-195	ES 6.3 - Appendix 13.3 Agricultural Impact Assessment Baseline Data Report
APP-196	ES 6.3 - Appendix 14.1 Water Framework Directive
APP-197	ES 6.3 - Appendix 14.2 Flood Risk Assessment
APP-198	ES 6.3 - Appendix 14.3 HAWRAT
APP-199	ES 6.3 - Appendix 15.1 Historic England Letter
APP-200	ES 6.3- Appendix 15.2 List of 'Other Developments'
APP-201	ES 6.3 - Appendix 15.3 Assessment of Combined Effects
APP-202	ES 6.3 - Appendix 15.4 Assessment of Cumulative Effects
APP-203	ES 6.3 - Appendix 15.5 Air Quality and Noise and Vibration Cumulative Effects
APP-204	ES 6.3 - Appendix 17.1 Outline Construction Environmental Management Plan OCEMP
APP-205	ES 6.3 - Appendix 17.2 Indicative Contents of a HEMP
APP-206	ES 6.4 - Statement of Statutory Nuisances
APP-207	ES 6.5 - Non Technical Summary
APP-208	ES 6.6 - Assessment of Implications on European Sites
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APP-210	7.2 - Transport Assessment and Appendices
APP-211	7.4 - Contaminated Land Desk Study and Preliminary Interpretative Report
APP-212	7.5 - Signing Strategy
Adequacy of Consultation Representations	
AoC-001	Ashford Borough Council
AoC-002	Canterbury City Council

AoC-003	<u>Kent County Council</u>
AoC-005	<u>London Borough of Bexley</u>
AoC-006	<u>Maidstone Borough Council</u>
AoC-007	<u>Medway Council</u>
AoC-008	<u>Shepway District Council</u>
AoC-009	<u>Tunbridge Wells Borough Council</u>
Relevant Representations	
RR-001	<u>Ashford Borough Council - Affected person</u>
RR-002	<u>Ashford Borough Council - Local Authority</u>
RR-003	<u>Barry Kerr</u>
RR-004	<u>BDB Design LLP on behalf of Brett Aggregates Limited</u>
RR-005	<u>Bellamy Roberts on behalf of Church Commissioners for England</u>
RR-006	<u>Campaign for Better Transport</u>
RR-007	<u>David Hannigan</u>
RR-008	<u>David Lowe on behalf of The Executors of Marianne Clunies-Ross deceased plus 6 others</u>
RR-009	<u>DHA Planning on behalf of GSE Group</u>
RR-010	<u>Elizabeth Kerr</u>
RR-011	<u>Environment Agency</u>
RR-012	<u>Geoffrey Fletcher</u>
RR-013	<u>George Koowaree</u>
RR-014	<u>Georgina Mayes</u>
RR-015	<u>Gillian Miller</u>
RR-016	<u>Gowling WLG LLP on behalf of Friends Life Limited/ Aviva Investors</u>
RR-017	<u>Heidi Milner</u>
RR-018	<u>Historic England</u>
RR-019	<u>Ian Scollick</u>

RR-020	<u>Janet Oakley- Hills</u>
RR-021	<u>Jennifer Mills</u>
RR-022	<u>John Eastwood</u>
RR-023	<u>Jonathan Mayes</u>
RR-024	<u>Julia Miller</u>
RR-025	<u>Julia Spooner</u>
RR-026	<u>Kent County Council</u>
RR-027	<u>Kent Downs Area of Outstanding Natural Beauty(AONB) Unit</u>
RR-028	<u>Lee Evans Planning on behalf of Broad Oak Motor Group Limited</u>
RR-029	<u>Linda Arthur</u>
RR-030	<u>Michael Cremonesi</u>
RR-031	<u>NATS LTD</u>
RR-032	<u>North Willesborough Community Forum</u>
RR-033	<u>Paul Bartlett</u>
RR-034	<u>Peter Twaite</u>
RR-035	<u>Pilgrims Hospices</u>
RR-036	<u>PSP Consulting on behalf of Taylor Wimpey</u>
RR-037	<u>Public Health England</u>
RR-038	<u>Rebecca Cowling</u>
RR-039	<u>Savills on behalf of Wyevale Garden Centres Limited</u>
RR-040	<u>Sharon Swandale</u>
RR-041	<u>Southern Gas Networks PLC</u>
RR-042	<u>Stuart John Ramsay</u>
RR-043	<u>Sue Appleby</u>
RR-044	<u>The Village Alliance</u>
RR-045	<u>Vivian Blaney</u>

Procedural Decisions and Notifications from the Examining Authority	
PD-001	Section 55 Acceptance of Applications checklist
PD-002	Notification of Decision to Accept Application
PD-003	Post s51 Advice
PD-004	Appointment of an Examining Authority
PD-005	Pre Examination procedural decision- Procedural decision made by the Examining Authority requesting revised documents from the Applicant.
PD-006	Rule 6 Letter
PD-007	Rule 8 Letter
PD-008	The Examining Authority's First Written Questions
PD-009	Notification of Hearings and Accompanied Site Inspection for February 2017
PD-010	Response to s102A Application – Mr Shala - Second letter from the Examining Authority regarding an application to become an interested party under section 102A of the Planning Act 2008 (as amended).
PD-011	Response to s102A Application – Mr Jeminaj - Second letter from the Examining Authority regarding an application to become an interested party under section 102A of the Planning Act 2008 (as amended).
PD-012	The Examining Authority's Second Written Questions
PD-013	Rule 17 - Request for further information sent to the Applicant 18 April 2017
PD-014	Notification of hearings in May 2017
PD-015	Notification of completion of the Examining Authority's examination
Events and Hearings	
Preliminary Meeting – 2 December 2016	
EV-001	Audio of the Preliminary Meeting held on 02 December 2016
EV-003	Preliminary Meeting Note - key points discussed and advice given at the Preliminary Meeting on Friday 2 December 2016
Open Floor Hearing – 2 December 2016	
EV-002	Audio of the Open Floor Hearing held on 02 December 2016

Accompanied Site Inspection – 21 February 2017	
EV-004	Highways England - Itinerary for the Site Inspection
EV-005	Highways England - Applicant's notices for February 2017 Examination events
Hearings 22- 24 February 2017	
EV-006	Agendas for Hearings 22-24 February 2017
EV-007	Supplemental Agenda for Compulsory Acquisition Hearing on 23 February 2017
Issue Specific Hearing on environmental matters – 23 February 2017	
EV-008	Audio of the Issue Specific Hearing dealing with matters relating to the environment held on 22 February 2017 (Part 1 of 4)
EV-009	Audio of the Issue Specific Hearing dealing with matters relating to the environment held on 22 February 2017 (Part 2 of 4)
EV-010	Audio of the Issue Specific Hearing dealing with matters relating to the environment held on 22 February 2017 (Part 3 of 4)
EV-011	Audio of the Issue Specific Hearing dealing with matters relating to the environment held on 22 February 2017 (Part 4 of 4)
Compulsory Acquisition Hearing – 23 February 2017	
EV-012	Audio of the Compulsory Acquisition Hearing held on 23 February 2017
Issue Specific Hearing on the draft Development Consent Order – 24 February 2017	
EV-013	Audio of the Issue Specific Hearing dealing with the draft Development Consent Order held on 23 February 2017 (Part 1 of 2)
EV-014	Audio of the Issue Specific Hearing dealing with the draft Development Consent Order held on 23 February 2017 (Part 2 of 2)
Open Floor Hearing – 24 February 2017	
EV-015	Audio of the Open Floor Hearing held on 24 February 2017
Hearings on 17-18 May 2017	
EV-016	Agenda for hearings 17- 18 May 2017
Issue Specific Hearing on environmental matters – 17 May 2017	
EV-017	Audio of the Issue Specific Hearing dealing with matters relating to the

	<u>environment held on 17 May 2017 (Part 1 of 3)</u>
EV-018	<u>Audio of the Issue Specific Hearing dealing with matters relating to the environment held on 17 May 2017 (Part 2 of 3)</u>
EV-019	<u>Audio of the Issue Specific Hearing dealing with matters relating to the environment held on 17 May 2017 (Part 3 of 3)</u>
Compulsory Acquisition Hearing – 18 May 2017	
EV-020	<u>Audio of the Compulsory Acquisition Hearing held on 18 May 2017 (Part 1 of 2)</u>
EV-021	<u>Audio of the Compulsory Acquisition Hearing held on 18 May 2017 (Part 2 of 2)</u>
Issue Specific Hearing on the draft Development Consent Order – 18 May 2017	
EV-022	<u>Audio of the Issue Specific Hearing on the draft Development Consent Order held on 18 May 2017</u>
Representations	
Deadline 1 – 9 December 2016	
REP1-001	<u>Bellamy Roberts On Behalf of Church Commissioners for England - Written summary of oral submissions put at the Open Floor Hearing held on 2 December 2016</u>
Deadline 2 – 4 January 2017	
No documents were received that required publishing for this deadline	
Deadline 3 – 16 January 2017	
REP3-001	<u>Ashford Borough Council- Written Representation 1</u>
REP3-002	<u>Ashford Borough Council - Written Representation 2</u>
REP3-003	<u>Ashford Borough Council - Comments on the Applicant's Response to the ExA Procedural Decision of 21 September 2016</u>
REP3-004	<u>Ashford Borough Council - Response to the ExA's First Written Questions</u>
REP3-005	<u>Ashford Borough Council and Kent County Council - Joint Local Impact Report</u>
REP3-006	<u>David Lowe on behalf of the Executors of Marianne Clunies- Ross and others - Response to the ExA's First Written Questions</u>

REP3-007	<u>Environment Agency - Response to the ExA's First Written Questions</u>
REP3-008	<u>Environment Agency - Written Representation</u>
REP3-009	<u>Friends Life and Aviva Investors - Written Representation and Response to the ExA's First Written Questions</u>
REP3-010	<u>Highways England - Deadline 3 Document Register</u>
REP3-011	<u>Highways England - 3.1 Draft Development Consent Order (Rev C)</u>
REP3-012	<u>Highways England - 3.1 Draft Development Consent Order Tracked Changes Version (Rev C)</u>
REP3-013	<u>Highways England - 8.5 Statement of Common Ground with Natural England (Rev A)</u>
REP3-014	<u>Highways England - 8.8 Statement of Common Ground with Public Health England (Rev A)</u>
REP3-015	<u>Highways England - 8.10 Statement of Common Ground with South Ashford Developers (Rev A)</u>
REP3-016	<u>Highways England - 9.6 Compulsory Acquisition Negotiations Status Report (Rev A)</u>
REP3-017	<u>Highways England - 10.7 Comments on Relevant Representations (Rev A)</u>
REP3-018	<u>Highways England -10.8 Response to Examining Authority's First Written Questions Report 1 (Rev A)</u>
REP3-019	<u>Highways England -10.10 Response to Examining Authority's First Written Questions Report 3 (Rev A)</u>
REP3-020	<u>Highways England -10.11 Response to Examining Authority's First Written Questions Report 4 (Rev A)</u>
REP3-021	<u>Highways England -10.12 Response to Examining Authority's First Written Questions Report 5 (Rev A)</u>
REP3-022	<u>Highways England -10.13 Environmental Update Report (Rev A)</u>
REP3-023	<u>Kent County Council - Written Representation</u>
REP3-024	<u>Kent County Council - Response to the ExA's First Written Questions</u>
REP3-025	<u>Kent County Council - Summary of Relevant Representation</u>
REP3-026	<u>Kent Downs Area of Outstanding Natural Beauty Unit - Written Representation</u>

REP3-027	<u>Kent Downs Area of Outstanding Natural Beauty Unit - Response to the ExA's First Written Questions</u>
REP3-028	<u>Natural England - Written Representation and Response to the ExA's First Written Questions</u>
REP3-029	<u>Paul Bartlett - Written Representation</u>
REP3-030	<u>River Stour (Kent) International Drainage Board - Written Representation</u>
REP3-031	<u>Southern Gas Networks Plc - Written Representation</u>
REP3-032	<u>South Ashford Developers - Statement of Common Ground</u>
REP3-033	<u>The Trustees of the Henderson UK Retail Warehouse Fund - Request to become an Interested Party</u>
REP3-034	<u>Village Alliance - Written Representation</u>
Late Submissions	
REP3-035	<u>Highways England - 10.9 Response to Examining Authority's First Written Questions Report 2 (Rev A).</u>
REP3-036	<u>Highways England - 10.20 Update on Status of Statement of Common Ground with Environment Agency</u>
REP3-037	<u>Highways England - 10.21 Update on Status of Statement of Common Ground with Historic England</u>
REP3-038	<u>Public Health England - Response to the ExA's First Written Questions. Late Submission for Deadline 3</u>
REP3-039	<u>North Willesborough Community Forum - Written Representation. Late Submission for Deadline 3</u>
Deadline 4 – 3 February 2017	
REP4-001	<u>Ashford Borough Council - Comments on Responses to Relevant Representations and to the ExA's First Written Questions.</u>
REP4-002	<u>Ashford Borough Council - Comments on Responses to the ExA's First Written Questions</u>
REP4-003	<u>Kent County Council - Comments on Submission made for Deadline 4</u>
REP4-004	<u>Highways England - Document Drawing Issue Register - ST06 (Rev 0)</u>
REP4-005	<u>Highways England - Statement of Common Ground with Historic England</u>

REP4-006	<u>Highways England - Rights of Way and Access plans - Drawing - HA514442-MMGJV-GEN-SMW-DE-Z-2404 (Rev B)</u>
REP4-007	<u>Highways England - Environmental Constraints Plan - HA514442-MMGJV-GEN-SMW-DE-Z-60219 (Rev B)</u>
REP4-008	<u>Highways England - Environmental Constraints Plan - HA514442-MMGJV-GEN-SMW-DE-Z-60214 (Rev C)</u>
REP4-009	<u>Highways England - Environmental Constraints Plan - HA514442-MMGJV-GEN-SMW-DE-Z-60220 (Rev C)</u>
REP4-010	<u>Highways England - Environmental Constraints Plan - HA514442-MMGJV-GEN-SMW-DE-Z-60221 (Rev C)</u>
REP4-011	<u>Highways England - HA514442-MMGJV-GEN-SMW-DE-Z-60213 (Rev C)</u>
REP4-012	<u>Highways England - Site Plan Showing Location of Survey Grids and Referencing</u>
REP4-013	<u>Highways England - Plot of Raw Gradiometer Data</u>
REP4-014	<u>Highways England - Colour Plot of Raw Gradiometer Data Showing Extreme Magnetic Values</u>
REP4-015	<u>Highways England - Plot of Processed Gradiometer Data</u>
REP4-016	<u>Highways England - Interpretation of Gradiometer Anomalies</u>
REP4-017	<u>Highways England - Site Location and Overview of Survey Areas</u>
REP4-018	<u>Highways England - 11.1 Response to Ashford Borough Council Submission at Deadline 3</u>
REP4-019	<u>Highways England - 11.2 Response to Kent County Council Submission at Deadline 3</u>
REP4-020	<u>Highways England - 11.3 Comments on Responses to the ExA's First Written Questions</u>
REP4-021	<u>Highways England - 11.4 Comments on Written Representations from Deadline 1 and 3</u>
REP4-022	<u>Highways England - 11.5 Outline Site Waste Management Plan</u>
REP4-023	<u>Highways England - Archaeological Walkover survey, metal detecting survey and evaluation trenching Report</u>
REP4-024	<u>Highways England - Site Investigation Report</u>
REP4-025	<u>Highways England - Geophysical Survey Report</u>

Late Submissions	
REP4-026	<u>Highways England - Arboricultural Implications Assessment (Rev C) - Late Submission for Deadline 4</u>
REP4-027	<u>Highways England - Arboricultural Survey Report (Rev D) - Late Submission for Deadline 4</u>
Deadline 5 - 3 March 2017	
REP5-001	<u>Ashford Borough Council - Comments on Applicant's Response to Written Representation</u>
REP5-002	<u>Ashford Borough Council - Written submission for the hearing held on 23 February 2017</u>
REP5-003	<u>British Horse Society - Submission for the hearing held on 24 February 2017- Representation accepted at the discretion of the ExA</u>
REP5-004	<u>Environment Agency - Comments on Applicant's Response to Written Representation</u>
REP5-005	<u>Highways England - Deadline 5 Document Register</u>
REP5-006	<u>Highways England - Agreed Joint Statement of Highways England and Friends Life Limited</u>
REP5-007	<u>Highways England - 3.1 Draft Development Consent Order (Rev D)</u>
REP5-008	<u>Highways England - 3.1 Draft Development Consent Order Tracked Changes Version (Rev D)</u>
REP5-009	<u>Highways England - Amendments to draft DCO for Deadline 5</u>
REP5-010	<u>Highways England - Position Statement of Highways England on Highfield Lane Turning Loop</u>
REP5-011	<u>Highways England - General Arrangement Plan - Kingsford Street Highfield Lane Turning Loop as Proposed by Kent County Council</u>
REP5-012	<u>Highways England - Proposed Compound Plans</u>
REP5-013	<u>Highways England - Arboricultural Survey Report (Rev E)</u>
REP5-014	<u>Highways England - Arboricultural Implications Assessment (Rev D)</u>
REP5-015	<u>Highways England - 9.6 Compulsory Acquisition Negotiations Status Report (Rev B)</u>
REP5-016	<u>Highways England - 12.1 Written summary of oral submissions at Issue Specific Hearing - Environmental Issues</u>

REP5-017	<u>Highways England - 12.2 Written summary of oral submissions at Issue Specific Hearing - Non-Environmental Issues</u>
REP5-018	<u>Highways England - 12.3 Written summary of oral submissions at Compulsory Acquisition Hearing</u>
REP5-019	<u>Highways England - 12.4 Responses to Comments on ABC and KCC Submissions at Deadline 4</u>
REP5-020	<u>Highways England - 12.5 Written summary of oral submissions at Development Consent Order Hearing</u>
REP5-021	<u>Highways England - 12.6 Responses to issues raised at the Open Floor Hearing</u>
REP5-022	<u>Highways England - Minerals Safeguarding Assessment</u>
REP5-023	<u>Highways England - List of Appearances for Highways England</u>
REP5-024	<u>Highways England - Ashford Borough Council Planning Committee Report - Re. the ExA's First Written Questions - Q21.8</u>
REP5-025	<u>Historic England - Written submission for the hearing held on 22 February 2017</u>
REP5-026	<u>Kent County Council - Written submission for the hearings held in February 2017</u>
REP5-027	<u>Natural England - Response to questions raised prior to the February 2017 hearings</u>
REP5-028	<u>North Willlesborough Community Forum - Comments on Applicant's Response to Written Representation</u>
REP5-029	<u>Paul Bartlett - Written submission for the hearing held on 24 February 2017</u>
REP5-030	<u>Robin Bristow - Written submission for the hearing held on 24 February 2017</u>
REP5-031	<u>South Ashford Developers - Response to Agenda Number 8 - for the hearings held in February 2017</u>
Late Submissions	
REP5-032	<u>Ashford Borough Council - Written submission for the hearings held in February 2017 and other comments. Late Submission for Deadline 5</u>
REP5-033	<u>Shepway Environment and Community Network - Written submission for the hearings held in February 2017 and other comments. Late Submission for Deadline 5</u>

REP5-034	<u>The Village Alliance - Written submission for the hearings held in February 2017 and other comments. Late Submission for Deadline 5</u>
Deadline 6 - 10 April 2017	
REP6-001	<u>Ashford Borough Council - Response to the Examining Authority's Second Written Questions and Comments on the draft DCO</u>
REP6-002	<u>David Lowe on behalf of the Executors of Marianne Cluines-Ross and others - Further Representation</u>
REP6-003	<u>Environment Agency - Response to the Examining Authority's Second Written Questions</u>
REP6-004	<u>Highways England - Figure 2.1 The Main Scheme - HA514442-MMGJV-GEN-SMW-DE-Z-60201 (Rev B)</u>
REP6-005	<u>Highways England - Figure 2.6a Environmental Masterplan for the Main Scheme Revision B</u>
REP6-006	<u>Highways England - Figure 2.6b Environmental Masterplan for the Main Scheme Revision B</u>
REP6-007	<u>Highways England - Figure 2.6c Environmental Masterplan for the Main Scheme (Detail Area 1) Revision B</u>
REP6-009	<u>Highways England - Figure 2.6d Environmental Masterplan for the Main Scheme (Detail Area 2) Revision B</u>
REP6-010	<u>Highways England - Figure 2.6e Environmental Masterplan for the Main Scheme (Detail Area 3) Revision B</u>
REP6-011	<u>Highways England - Figure 2.6f Environmental Masterplan for the Main Scheme (Detail Area 4) Revision B</u>
REP6-012	<u>Highways England - Figure 2.6g Environmental Masterplan for the Main Scheme (Detail Area 5) Revision B</u>
REP6-013	<u>Highways England - Figure 2.7a Environmental Masterplan for the Alternative Scheme, Revision B</u>
REP6-014	<u>Highways England - Figure 2.7b Environmental Masterplan for the Alternative Scheme Revision B</u>
REP6-015	<u>Highways England - Figure 2.7c Environmental Masterplan for the Alternative Scheme (Detail Area 1) Revision B</u>
REP6-016	<u>Highways England - 4.3 Book of Reference Rev C- clean copy</u>
REP6-017	<u>Highways England - 4.3 Book of Reference Rev C- marked up copy</u>
REP6-018	<u>Highways England - 6.3 Appendix 17.1 Outline Construction</u>

	<u>Environmental Management Plan (Rev B)</u>
REP6-019	<u>Highways England - 8.3 Statement of Common Ground with Environment Agency (Rev A)</u>
REP6-020	<u>Highways England - 8.6 Statement of Common Ground with Southern Gas Networks (Rev A)</u>
REP6-021	<u>Highways England - 9.6 Compulsory Acquisition Negotiations Status Report (Rev C)</u>
REP6-022	<u>Highways England - 13.4 Applicant's Responses to The Examining Authority's Second Written Questions (Rev A)</u>
REP6-023	<u>Highways England - 13.5 Environmental Masterplan Update Report for Deadline 6 (Rev A)</u>
REP6-024	<u>Highways England - 13.6 Response to Examining Authority's Second Written Questions ExA Question 2.01 (i) (Rev A)</u>
REP6-025	<u>Highways England - 13.8 Drawing Update Report</u>
REP6-026	<u>Highways England - 13.9 Archaeological Intrusive Evaluation, Written Scheme of Investigation (Rev D)</u>
REP6-027	<u>Highways England - 13.10 Scheme Overlay and Aerial Photo (Rev A)</u>
REP6-028	<u>Highways England - 13.11 Development Assumptions for Traffic Modelling (Rev A)</u>
REP6-029	<u>Highways England - Document-Drawing Issue Register</u>
REP6-030	<u>Highways England - Agreed Joint Statement of Highways England and Friends Life Limited - updated 07.04.2017</u>
REP6-031	<u>Highways England - Nationally Significant Infrastructure Project Definition Plan - HA514442-MMGJV-GEN-SMW-DE-Z-21401 (Rev B)</u>
REP6-032	<u>Highways England - Classification of Road Plan (Key Plan) - HA514442-MMGJV-GEN-SMW-DE-Z-2701 (Rev B)</u>
REP6-033	<u>Highways England - Traffic Management Plan - DRAFT Rev01</u>
REP6-034	<u>Highways England - Works Plans (Key Plan) - HA514442-MMGJV-GEN-SMW-DE-Z-2301 (Rev C)</u>
REP6-035	<u>Highways England - Works Plans (Sheet 2 of 4) - HA514442-MMGJV-GEN-SMW-DE-Z-2303 (Rev C)</u>
REP6-036	<u>Highways England - Works Plans (Sheet 3 of 5) - HA514442-MMGJV-GEN-SMW-DE-Z-2304 (Rev C)</u>

REP6-037	<u>Highways England - Works Plan (Sheet 4 of 5) - HA514442-MMGJV-GEN-SMW-DE-Z-2305 (Rev C)</u>
REP6-038	<u>Highways England - Works Plans (Sheet 5 of 5) - HA514442-MMGJV-GEN-SMW-DE-Z-2306 (Rev C)</u>
REP6-039	<u>Highways England - Land Plans (Key Plan) - HA514442-MMGJV-GEN-SMW-DE-Z-2201 (Rev C)</u>
REP6-040	<u>Highways England - Land Plans (Sheet 2 of 4) - HA514442-MMGJV-GEN-SMW-DE-Z-2303 (Rev C)</u>
REP6-041	<u>Highways England - Land Plans (Sheet 4 of 4) - HA514442-MMGJV-GEN-SMW-DE-Z-2205 (Rev C)</u>
REP6-042	<u>Highways England - General Arrangement Plan (Key Plan) - HA514442-MMGJV-GEN-SMW-DE-Z-2601 (Rev B)</u>
REP6-043	<u>Highways England - General Arrangement Plan (Sheet 1 of 4) - HA514442-MMGJV-GEN-SMW-DE-Z-2602 (Rev B)</u>
REP6-044	<u>Highways England - General Arrangement Plan (Sheet 2 of 4) - HA514442-MMGJV-GEN-SMW-DE-Z-2603 (Rev B)</u>
REP6-045	<u>Highways England - General Arrangement Plan (Sheet 3 of 4) - HA514442-MMGJV-GEN-SMW-DE-Z-2604 (Rev B)</u>
REP6-046	<u>Highways England - General arrangement Plan (Sheet 4 of 4) - HA514442-MMGJV-GEN-SMW-DE-Z-2605 (Rev B)</u>
REP6-047	<u>Highways England - Rights of Way and Access Plans (Key Plan) - HA514442-MMGJV-GEN-SMW-DE-Z-2401 (Rev B)</u>
REP6-048	<u>Highways England - Rights of Way and Access Plans (Sheet 2 of 4) - HA514442-MMGJV-GEN-SMW-DE-Z-2403 (Rev B)</u>
REP6-049	<u>Highways England - Permanent Speed Limit Plans (Key Plan) - HA514442-MMGJV-GEN-SMW-DE-Z-2501 (Rev B)</u>
REP6-050	<u>Highways England - Red Line Boundary Plan - HA514442-MMGJV-GEN-SMW-DE-Z-21301 (Rev B)</u>
REP6-051	<u>Highways England - Red Line Boundary Plan- Alternative Scheme - HA514442-MMGJV-GEN-SMW-DE-Z-21302 (Rev B)</u>
REP6-052	<u>Highways England - Outline Drainage Works Plan (Key Plan) - HA514442-MMGJV-GEN-SMW-DE-Z-21101 (Rev B)</u>
REP6-053	<u>Highways England - Traffic Regulation Measures Plan (Key Plan) - HA514442-MMGJV-GEN-SMW-DE-Z-21001 (Rev B)</u>

REP6-054	<u>Kent County Council - Response to the Examining Authority's Second Written Questions</u>
REP6-055	<u>Kent County Council - Updated comments on DCO</u>
REP6-056	<u>Kent County Council - Updated comments on the schedule to the DCO</u>
REP6-057	<u>Public Health England - Response to the Examining Authority's Second Written Questions</u>
Deadline 7 - 02 May 2017	
REP7- 001	<u>Ashford Borough Council and Kent County Council - Environmental Master plan Update Report Review</u>
REP7- 002	<u>Environment Agency - Deadline 7 submission</u>
REP7- 003	<u>Kent County Council - Further Response to The Examining Authority's Second Written Questions</u>
REP7- 004	<u>Highways England - 3.1 Draft Development Consent Order (Rev E)</u>
REP7- 005	<u>Highways England - 3.1 Draft Development Consent Order -Rev E (Deadline 7) compared to Rev A (Submission)</u>
REP7- 006	<u>Highways England - 3.1 Draft Development Consent Order Tracked Changes Version (Rev E)</u>
REP7- 007	<u>Highways England - Amendments to draft DCO for Deadline 7</u>
REP7- 008	<u>Highways England - 4.1 Statement of Reasons (Rev B)</u>
REP7- 009	<u>Highways England - 4.1 Statement of Reasons Tracked Changes Version (Rev B)</u>
REP7- 010	<u>Highways England - 8.3 Statement of Common Ground with Environment Agency (Rev B)</u>
REP7- 011	<u>Highways England - 9.6 Compulsory Acquisition Negotiations Status Report (Rev D)</u>
REP7- 012	<u>Highways England - 14.1 Comments on Responses to ExA's Second Written Questions (Rev A)</u>
REP7- 013	<u>Highways England - 14.2 Applicant's Responses to Kent County Council and Ashford Borough Council DCO Comments (Rev A)</u>
REP7- 014	<u>Highways England - 14.3 Applicant's Response to Written Representation Submitted at Deadline 6 (Rev A)</u>
REP7- 015	<u>Highways England- Document-Drawing Issue Register - DCO submission (deadline 7)</u>

Late submissions	
REP7- 016	<u>Highways England - 8.1 Statement of Common Ground with Ashford Borough Council - Local Authority DRAFT (Rev B). Late Submission for Deadline 7</u>
REP7- 017	<u>Highways England - 8.2 Statement of Common Ground with Kent County Council (Rev B). Late Submission for Deadline 7</u>
Deadline 8 - 26 May 2017	
REP8-001	<u>Ashford Borough Council - Deadline 8 Submission</u>
REP8-002	<u>Ashford Borough Council - Signed letter withdrawal of objections to compulsory acquisition</u>
REP8-003	<u>David Lowe on behalf of Executors of Marianne Clunies-Ross and others - Presentation made at the Compulsory Acquisition hearing 18 May 2017</u>
REP8-004	<u>David Lowe on behalf of Executors of Marianne Clunies-Ross and others- Presentation made at the hearing dated 18 May 2017</u>
REP8-005	<u>Environment Agency - Deadline 8 submission</u>
REP8-006	<u>Environment Agency - Preferred version of the protective provisions</u>
REP8-007	<u>Highways England - Aviva Friends Life Drainage outfall plan</u>
REP8-008	<u>Highways England - Figure 2.6a Environmental Master plan for the Main Scheme Revision C</u>
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REP8-029	<u>Highways England - 15.3 Applicant's written summary of oral submissions at Development Consent Order Hearing (Rev A)</u>
REP8-030	<u>Highways England - 15.4 FRA Depth and Hazard mapping (Rev A)</u>
REP8-031	<u>Highways England - 15.5 FRA Additional Submission at Deadline 8 (Rev A)</u>
REP8-032	<u>Highways England - Document-Drawing Issue Register-Deadline 8</u>
REP8-033	<u>Highways England - Section 106 Unilateral Undertaking</u>

REP8-034	<u>Highways England - Operational Test Results regarding Lorry Area Turnaround</u>
REP8-035	<u>Highways England - Extract from House of Commons Transport Committee Report on Operation Stack</u>
REP8-036	<u>Highways England - Agreed Joint Statement of Highways England and Friends Life Limited - updated 16.05.2017</u>
REP8-037	<u>Kent County Council - Deadline 8 Submission</u>
REP8-038	<u>Paul Bartlett - Speaking notes from the hearing dated 17 May 2017</u>
REP8-039	<u>The Trustees of the Henderson UK Retail Warehouse Fund - Deadline 8 submission</u>
Deadline 9 - 31 May 2017	
All submissions to Deadline 9 were late submissions	
Late submissions	
REP9-001	<u>Highways England - 3.1 Draft Development Consent Order -Rev G - Late Submission for Deadline 9</u>
REP9-002	<u>Highways England - 3.1 Draft Development Consent Order -Rev G (Deadline 9) compared to Rev A (Submission)- Late Submission for Deadline 9</u>
REP9-003	<u>Highways England - 3.1 Draft Development Consent Order Tracked Changes Version (Rev G)- Late Submission for Deadline 9</u>
REP9-004	<u>Highways England -Validation Report - Rev G 31.05.17- Late Submission for Deadline 9</u>
REP9-005	<u>Highways England - Amendments to draft DCO for Deadline 9- Late Submission for Deadline 9</u>
REP9-006	<u>Highways England - 8.2 Statement of Common Ground with Kent County Council (Rev D)- Late Submission for Deadline 9</u>
REP9-007	<u>Highways England - 8.3 Statement of Common Ground with Environment Agency (Rev C)- Late Submission for Deadline 9</u>
REP9-008	<u>Highways England - 9.6 Compulsory Acquisition Negotiations Status Report (Rev E)- Late Submission for Deadline 9</u>
Other Documents	
OD-001	<u>London Borough of Bexley- Representation accepted at the discretion of the Examining Authority</u>

OD-002	<u>Highways England - Covering letter enclosing certificates of compliance and Schedule of changes to the Updated Book of Reference</u>
OD-003	<u>Royal Mail Group - Representation accepted at the discretion of the ExA</u>
OD-004	<u>Response to s102A application- Mr Jeminaj</u>
OD-005	<u>Highways England- Cover Letter for the Summary Table of responses to s51 Advice and s55 Checklist- Forming part of Applicant's response to Post -Acceptance s51 Advice and Examining Authority's procedural decision dated 21 September 2016</u>
OD-006	<u>Highways England – Summary table of responses to s52 advice and s55 checklist- Forming part of Applicant's response to Post -Acceptance s51 Advice and Examining Authority's procedural decision dated 21 September 2016</u>
OD-007	<u>Highways England – Case for the Scheme Revision B - Forming part of Applicant's response to Post -Acceptance s51 advice and Examining Authority's procedural decision dated 21 September 2016</u>
OD-008	<u>Highways England – Draft Development Consent Order Revision B - Forming part of Applicant's response to post -Acceptance s51September 2016</u>
OD-009	<u>Highways England – Book of Reference Revision B - Forming part of Applicant's response to post -Acceptance s51 Advice and Examining Authority's procedural decision dated 21 September 2016</u>
OD-010	<u>Highways England – 2.2 Land Plans Revision B - Forming part of Applicant's response to post -Acceptance s51 Advice and Examining Authority's procedural decision dated 21 September 2016</u>
OD-011	<u>Highways England – 2.3 Works Plans Revision B - Forming part of Applicant's response to post -Acceptance s51 Advice and Examining Authority's procedural decision dated 21 September 2016</u>
OD-012	<u>Highways England - Response to Rule 6 letter proposing amendments to the draft Examination Timetable</u>
OD-013	<u>Response to s102A application- Mr Shala - Letter from the Examining Authority regarding an application to become an interested party under section 102A of the Planning Act 2008 (as amended).</u>
OD-014	<u>Highways England - Applicant's draft itinerary for the Accompanied Site Inspection scheduled to take place on 21 February 2017</u>
OD-015	<u>Highways England - Glossary of Terms</u>
OD-016	<u>Southern Water - Representation accepted at the discretion of the ExA</u>
OD-017	<u>Highways England - 8.1 Statement of Common Ground with Ashford</u>

	<u>Borough Council. Additional representation accepted by the Examining Authority to be read in conjunction with the examination</u>
OD-018	<u>Highways England - 8.2 Statement of Common Ground with Kent County Council. Additional representation accepted by the Examining Authority to be read in conjunction with the examination</u>
OD-019	<u>David Lowe on behalf of the Executors of Marianne Clunies- Ross and others - Additional representation accepted by the Examining Authority to be read in conjunction with the examination</u>
OD-020	<u>Regulation 24 transboundary screening document</u>
OD-021	<u>Mr Ransley - Representation accepted at the discretion of the ExA</u>
OD-022	<u>Highways England - Flood Risk Assessment modelling addendum- Accepted at the discretion of the ExA</u>
OD-023	<u>David Lowe on behalf of the Executors of Marianne Clunies- Ross and others- Representation accepted at the discretion of the ExA</u>
OD-024	<u>Trustees of the Henderson UK Retail Warehouse Fund- Representation accepted at the discretion of the ExA</u>
OD-025	<u>Highways England - Document-Drawing Issue Register- DCO submission (post deadline 7)- Representation accepted at the discretion of the ExA</u>
OD-026	<u>Highways England - 13.5 Environmental Master plan Update Report for Deadline 6 (Rev B)- Representation accepted at the discretion of the ExA</u>
OD-027	<u>Highways England - 13.9 Archaeological Intrusive Evaluation, Written Scheme of Investigation- Representation accepted at the discretion of the ExA</u>
OD-028	<u>Highways England - Appendix 14.2 Flood Risk Assessment (Rev B) - Representation accepted at the discretion of the ExA</u>
OD-029	<u>Highways England - Appendix 14.2 Flood Risk Assessment Tracked Changes Version (Rev B)- Representation accepted at the discretion of the ExA</u>
OD-030	<u>Highways England - 14.4 Flood Risk Assessment Summary- Representation accepted at the discretion of the ExA</u>
OD-031	<u>Highways England - Protective provisions - Representation accepted at the discretion of the ExA</u>
OD-032	<u>Environment Agency - Protective provisions - Representation accepted at the discretion of the ExA</u>

OD-033	<u>Highways England - 3.1 Draft Development Consent Order -Rev H - accepted at the discretion of the ExA</u>
OD-034	<u>Highways England - Validation Report - Rev H- accepted at the discretion of the ExA</u>
OD-035	<u>Highways England - Consolidated positions with third parties prior to the close of Examination - accepted at the discretion of the ExA</u>
OD-036	<u>Highways England - 8.1 Statement of Common Ground with Ashford Borough Council - Local Authority (Rev D) -accepted at the discretion of the ExA-(this has been updated to reflect a change to amend point 3.2.12)</u>
OD-037	<u>The Trustees of the Henderson UK Retail Warehouse Fund- Confirmation of agreement reached with Highways England- accepted at the discretion of the ExA</u>
OD-038	<u>Southern Water - Withdrawing their objection</u>
OD-039	<u>Kent County Council - Regarding Kingsford Street Turning Loop - accepted at the discretion of the ExA</u>
OD-040	<u>Gowling WLG LLP on behalf of friends life/ Aviva investors - Joint statement between the Applicant and Gowling WLG LLP on behalf of friends for life/ Aviva investors - accepted at the discretion of the ExA</u>
OD-041	<u>Finns (1865) Ltd on behalf of Pilgrims Hospices - Update on negotiations - accepted at the discretion of the ExA</u>
OD-042	<u>Village Alliance - Additional Submission</u>

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AADT	Annual Average Daytime Traffic
ABC	Ashford Borough Council
AFS	Archaeological Framework Strategy
AIA	Arboricultural Implications Assessment
AIES	Assessment of Implications for European Sites
AONB	Area of Outstanding Natural Beauty
AQD	Air Quality Directive
AQMA	Air Quality Management Area
AQS	Air Quality Strategy
ASI	Accompanied Site Inspection
BMV	Best and Most Versatile (agricultural land)
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CCS	Considerate Constructors Scheme
CEMP	Construction Environmental Management Plan
CIEEM	Chartered Institute of Ecology and Environmental Management
CO ₂	Carbon Dioxide
CO ₂ e	Carbon Dioxide Equivalent
COBALT	Cost and Benefit to Accidents – Light Touch
COMEAP	Committee on the Medical Effects of Air Pollution
CoPA74	Control of Pollution Act 1974
CRTN	Calculation of Road Traffic Noise
CRWA 2000	The Countryside and Rights of Way Act 2000

dB	decibel
DCLG	Department for Communities and Local Government
dDCO	Draft Development Consent Order
DCO	Development Consent Order
Defra	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DIADEM	Dynamic Integrated Assignment and Demand Modelling
DMRB	Design Manual for Roads and Bridges
dTMP	Draft Traffic Management Plan
EA	Environment Agency
EC	European Commission
ECHR	European Convention on Human Rights
EEA	European Economic Area
EIA	Environment Impact Assessment
EIA Regs	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
EMUR	Environmental Masterplan Update Report
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010
EP Regs	Environmental Permitting (England and Wales) Regulations 2016
EPUK	Environmental Protection UK
EQS	Environmental Quality Standards
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FLL	Friends Life Limited
FRA	Flood Risk Assessment
FWQ	First Written Questions

GCN	Great Crested Newt
GIS	Geographic information systems
ha	Hectare
HAWRAT	Highways Agency Water risk Assessment Tool
HCA	Homes and Communities Agency
HDV	Heavy Duty Vehicle
HE	Highways England
HED	Historic Environment Data
HEMP	Handover Environmental management Plan
HGV	Heavy Goods Vehicle
HIA	Health Impact Assessment
HiE	Historic England
HIAND	Health Impact Assessment Navigation Document
HRA	Habitat Regulations Assessment
IAN	Interim Advice Note (Highways England)
IAQM	Institute of Air Quality Management
IDB	Internal Drainage Board
IP	Interested Party
ISH	Issue Specific Hearing
KCC	Kent County Council
KDAU	Kent Downs AONB Unit
km	kilometre
KWMP	Kent Waste and Minerals Plan 2013-30
LCA	Landscape Character Area
LED	Light Emitting Diode
LEMP	Landscape Environmental Management Plan

LHA	Local Highway Authority
LiDAR	Light Imaging, Detection and Ranging
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LNR	Local Nature Reserve
LOAEL	Lowest Observed Adverse Effect Level
LoNI	Letter of No Impediment
LPA	Local Planning Authority
LSE	Likely Significant Effects
LTP	Local Transport Plan
LVIA	Landscape and Visual Impacts Assessment
MAFF	Ministry of Agriculture, Fisheries and Food
MMP	Materials Management Plan
NE	Natural England
NERCA	Natural Environment and Rural Communities Act 2006
NHS	National Health Service
NIDP	National Infrastructure Delivery Plan
NIP	National Infrastructure Plan
NMU	Non-Motorised Users
NOAEL	No Observed Adverse Effect Level
NO ₂	Nitrogen dioxide
NO _x	Mono-nitrogen oxides NO and NO ₂
NPACA	The National Parks and Access to the Countryside Act 1949
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England

NPSNN	National Policy Statement for National Networks
NSIP	Nationally Significant Infrastructure Project
NTEM	National Trip End Model
NVMS	Noise and Vibration Monitoring Strategy
NWCF	North Willesborough Community Forum
oCEMP	Outline Construction Environmental Mitigation Plan
OFH	Open Floor Hearing
oSWMP	Outline Site Waste Management Plan
PA2008	Planning Act 2008 (as amended)
PCM	Pollution Climate Mapping
PHE	Public Health England
PM	Preliminary Meeting
PM10	Particulate matter 10 micrometres or less in diameter
PM2.5	Particulate matter less than 2.5 micrometres in diameter
POPE	Post Opening Project Evaluation
PPG	Planning Practice Guidance
PRoW	Public Right Of Way
RBMP	River Basin Management Plan
RIS1	Roads Investment Strategy 2015-2020
RNR	Roadside Nature Reserve
RR	Relevant Representation
RSA	Road Safety Audit
SAC	Special Area of Conservation
SGN	Southern Gas Networks
SHMP	Soil Handling Management Plan
SM	Scheduled Monument

SNCI	Site of Nature Conservation Importance
SO2	Sulphur Dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoSEFRA	Secretary of State for the Environment, Food and Rural Affairs
SoST	Secretary of State for Transport
SPA	Special Protection Area
SPD	Supplementary Planning Document
SRN	Strategic Road Network
SSSI	Sites of Special Scientific Interest
SU	Statutory Undertaker
SWMP	Site Waste Management Plan
SWQ	Second Written Questions
TAR	Transport Assessment Report
TEMPro	Trip End Model Presentation Programme
TMP	Traffic Management Plan
ToM	Table of Mitigation
TP	Temporary Possession
TPO	Tree Preservation Order
TSC	Thin Surface Course
UK	United Kingdom
WCA	Wildlife and Countryside Act 1981
WebTAG	Department for Transport Web-based Traffic Analysis Guidance
WFD	Water Framework Directive

WGC	Wyevale Garden Centre
WMS	Waste Management Sites
WR	Written Representation
WRA91	Water Resources Act 1991
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility

APPENDIX D: RECOMMENDED DRAFT DEVELOPMENT CONSENT ORDER

201[] No.

INFRASTRUCTURE PLANNING

The M20 Junction 10a Development Consent Order 201[]

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - ***

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An application has been made to the Secretary of State under section 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 examined by a [single appointed person] (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State is satisfied that replacement land has been or will be given in exchange for the special category land (as defined in article 36 of this Order), and the replacement land (as defined in that article) has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the special category land, and that, accordingly, section 131(4) of the 2008 Act applies.

The Secretary of State is satisfied that the special category (rights) land (as defined in article 36 of this Order), when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 15, 17, 19, 20, 21, 22, 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 M20 Junction 10a Development Consent Order 201[] and comes into force on [] 201[].

Interpretation

2.—(1) In this Order except where provided otherwise—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

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

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

(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. 2014/2381, S.I. 2015/377; modified by S.I. 2012/1659

(c) S.I. 2010/103, amended by S.I. 2012/635

(d) 1961.c.33

(e) 1965 c.56.

(f) 1980 c. 66.

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

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

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

“the 2008 Act” means the Planning Act 2008**(e)**;

“A2070 Option A” means Work No. 2A;

“A2070 Option B” means Work No. 2B;

“address” includes any number or address for the purposes of electronic transmission;

“alternative A2070 options” means the A2070 Option A and the A2070 Option B;

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

“authorised development” means the development and associated 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;

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

“the classification of roads plans” means the plans of that description certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980**(f)** Act and includes part of a cycle track;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“the engineering drawings and sections” means the documents certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“the environmental masterplan” means the plan of that description certified by the Secretary of State as the environmental masterplan for the purposes of this Order;

“environmental statement” means the documents of that description set out in Schedule 10 certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act and include part of a footpath or footway;

“the general arrangement drawings” means the drawings of that description certified by the Secretary of State as the general arrangement drawings for the purposes of this Order;

(a) 1981 c. 66.
(b) 1984 c. 27.
(c) 1990 c. 8.
(d) 1991 c. 22.
(e) 2008 c. 29.
(f) The definition of “cycle track” 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).

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

“the highway authority” means the undertaker;

“the land plans” means the plans 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 8 (limits of deviation);

“the local highway authority” means Kent County Council;

“maintain” includes inspect, repair, adjust, alter, remove or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“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;

“the Order limits” means the limits of deviation shown on the works plans within which the authorised development may be carried out;

“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 the local planning authority for the land in question;

“the rights of way and access plans” means the plans certified as the rights of way and access plans by the Secretary of State for the purposes of this Order;

“Secretary of State” means the Secretary of State for Transport;

“the special category land plans” means the plans of that description certified by the Secretary of State as the special category land plans for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16 (general provisions as to special roads) of the 1980 Act or by virtue of an order granting development consent;

“the speed limit plans” means the plans of that description certified by the Secretary of State as the speed limit plans 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;

“traffic authority” has the same meaning as in the 1984 Act;

“traffic regulation measure plans” means the plans certified as the traffic regulation measure plans by the Secretary of State for the purposes of this Order;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of-
 section 10 (b) or 19(1) (c) of the 1980 Act (provisions as to trunk roads);
 an order or direction under section 10 of that Act; or
 an order granting development consent; or
 any other enactment;

“the undertaker” means Highways England Company Limited, company number 9346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

-
- (a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.
- (b) As amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).
- (c) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

“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 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 relevant plans.

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

Disapplication of legislative provisions

3.—(1) The following provisions 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-

- (a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016/1154(a) in relation to the carrying on of a flood risk activity or a water discharge activity;
- (b) section 24 (restrictions on abstraction) of the Water Resources Act 1991;
- (c) the provisions of any byelaws made under, or having effect as if made under, paragraph 5 of Schedule 25 to the Water Resources Act 1991;
- (d) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(b);
- (e) section 32 (variation of awards) of the Land Drainage Act 1991; and
- (f) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991.

(2) In paragraph 1(a) “flood risk activity” and “water discharge activity” have the meaning given in the Environmental Permitting (England and Wales) Regulations 2016.

Maintenance of drainage works

4.—(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.

(a) S.I. 2016/1154

(b) 1991 c .59.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

(3) Despite anything in this Order or shown on the works plans, the undertaker may construct either Work No. 2A or Work No. 2B but not both.

Maintenance of authorised development

6. 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.

Planning permission

7. If planning permission is issued pursuant to the 1990 Act for development any part of which is within the Order limits following the publication 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 development authorised by this Order,

then the carrying out, use or operation of such development pursuant to the terms of the planning permission is not to constitute a breach of the terms of this Order.

Limits of deviation

8. 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 section drawings, to a maximum of 1 metre upwards or 1 metre downwards,

except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority and the local highway authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement.

Benefit of Order

9. Subject to article 10 (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.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to-

- (a) Southern Gas Networks Public Limited Company for the purposes of undertaking Work No. 22;
- (b) Southern Water Services Limited for the purposes of undertaking Work No. 23;
- (c) BT Group Public Limited Company (or a related and/or subsidiary company) for the purposes of undertaking Work No. 24;
- (d) South East Water Limited for the purposes of undertaking Work No. 25;
- (e) Vodafone Group Public Limited Company (or a related and/or subsidiary company) for the purposes of undertaking Work No. 26;
- (f) Virgin Media Limited (or a related and/or subsidiary company) for the purposes of undertaking Work No. 27;
- (g) South Eastern Power Networks Public Limited Company (or a related and/or subsidiary company) for the purposes of undertaking Work No. 28; or
- (h) Telent Technology Services Limited for the purposes of undertaking Work No. 29.

PART 3 STREETS

Application of the 1991 Act

11.—(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) 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 local 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 (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(a) As 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 New Roads and Street Works Act 1991 (c. 22).

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

section 56(a) (directions as to timing);

section 56A(b) (power to give directions as to placing of apparatus);

section 58(c) (restrictions following substantial road works);

section 58A(d) (restriction on works following substantial street works); and

Schedule 3A(e) (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 14 (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(f) referred to in paragraph (4) are—

section 54(g)(advance notice of certain works), subject to paragraph (6);

section 55(h) (notice of starting date of works), subject to paragraph (6);

section 57(i) (notice of emergency works);

section 59(j)(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 12 (construction and maintenance of new, altered or diverted streets and other structures)—

(a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the undertaker is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(a) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).

(b) Inserted by section 44 of the Traffic Management Act 2004.

(c) As amended by section 51 of the Traffic Management Act 2004.

(d) Inserted by section 52 of the Traffic Management Act 2004.

(e) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004

(f) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(g) As also amended by section 49(1) of the Traffic Management Act 2004

(h) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

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

(j) As amended by section 42 of the Traffic Management Act 2004.

Construction and maintenance of new, altered or diverted streets and other structures

12.—(1) Any highway (other than a special road or 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 highway lies and, unless otherwise agreed in writing with the local highway authority, the highway must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a footpath, cycle track or bridleway is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway must be maintained by and at the expense of the local highway authority from its completion with the exception of the footpath to be provided on plots 3/1/b and 3/1/d, shown on the land plans and the rights of way and access plans, which must be maintained by the undertaker from its completion.

(4) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or trunk road, the bridge must be maintained by and at the expense of the undertaker.

(5) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority and unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(6) 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.

(7) For the purposes of a defence under paragraph (6), 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;
- (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.

13.—(1) The roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) are to be—

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and
- (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act.

(2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) have been completed and are open for traffic—

- (a) the undertaker is the highway authority for those roads; and
- (b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

(3) From the date on which the roads described in Part 2 (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^(a) specifying that date as the date on which they were to become trunk roads.

(4) From the date on which the roads described in Part 3 (classified roads) of Schedule 3 (classification of roads, etc.) are complete and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(5) From the date on which the roads described in Part 4 (unclassified roads) of Schedule 3 (classification of roads, etc.) are complete and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.

(6) From the date on which the roads specified in Part 5 (speed limits) of Schedule 3 (classification of roads, etc.) are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of Part 5 of Schedule 3 along the lengths of road identified in the corresponding row of column (2) of that Part.

(7) Unless otherwise agreed with the relevant planning authority the footpaths, cycle tracks and footways set out in Part 8 (footpaths, cycle tracks and footways) of Schedule 3 (classification of roads, etc.) and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

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

(9) The application of paragraphs (1) to (7) 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

14.—(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.

^(a) As amended by section 22 of the 1991 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015.

(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, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Permanent stopping up and restriction of use of streets and private means of access

15.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) to the extent specified and described in column (3) of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 2 and 3 of Schedule 4 (being a street 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 or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Parts 1 and 4 of Schedule 4 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street or private means of access concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street or private means of access has been stopped up under this article-

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and

- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

16. The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Clearways

17.—(1) From such day as the undertaker may determine, save as provided in paragraph (2) below, no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) where it is identified that such lengths of road are to become a clearway in the corresponding row of column (3) of that Part, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) above applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 (the Telecommunications Code) to the Telecommunications Act 1984(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person's control.

(a) 1984 c. 12.
(b) 1991 c. 56.
(c) 2000 c. 26.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(a).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use 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(b).

(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 take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, 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.

(7) 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 is deemed to have granted consent or given approval, as the case may be.

(a) 2004 c. 18.

(b) 1991 c. 56. Section 106 was amended by section 35(1) and (8) 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 paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(c) 1991 c. 57.

Protective work to buildings

19.—(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 (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) 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 (determination of questions of disputed compensation) of the 1961 Act.

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

(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

20.—(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 the highway boundary without the consent of the highway authority or the local highway authority as the case may be; 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 the highway authority, the local highway authority or a 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 the highway authority or the local highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority.

that authority is deemed to have granted consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

21.—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development, or is required as replacement land.

(2) This article is subject to paragraph (2) of article 24 (compulsory acquisition of rights) and paragraph (8) of article 31 (temporary use of land for carrying out the authorised development).

(3) The undertaker must not exercise the powers conferred by paragraph (1) in relation to any land unless it has first given notice in writing to the relevant planning authority and the local highway authority of which of the alternative A2070 options it intends to construct, being either the A2070 Option A or the A2070 Option B.

Compulsory acquisition of land - incorporation of the mineral code

22. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

23.—(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 (execution of declaration) of the 1981 Act as applied by article 27 (application of the 1981 Act).

(2) The authority conferred by article 31 (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 from 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

24.—(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 21 (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 5 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(4) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land or the benefit of a

(a) 1981 c. 67.

restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(6) The undertaker must not exercise the powers conferred by paragraphs (1) to (5) in relation to any land unless it has first given notice in writing to the relevant planning authority and the local highway authority of which of the alternative A2070 options it intends to construct, being either the A2070 Option A or the A2070 Option B.

Public rights of way

25.—(1) The public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and shown on the rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the rights of way and access plans, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

Private rights over land

26.—(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) (power 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 rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) 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) (power of entry) 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 which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order 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 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 (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 or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

27.—(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—

“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).

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

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

(7) 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

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 21 (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 the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 29 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

29.—(1) This article applies instead of section 8(1) (other provisions as to divided land) of the 1965 Act (as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner must sell only the land subject to the notice to treat is, unless the undertaker agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and in that event must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

30.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is 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 a statutory 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

31.—(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 columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) 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 in column (3) of Schedule 7 (land of which temporary possession may be taken), or any other 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 (4) of Schedule 7 (land of which temporary possession may be taken); 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) 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).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

(a) acquiring new rights over any part of that land under article 24 (compulsory acquisition of rights); or

(b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 28 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to 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.

(11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under articles 21 (compulsory acquisition of land) or 24 (compulsory acquisition of rights).

Temporary use of land for maintaining the authorised development

32.—(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;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) 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.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (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 (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to 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 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

33.—(1) Subject to the provisions of Schedule 9 (protective provisions) 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 the apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 34 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

34.—(1) Where a street is stopped up under article 15 (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 15 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) of the Communications Act 2003(a).

Recovery of costs of new connections

35.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (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 33, 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 34 (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) (Interpretation of Chapter 1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act.

Special category land

36.—(1) The special category land is not to vest in the undertaker until the undertaker has acquired the replacement land and the Secretary of State (in consultation with the relevant planning authority) has certified that a scheme for the provision of the replacement land as open space and a timetable for the implementation of the scheme has been received from the undertaker.

(2) On the requirements of sub-paragraph (1) being satisfied, the special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(a) 2003 c.21.

(3) On the requirements of sub-paragraph (1) being satisfied, the rights to be acquired over the special category (rights) land are to vest in the undertaker and the special category (rights) land is to be discharged from all private rights to which it was previously subject in accordance with article 26(2).

(4) On the date on which the replacement land is laid out and provided in accordance with the scheme requirements at sub-paragraph (1), provided that does not occur any later than the first anniversary of the date that Work No. 3 is first opened to the public for use, the replacement land is to vest in the person(s) in whom the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights, trusts and incidents as attached to the special category land.

(5) In this article—

“the special category land” means the land numbered 3/14/b in the book of reference and on the land plans and forming part of open space which may be acquired compulsorily under this Order;

“the special category (rights) land” means the land numbered 3/14/a in the book of reference and on the land plans and forming part of open space over which rights may be acquired compulsorily under this Order;

“the replacement land” means the land identified as such and numbered 3/1/b, 3/1/c and 3/1/d in the book of reference and on the land plans.

PART 6 OPERATIONS

Existing powers and duties of the undertaker

37. Except as expressly provided, nothing in this Order is to prejudice the operation of, and the powers and duties of the undertaker under, the 1980 Act, the 1991 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015(a).

Felling or lopping of trees and removal of hedgerows

38.—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits 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—

- (a) do no unnecessary damage to any tree or shrub;
- (b) pay compensation to any person for any loss or damage arising from such activity; and
- (c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010 or any successor acts.

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

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(a) 2015/596

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

Trees subject to tree preservation orders

39.—(1) The undertaker may fell or lop any tree described in Schedule 8 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) 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 persons using the authorised development.

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

- (a) the undertaker is to 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;
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker shall seek to replace any trees which are removed; and
- (c) the undertaker shall consult the relevant planning authority prior to that activity taking place.

(3) The authority given in 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 (determination of questions of disputed compensation) of the 1961 Act.

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.

(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;

(a) S.I 1997/1160

- (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)(a) (cases in which land is to be treated as 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 sites), or a consent given under section 61 (prior consent for work on construction sites), 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.

Protective provisions

43. Schedule 9 (protective provisions) has effect.

Certification of plans, etc.

44.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference (document reference HA514442-MMGJV-GEN-SMW-RE-Z-4301 Rev C);
- (b) the classification of roads plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2700 Rev A); Drawing Nos:

(a) 1990 c. 43. There are amendments to this sub-section which are not relevant to this Order.
 (b) Subsection 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection but none are relevant to this Order.
 (c) 1974 c. 40. Section 61 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43); there are other amendments to section 61 but none are relevant to this Order.

- HA514442-MMGJV-GEN-SMW-DE-Z-2701 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2702 Rev A
 HA514442-MMGJV-GEN-SMW-DE-Z-2703 Rev A
 HA514442-MMGJV-GEN-SMW-DE-Z-2704 Rev A
 HA514442-MMGJV-GEN-SMW-DE-Z-2705 Rev A
- (c) the outline construction environmental management plan (environmental statement appendix 17.1, volume 6.3 Rev B);
- (d) the engineering section drawings (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2900 Rev A);
- (e) the environmental masterplan (document reference HA514442-MMGJV-GEN-SMW-DE-Z-60213-60222 Rev C);
- (f) the environmental statement;
- (g) the general arrangement drawings (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2600 Rev A); Drawing Nos:
 HA514442-MMGJV-GEN-SMW-DE-Z-2601 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2602 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2603 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2604 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2605 Rev B
- (h) the land plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2200 Rev B); Drawings Nos:
 HA514442-MMGJV-GEN-SMW-DE-Z-2201 Rev C
 HA514442-MMGJV-GEN-SMW-DE-Z-2202 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2203 Rev C
 HA514442-MMGJV-GEN-SMW-DE-Z-2204 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2205 Rev C
- (i) the rights of way and access plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2400 Rev A); Drawings Nos:
 HA514442-MMGJV-GEN-SMW-DE-Z-2401 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2402 Rev A
 HA514442-MMGJV-GEN-SMW-DE-Z-2403 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2404 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-2405 Rev A
- (j) the special category land plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-21200 Rev A);
- (k) the traffic regulation measure plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-21000 Rev A); Drawings Nos:
 HA514442-MMGJV-GEN-SMW-DE-Z-21001 Rev B
 HA514442-MMGJV-GEN-SMW-DE-Z-21002 Rev A
 HA514442-MMGJV-GEN-SMW-DE-Z-21003 Rev A
 HA514442-MMGJV-GEN-SMW-DE-Z-21004 Rev A
 HA514442-MMGJV-GEN-SMW-DE-Z-21005 Rev A
- (l) the speed limit plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2500 Rev A); Drawings Nos:
 HA514442-MMGJV-GEN-SMW-DE-Z-2501 Rev B

HA514442-MMGJV-GEN-SMW-DE-Z-2502 Rev A

HA514442-MMGJV-GEN-SMW-DE-Z-2503 Rev A

HA514442-MMGJV-GEN-SMW-DE-Z-2504 Rev A

HA514442-MMGJV-GEN-SMW-DE-Z-2505 Rev A

- (m) the works plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2300 Rev B); Drawing Nos:

HA514442-MMGJV-GEN-SMW-DE-Z-2301 Rev C

HA514442-MMGJV-GEN-SMW-DE-Z-2302 Rev B

HA514442-MMGJV-GEN-SMW-DE-Z-2303 Rev C

HA514442-MMGJV-GEN-SMW-DE-Z-2304 Rev C

HA514442-MMGJV-GEN-SMW-DE-Z-2305 Rev C

HA514442-MMGJV-GEN-SMW-DE-Z-2306 Rev C, and

- (n) any other plans or documents referred to in this Order as requiring certification, for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is 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 is to be taken to be fulfilled only where—

(a) 1978 C. 30.

- (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 that notice or other document the sender must 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 is final and takes 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 does not 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.

Traffic regulation

47.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7)

any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

(a) given not less than—

(i) 12 weeks' notice in writing of the undertaker's 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 the undertaker's 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 the undertaker's 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) of the 1984 Act^(a),

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 conferred by 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 the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker 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.

Signed by authority of the Secretary of State for Transport

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

(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.

SCHEDULES

SCHEDULE 1

Article 5 and 6

AUTHORISED DEVELOPMENT

In the administrative areas of Kent County Council and Ashford Borough Council

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act(a), comprising—

Work No. 1 – the replacement of 1460 metres of existing tension corrugated safety barrier double sided central reserve barrier with concrete step barrier, from point A to point B on sheets 2 and 5 of the works plans.

Work No. 2A – the construction of a new A2070 dual carriageway link road approximately 720 metres long from a new junction with the M20 Junction 10a generally westwards to a new roundabout junction with the existing A2070. To include the construction of a new private means of access from this road to drainage attenuation pond no. 1.

Work No. 2B – the construction of a new A2070 dual carriageway link road approximately 720 metres long from a new junction with the M20 Junction 10a generally westwards to a new roundabout junction with the existing A2070. To include:

- (a) the construction of a new private means of access from this road to drainage attenuation pond no. 1;
- (b) the construction of a new roundabout junction including a spur to the south for the Stour Park site.

Work No. 3 – the construction of a new Junction 10a gyratory and two bridges over the existing M20 main carriageway. To include:

- (c) the construction of drainage attenuation pond no. 1 with associated drainage facilities, access and landscaping at the locations shown on sheet 3 of the works plans;
- (d) the construction of drainage attenuation pond no. 3 with associated drainage facilities, access and landscaping at the locations shown on sheet 2 of the works plans;
- (e) the re-alignment of the A20 Hythe Road at the location of this junction to create two new interfaces with the M20 Junction 10a main circulatory carriageway as shown on sheets 2 and 5 of the works plans;
- (f) the demolition of the Highfield Lane Overbridge, Wyevale Garden Centre and Highfield Bungalow.

Work No. 4 – the re-alignment of the A2070 Bad Munstereifel Road at the location of the new A2070 link road roundabout to create two new interfaces with the circulatory carriageway of the new roundabout. To include the construction of drainage attenuation pond no. 2 with associated drainage facilities, access and landscaping and the provision of 5169m² of replacement open space land including removal of redundant carriageway and landscaping.

Work No. 5 – the re-alignment of Kingsford Street onto Highfield Lane.

Work No. 6 – the construction of a new cycle/footbridge of approximately 55m in length over the M20 main carriageway to the east of M20 Junction 10a and connecting together Kingsford Street and Hythe Road.

(a) Section 22 was substituted by article 3 of S.I. 2013/1883

Work No. 7 – associated development comprising alteration works to the existing road markings, traffic signs and traffic signals on the M20 Junction 10 and its approaches.

Work No. 8 – the construction of a new cycle/footbridge over the A2070 main carriageway to the south of the new A2070 link road roundabout and the demolition of the existing Church Road footbridge.

Work No. 9 – alteration works to Barrey Road.

Work No. 10 – the construction of a new roundabout junction to connect the A2070 to the A2070 link road.

Work No. 11 – the strengthening of the existing Swatfield Bridge on the A20 Hythe Road.

Work No. 12 – the closure of the existing M20 Junction 10 eastbound on-slip. To include:

- (g) construction of a barrier at the interfaces with the existing Junction 10 circulatory carriageway;
- (h) construction of a barrier at the interfaces with the existing M20 main carriageway;
- (i) remediation and landscaping works.

Work No. 13 – the closure of the existing M20 Junction 10 westbound off-slip. To include:

- (j) construction of a barrier at the interfaces with the existing Junction 10 circulatory carriageway;
- (k) construction of a barrier at the interfaces with the existing M20 main carriageway;
- (l) remediation and landscaping works.

Work No. 14 – the construction of a new eastbound off-slip from the M20 main carriageway to the circulatory carriageway of Junction 10a, approximately 300 metres in length.

Work No. 15 – the construction of a new westbound on-slip from the circulatory carriageway of Junction 10a to the M20 main carriageway, approximately 463 metres in length.

Work No. 16 – the re-alignment of the A20 Hythe Road west from the new M20 Junction 10a. To include the construction of a new private means of access from this road to drainage attenuation pond no. 3.

Work No. 17 – the re-alignment of the A20 Hythe Road east from the new M20 Junction 10a. To include the construction of a new private means of access.

Work No. 18 – the construction of a new eastbound on-slip from the circulatory carriageway of Junction 10a to the M20 main carriageway, approximately 372 metres in length.

Work No. 19 – the construction of a new westbound off-slip from the M20 main carriageway to the circulatory carriageway of Junction 10a, approximately 329 metres in length.

Work No. 20 – the realignment of the A2070 and amendments to the junction layout between Barrey Road and the A2070.

Work No. 21 – the installation of approximately 1980 metres of motorway communication cables.

Work No. 22 – the diversion of approximately 460 metres of gas pipeline to accommodate the widened footprint of the M20 presented by the Junction 10a slip roads and the new footprint of the A2070 link road.

Work No. 23 – the diversion of approximately 220 metres of sewer to accommodate the construction and operation of the new M20 Junction 10a.

Work No. 24 – the diversion of approximately 950 metres of telecoms equipment to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a.

Work No. 25 – the diversion of approximately 850 metres of water pipeline to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a.

Work No. 26 – the diversion of approximately 500 metres of telecoms equipment to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a. Additionally, the diversion of approximately 400 metres of telecoms equipment to accommodate the realignment of the A2070 and the construction and operation of the new A2070 link road roundabout.

Work No. 27 – the diversion of approximately 500 metres of telecoms equipment to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a. Additionally, the diversion of approximately 400 metres of telecoms equipment to accommodate the realignment of the A2070 and the construction and operation of the new A2070 link road roundabout.

Work No. 28 – the diversion of approximately 500 metres of power cables to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a. Additionally, the diversion of approximately 650 metres of power cables to accommodate the realignment of the A2070 and the construction and operation of the new A2070 link road roundabout.

Work No. 29 – the diversion of approximately 50 metres of communication cables to accommodate the installation of the replacement Church Road footbridge.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (m) alteration to the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge;
- (n) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (o) refurbishment works to any existing bridge;
- (p) the strengthening, alteration or demolition of any building;
- (q) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;
- (r) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (s) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (t) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, pipes, cables, ducts and lights;
- (u) works to alter the course of or otherwise interfere with a watercourse;
- (v) landscaping, noise bunds and 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;
- (w) works for the benefit or protection of land affected by the authorised development;
- (x) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (y) the felling of trees;
- (z) construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related

buildings, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;

- (aa) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (bb) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 5

PART 1 REQUIREMENTS

Interpretation

48. In this Schedule—

“CEMP” means construction environmental management plan;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990;

“County Archaeologist” means the individual appointed as such by the relevant planning authority;

“Ecological Clerk of Works” means the individual appointed as such by the [undertaker];

“European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010;

“HEMP” means the handover environmental management plan, being the CEMP to be developed towards the end of the construction 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.

“LEMP” means landscape and ecological management plan, including a reptile mitigation strategy;

“protected species” means species which are subject to protection under the laws of England or which are European protected species;

“Stour Park site” means the land to the south of the authorised development that is designated by Policy U19 – Sevington, in the Ashford Borough Council Urban Sites and Infrastructure Development Plan Document 2012.

Time limits

49. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Construction Environmental Management Plan

50.—(1) No part of the authorised development is to commence until a CEMP has been prepared in consultation with the relevant planning authority, the local highway authority and the Environment Agency and submitted to and approved in writing by the Secretary of State.

(2) The CEMP must—

- (a) be substantially in accordance with the outline construction environmental management plan certified under article 44 (certification of plans, etc.) save that measures may be added to take account of and accommodate within the CEMP any turning loop constructed or under construction by the local highway authority on plot 4/16/c as identified in the book of reference and on the land plans at the time of commencement of the authorised development;
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) incorporate the measures as detailed in the environmental statement;
- (d) include information on the control measures required to mitigate and reduce potential impacts which reflect the mitigation measures included in the environmental statement;
- (e) require adherence to working hours of 07:00 to 18:00 on Mondays to Fridays and 07:00 to 13:00 on Saturdays, except for—
 - (i) works requiring the full or partial closure of, or otherwise adversely affecting the operation of, the M20 carriageway;
 - (ii) works associated with the demolition of the Church Road footbridge and the Highfield Lane bridge;
 - (iii) works associated with the construction of the new Church Road Bridge, the new Kingsford Street Bridge, the two new Junction 10a interchange bridges over the M20 carriageway and the A20 Swatfield bridge;
 - (iv) works associated with the diversion of existing utilities;
 - (v) works associated with traffic management and signal changes;
 - (vi) works associated with tie-ins to existing carriageways; and
 - (vii) any emergency works;
- (f) include management plans, working methods and mitigation measures for each of the topics covered in the environmental statement, including -
 - (i) LEMP;
 - (ii) Arboricultural Method Statement;
 - (iii) Archaeological Written Scheme of Investigation;
 - (iv) Japanese Knotweed Management Plan;
 - (v) Materials Management Plan;
 - (vi) Soil Handling and Management Plan;
 - (vii) Site Waste Management Plan;
 - (viii) Community Relations Strategy;
 - (ix) Groundwater Monitoring Strategy; and
 - (x) Noise and Vibration Monitoring Strategy.

(3) The authorised development must be constructed in accordance with the approved CEMP.

(4) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP which may include measures to take account of and accommodate within the HEMP any turning loop constructed or to be constructed by the local highway authority on plot 4/16/c as identified in the book of reference and on the land plans.

(5) The authorised development must be operated and maintained in accordance with the HEMP.

Details of consultation

51.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

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

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

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

Landscaping

52.—(1) No part of the authorised development is to commence until a written 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 and the local highway authority.

(2) No part of the authorised development, including vegetation clearance, is to commence until an arboricultural walkover survey and tree survey for that part taking due regard to the guidance in British Standard 5837: 2012 have been undertaken to identify any significant constraints posed by trees.

(3) The landscaping scheme prepared under sub-paragraph (1) must be based on the environmental masterplan and the results of the surveys undertaken under sub-paragraph (2) and must take account of and accommodate any turning loop constructed or under construction by the local highway authority on plot 4/16/c as identified in the book of reference and on the land plans at the time of commencement of the authorised development.

(4) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period; and
- (f) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

53.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 5.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) 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.

Fencing

54. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the undertaker's Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Land and groundwater contamination

55.—(1) No part of the authorised development is to commence until a contamination risk assessment in respect of controlled waters has been produced which is to include details of-

- (a) any existing sources of contamination within the Order limits that may be affected by the carrying out of the authorised development;
- (b) any reasonably required protective measures to ensure that the carrying out of the authorised development does not make worse any adverse conditions or risks associated with such existing sources of contamination; and
- (c) appropriate remediation strategies and mitigation measures to address any historic contamination which is shown to be having significant, unacceptable effects on the environment within the context of the proposed works,

and the assessment has been submitted to and approved by the Secretary of State following consultation with the Environment Agency.

(2) The steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the assessment referred to in sub-paragraph (1) must be implemented as part of the authorised development.

(3) In the event that contaminated materials, including impacted groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that contamination and must report it immediately in writing to the Secretary of State, the Environment Agency and relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (4) and (5) will apply.

(4) Where the undertaker determines that remediation 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 prepared submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency and the relevant planning authority.

(5) Remedial measures must be carried out in accordance with the approved scheme.

Archaeology

56.—(1) No part of the authorised development is to commence until for that part an archaeological framework strategy for the investigation and mitigation of areas of archaeological interest, reflecting the mitigation measures included in chapter 6 of the environmental statement,

with provision for sub-written schemes of investigation for each area and each phase (evaluation and/or detailed excavation and/or watching brief), has been prepared in consultation with the relevant planning authority and the local highway authority, agreed with the County Archaeologist and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation and publication required as part of the archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) must be agreed with the County Archaeologist and implemented within a timescale agreed with the County Archaeologist and deposited with the Historic Environment Record of the relevant planning authority within two years of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be subject to appropriate mitigation as set out in the archaeological framework strategy and mitigation agreed with the County Archaeologist.

(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 they are identified unless otherwise agreed in writing by the Secretary of State.

(6) On completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the County Archaeologist.

Protected species

57.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works and report it immediately to the Ecological Clerk of Works.

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

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

Traffic management

58.—(1) No authorised development is to commence until a traffic management plan for the construction of the authorised development, substantially in accordance with the draft traffic management plan, has been submitted to and approved in writing by the Secretary of State following consultation with the relevant highway authority.

(2) The authorised development must be constructed in accordance with the approved traffic management plan.

Detailed design

59.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and the engineering section drawings, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering section drawings showing departures from the preliminary design

would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Surface and foul water drainage

60.—(1) No part of the authorised development is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in chapter 14 of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, the local highway authority and the Environment Agency.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, the local highway authority and the Environment Agency.

Flood compensatory storage

61.—(1) No part of the authorised development is to commence until a detailed flood compensatory storage scheme is submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The scheme prepared under sub-paragraph (1) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 105% climate change allowance event.

(3) The scheme must be fully implemented as approved and subsequently maintained.

Approvals and amendments to approved details

62. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

Alternative A2070 options

63.—(1) Only one of A2070 Option A and A2070 Option B may be constructed.

(2) The undertaker must not give notice in writing to the relevant planning authority and local highway authority of its intention to construct the A2070 Option B for the purposes of either or both of articles 21 and 24 unless a planning permission has first been granted for the development of the Stour Park site.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

64.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including 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 his or her 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 2; 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 that considers it likely that the subject matter of the application is to give rise to any materially new or materially worse environmental effects in comparison with the authorised development as approved,

then the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

65.—(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 this 21 day period the Secretary of State is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph 2 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 1 and in this paragraph.

Register of requirements

66.—(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

67. If before this Order came into force the undertaker or any other person took 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 13 and 17
CLASSIFICATIONS OF ROADS, ETC.

PART 1

SPECIAL ROADS

<i>(1) Area</i>	<i>(2) Length of road</i>
Ashford Borough	M20 eastbound off slip onto Junction 10a between point D and point E on the classification of roads plans, comprising 307 metres.
Ashford Borough	M20 eastbound on slip onto the M20 from Junction 10a between point K and point L on the classification of roads plans, comprising 379 metres.
Ashford Borough	M20 westbound off slip onto Junction 10a between point N and point M on the classification of roads plans, comprising 340 metres.
Ashford Borough	M20 westbound on slip onto the M20 from Junction 10a between point G and point F on the classification of roads plans, comprising 463 metres.

PART 2

TRUNK ROADS

<i>(1) Area</i>	<i>(2) Length of road</i>
Ashford Borough	In the event of construction of the A2070 Option A only, A2070 link road between point Q and point R on the classification of roads plans, comprising 693 metres.
Ashford Borough	In the event of construction of the A2070 Option A only, A2070 link road between point S and point T on the classification of roads plans, comprising 722 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point Q and point CC on the classification of roads plans, comprising 338 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point II and point R on the classification of roads plans, comprising 288 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point S and point DD on the classification of roads plans, comprising 363 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point HH and point T on the classification of roads plans, comprising 288 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, Stour Park roundabout circulatory carriageway, comprising 200 metres.
Ashford Borough	A2070 Bad Munstereifel Road between point U and point V on the classification of roads plans, comprising 237 metres.

Ashford Borough	A2070 Bad Munstereifel Road between point W and point X on the classification of roads plans, comprising 225 metres.
Ashford Borough	A2070 link road roundabout circulatory carriageway, comprising 200 metres.
Ashford Borough	A2070 Bad Munstereifel Road, between point Y and point Z on the classification of roads plans, comprising 354 metres.
Ashford Borough	A2070 Bad Munstereifel Road, between point AA and point BB on the classification of roads plans, comprising 348 metres.
Ashford Borough	M20 Junction 10a roundabout circulatory carriageway, comprising 490 metres.

PART 3

CLASSIFIED ROADS

<i>(1)Area</i>	<i>(2)Length. of road</i>
Ashford Borough	A20 Hythe Road between point A and points B and C on the classification of roads plans, comprising 186 metres.
Ashford Borough	A20 Hythe Road between points H and I and point J on the classification of roads plans, comprising 249 metres.

PART 4

UNCLASSIFIED ROADS

<i>(1)Area</i>	<i>(2)Length. of road</i>
Ashford Borough	Kingsford Street between point O and point P on the classification of roads plans, comprising 151 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, spur to Stour Park site between point FF and points EE and GG on the classification of roads plans, comprising 68 metres.

PART 5

SPEED LIMITS

<i>(1)Parish(es)</i>	<i>(2)Road name, number and length</i>	<i>(3)Speed Limit</i>
Ashford, Mersham	A20, Hythe Road From a point 40 metres north west of the M20 Junction 10a circulatory carriageway along its length to where it joins the M20 Junction 10a circulatory carriageway for a total distance of 40 metres. As shown on sheet 2 of the speed limit plans.	40 miles per hour
Mersham	A20, Hythe Road From where the A20 diverges/merges with the M20 Junction 10a circulatory carriageway along its length to a point 45	40 miles per hour

	metres east of this location. As shown on sheet 2 of the speed limit plans.	
Mersham	A20, Hythe Road From a point 45 metres east of the location where the A20 diverges/merges with the M20 Junction 10a circulatory carriageway to a point approximately 11 metres from the centre line of the junction of the A20 with Bockham Lane, a length of 386 metres. As shown on sheet 2 of the speed limit plans.	50 miles per hour
Mersham	M20 Junction 10a circulatory carriageway For the whole length of the circulatory carriageway around the M20 Junction 10a roundabout, a length of 490 metres. As shown on sheets 2 and 3 of the speed limit plans.	40 miles per hour
Ashford, Mersham	M20 eastbound off slip onto Junction 10a From the start of the diverge with the M20 main carriageway along its length to the point where it merges with the new Junction 10a circulatory carriageway, a length of 307 metres. As shown on sheets 1 and 2 of the speed limit plans.	70 miles per hour
Ashford, Mersham	M20 eastbound on slip onto the M20 from Junction 10a From the start of the diverge from the new Junction 10a circulatory carriageway along its length to its merge with the M20 main carriageway, a length of 379 metres. As shown on sheet 2 of the speed limit plans.	70 miles per hour
Mersham	M20 westbound off slip onto Junction 10a From the start of the diverge with the M20 main carriageway along its length to its merge with the new Junction 10a circulatory carriageway, a length of 340 metres. As shown on sheet 2 of the speed limit plans.	70 miles per hour
Mersham	M20 westbound on slip onto the M20 from Junction 10a From the start of the diverge from the new Junction 10a circulatory carriageway along its length to its merge with the M20 main carriageway, a length of 463 metres. As shown on sheets 1 and 3 of the speed limit plans.	70 miles per hour
Mersham, Sevington	Kingsford Street From a point 46 metres south-west of the current junction between Kingsford Street and Highfield Lane for a length of 137	40 miles per hour

	metres to the point where the newly re-aligned road joins existing Kingsford Street. As shown on sheet 2 of the speed limit plans.	
Mersham, Sevington	In the event of construction of the A2070 Option A only New A2070 link road (westbound) From the diverge of the link road from the M20 Junction 10a circulatory carriageway heading west along its length to its merge with the new A2070 roundabout circulatory carriageway for a distance of 722 metres. As shown on sheets 2 and 3 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option A only New A2070 link road (eastbound) From the diverge of the link road from the new A2070 roundabout circulatory carriageway heading east along its length to its merge with the M20 Junction 10a circulatory carriageway for a distance of 693 metres. As shown on sheets 2 and 3 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option B only New A2070 link road (westbound) From the diverge of the link road from the M20 Junction 10a circulatory carriageway heading west along its length to its merge with the new Stour Park roundabout circulatory carriageway for a distance of 363 metres. As shown on sheet 4 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option B only New A2070 link road (westbound) From the diverge of the link road from the new Stour Park roundabout circulatory carriageway heading west along its length to its merge with the new A2070 roundabout circulatory carriageway for a distance of 288 metres. As shown on sheet 4 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option B only New A2070 link road (eastbound) From the diverge of the link road from the new A2070 roundabout circulatory carriageway heading east along its length	40 miles per hour

	to its merge with the new Stour Park roundabout circulatory carriageway for a distance of 288 metres. As shown on sheet 4 of the speed limit plans.	
Mersham, Sevington	In the event of construction of the A2070 Option B only New A2070 link road (eastbound) From the diverge of the link road from the new Stour Park roundabout circulatory carriageway heading east along its length to its merge with the M20 Junction 10a circulatory carriageway for a distance of 338 metres. As shown on sheet 4 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option B only New Stour Park roundabout circulatory carriageway For the whole length of the circulatory carriageway around the new Stour Park roundabout, a length of 200 metres. As shown on sheet 4 of the speed limit plans.	40 miles per hour
Sevington	New A2070 roundabout circulatory carriageway For the whole length of the circulatory carriageway around the new A2070 roundabout, a length of 200 metres. As shown on sheet 3 of the speed limit plans.	40 miles per hour
Ashford, Sevington	A2070 Bad Munstereifel Road (southbound) From a point 74 metres south of the diverge from the M20 Junction 10 circulatory carriageway along its length to where it joins the A2070 roundabout circulatory carriageway for a total distance of 370 metres. As shown on sheets 1 and 3 of the speed limit plans.	40 miles per hour
Ashford, Sevington	A2070 Bad Munstereifel Road (northbound) From where it leaves the A2070 roundabout circulatory carriageway along its length to a point 70 metres south of the merge to the M20 Junction 10 circulatory carriageway for a total distance of 394 metres. As shown on sheets 1 and 3 of the speed limit plans.	40 miles per hour
Sevington	A2070 Bad Munstereifel Road (southbound) From where it leaves the A2070	40 miles per hour

	roundabout circulatory carriageway along its length to a point 27 metres south of the centreline of the junction with Church Road for a total distance of 394 metres. As shown on sheet 3 of the speed limit plans.	
Sevington	A2070 Bad Munstereifel Road (northbound) From a point 27 metres south of the centreline of the junction with Church Road along its length to where it joins the A2070 roundabout circulatory carriageway for a total distance of 395 metres. As shown on sheet 3 of the speed limit plans.	40 miles per hour
Sevington	Barrey Road From the junction with the A2070 to a point 46 metres to the west. As shown on sheet 3 of the speed limit plans.	40 miles per hour

PART 6

TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>Parish(es)(1)</i>	<i>Road name, number and length(2)</i>	<i>Measures(3)</i>
Ashford, Sevington	A2070 Bad Munstereifel Road (northbound) From point A to point B on sheets 1 and 3 of the traffic regulation measures plans, for a total distance of 369 metres.	Clearway (to include verges, hard shoulders and slip roads)
Ashford, Sevington	A2070 Bad Munstereifel Road (southbound) From point E to point F on sheets 1 and 3 of the traffic regulation measures plans, for a total distance of 369 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington	A2070 Bad Munstereifel Road (northbound) From point K to point L on sheet 3 of the traffic regulation measures plans, for a total distance of 341 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington	A2070 Bad Munstereifel Road (southbound) From point M to point N on sheet 3 of the traffic regulation measures plans, for a total distance of 333 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington	New A2070 roundabout circulatory carriageway For the whole length of the circulatory carriageway around the new A2070 roundabout, a length of 200 metres. As shown on sheet 3 of the traffic regulation measures plans.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option A only	Clearway (to include verges, hard shoulders and slip roads)

	New A2070 link road (eastbound) From point H to point G on sheets 2 and 3 of the traffic regulation measures plans, for a total distance of 636 metres.	
Sevington, Mersham	In the event of construction of the A2070 Option A only New A2070 link road (westbound) From point I to point J on sheets 2 and 3 of the traffic regulation measures plans, for a total distance of 657 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only New A2070 link road (eastbound) From point H to point R on sheet 4 of the traffic regulation measures plans, for a total distance of 288 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only New A2070 link road (eastbound) From point O to point G on sheet 4 of the traffic regulation measures plans, for a total distance of 282 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only New A2070 link road (westbound) From point I to point P on sheet 4 of the traffic regulation measures plans, for a total distance of 302 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only New A2070 link road (westbound) From point Q to point J on sheet 4 of the traffic regulation measures plans, for a total distance of 288 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only New Stour Park roundabout circulatory carriageway For the whole length of the circulatory carriageway around the new Stour Park roundabout, a length of 200 metres. As shown on sheet 4 of the traffic regulation measures plans.	Clearway (to include verges, hard shoulders and slip roads)

PART 7

REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>Parish(es)(1)</i>	<i>Road name, number and length(2)</i>	<i>Title of Order(3)</i>	<i>Revocations or Variations(4)</i>
Ashford, Sevington	A2070 Bad Munstereifel Road From point C to point D on sheets 1 and 3 of the	The Kent County Council (Various Road, Ashford) (Prohibition of Waiting) (Clearway)	Order to be varied to remove the existing clearway over this length.

	traffic regulation measures plans, a total distance of 748 metres.	Order 1995	
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PART 8

FOOTPATHS, CYCLE TRACKS AND FOOTWAYS

<i>(1)Area</i>	<i>(2)Length of Footpath/Cycle track/Footway</i>
Ashford Borough	337 metres combined footway and cycle track from point A to point B on the rights of way and access plans.
Ashford Borough	90 metres combined footway and cycle track from point C to point D on the rights of way and access plans.
Ashford Borough	288 metres cycle track with a right of way on foot from point E to point F on the rights of way and access plans.
Ashford Borough	In the event of construction of the A2070 Option A only, 1298 metres combined footway and cycle track from point F to point G on the rights of way and access plans.
Ashford Borough	In the event of construction of the A2070 Option B only, 874 metres combined footway and cycle track from point F to point N on the rights of way and access plans.
Ashford Borough	In the event of construction of the A2070 Option B only, 537 metres combined footway and cycle track from point O to point G on the rights of way and access plans.
Ashford Borough	425 metres cycle track with a right of way on foot from point G to point H on the rights of way and access plans.
Ashford Borough	50 metres footpath from point I to point K on the rights of way and access plans.
Ashford Borough	291 metres cycle track with a right of way on foot from point J to point K on the rights of way and access plans.
Ashford Borough	210 metres combined footway and cycle track from point K to point L on the rights of way and access plans.
Ashford Borough	81 metres combined footway and cycle track from point M to point N on the rights of way and access plans.

SCHEDULE 4

Article 15 and 25

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule 4 to the rights of way and access plans, the provisions described herein are shown on the rights of way and access plans in the following manner—

- (a) Existing highways to be stopped up, as described in column 2 of Part 1 and Part 2 of this Schedule, are shown by thick black diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in column 3 of Part 1 and Part 2 of this Schedule.
- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column 4 of Part 2 of this Schedule, are shown by red cross-hatching (for motorways and trunk roads), blue cross-hatching (for

other classified roads and highways) and solid blue shading (for footpaths, footways and cycle tracks) (as shown in the key on the rights of way and access plans) and are given a reference label (a capital letter in a circle) and will be a road unless the word ‘footpath’, ‘bridleway’, ‘footway’ or ‘cycle track’ appears beneath its reference letter in column 4 of Part 2 of this Schedule.

- (c) Private means of access to be stopped up, as described in column 2 of Parts 3 and 4 of this Schedule, are shown by solid black shading (as shown in the key on the rights of way and access plans) over the extent of stopping up described in column 3 of Parts 3 and 4 of this Schedule, and are given a reference label (a lower case letter in a circle).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column 4 of Part 3 of this Schedule, are shown by black line hatching (as shown in the key on the rights of way and access plans) and are given a reference label (a number in a circle).

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)Area</i>	<i>(2)Highway to be stopped up</i>	<i>(3)Extent of stopping up</i>
Mersham	Highfield Lane overbridge	From the junction with Kingsford Street to the junction with the A20 Hythe Road, a distance of 170 metres, shown on sheet 2 of the rights of way and access plans.
Ashford	Public right of way AU63C	From its crossing of the Old Mill Stream to where it meets public right of way AU53, a distance of 177 metres, shown on sheets 1 and 3 of the rights of way and access plans.
Sevington	Public right of way AE337A	From where it crosses the new A2070 link road to where it meets the Old Mill Stream, a distance of 260 metres, shown on sheet 3 of the rights of way and access plans.
Ashford	Public right of way AU65	From its crossing of the Old Mill Stream to where it meets public right of way AU53 to the north, a distance of 172 metres, shown on sheets 1 and 3 of the rights of way and access plans.
Ashford	Public right of way AU53	From where it crosses the Old Mill Stream to where it meets the M20 Junction 10 circulatory carriageway, a distance of 647 metres, shown on sheet 1 of the rights of way and access plans.
Mersham	Public right of way AE636	From where it meets the Old Mill Stream to where it meets Highfield Lane, a distance of 288 metres, shown on sheets 1, 2 and 3 of the rights of way and access plans.

Sevington	Public Right of Way AE338	From where it crosses the new A2070 link road to where it meets the Old Mill Stream, a distance of 120 metres, shown on the rights of way and access plans sheet 3.
Sevington	Public Right of Way AE339	From the Barrey Road/Church Road junction west of the A2070 Bad Munstereifel Road to where it meets Church Road again, east of the A2070 Bad Munstereifel Road, a distance of 184 metres, shown on sheet 3 of the rights of way and access plans.

PART 2

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)Area</i>	<i>(2)Highway to be stopped up</i>	<i>(3)Extent of stopping up</i>	<i>(4)New highway to be substituted/provided</i>
Mersham	A20 Hythe Road	From the junction with Highfield Lane to a point 157 metres west on the existing A20, shown on sheet 2 of the rights of way and access plans.	Reference C Re-aligned A20 Hythe Road west from the M20 Junction 10a circulatory carriageway shown on sheets 1 and 2 of the rights of way and access plans.
Mersham	A20 Hythe Road	From the junction with Highfield Lane to a point 190 metres east on the existing A20, shown on sheet 2 of the rights of way and access plans.	Reference D Re-aligned A20 Hythe Road east from the M20 Junction 10a circulatory carriageway shown on sheets 1 and 2 of the rights of way and access plans.
Ashford	M20 Junction 10 eastbound on slip	From the diverge from the M20 Junction 10 main circulatory carriageway to the merge with the M20 eastbound main carriageway shown on sheet 1 of the rights of way and access plans.	Reference E M20 Junction 10a eastbound on slip shown on sheet 2 of the rights of way and access plans.
Ashford	M20 Junction 10 westbound off slip	From the diverge from the M20 westbound main carriageway to the merge with the M20 Junction 10 circulatory carriageway shown on sheet 1 of the rights of way and access plans.	Reference F M20 Junction 10a westbound off slip shown on sheet 2 of the rights of way and access plans.

Mersham	Kingsford Street and Highfield Lane	From a point on Kingsford Street 100 metres east of the junction with Highfield Lane, west to the junction with Highfield Lane and then south on Highfield Lane for a distance of 46 metres, shown on sheet 2 of the rights of way and access plans.	Reference I Re-aligned Kingsford Street and Highfield Lane shown on sheet 2 of the rights of way and access plans.
Sevington, Mersham	A2070 Bad Munstereifel Road (southbound)	From a point 220 metres south of the M20 Junction 10 circulatory carriageway to a point 68 metres north of the junction with Church Road, a distance of 550 metres, shown on sheet 3 of the rights of way and access plans.	References K, L and M Re-aligned A2070 Bad Munstereifel Road and new A2070 roundabout circulatory carriageway shown on sheet 3 of the rights of way and access plans.
Sevington	A2070 Bad Munstereifel Road (northbound)	From a point 220 metres south of the M20 Junction 10 circulatory carriageway to a point 68 metres north of the junction with Church Road, a distance of 550 metres, shown on sheet 3 of the rights of way and access plans.	References K, L and M Re-aligned A2070 Bad Munstereifel Road and new A2070 roundabout circulatory carriageway shown on sheet 3 of the rights of way and access plans.
Sevington	Church Lane overbridge	From point H to point G on sheet 3 of the rights of way and access plans.	Reference R A length of new cycle track (with a right of way on foot) to be known as the new Church Road footbridge shown on sheet 3 of the rights of way and access plans.
Sevington, Mersham	-	-	Reference A M20 Junction 10a eastbound off slip shown on sheet 1 of the rights of way and access plans.
Sevington, Mersham	-	-	Reference B M20 Junction 10a westbound on slip shown on sheets 1 and 3 of the rights of way and access plans.
Sevington, Mersham	-	-	Reference G New M20 Junction 10a circulatory carriageway shown on sheets 2 and 3 of the rights of way and access plans.
Mersham	-	-	Reference H A length of new cycle track (with a right of

			way on foot) to be known as the new Kingsford Street footbridge shown on sheet 2 of the rights of way and access plans.
Sevington, Mersham			Reference J In the event of construction of the A2070 Option A only, a new length of highway from the M20 Junction 10a circulatory carriageway to the new A2070 roundabout shown on the rights of way and access plans sheets 2 and 3.
Sevington			Reference N In the event of construction of the A2070 Option B only, a new length of highway from the M20 Junction 10a circulatory carriageway to the new Stour Park roundabout circulatory carriageway, shown on sheet 4 of the rights of way and access plans.
Sevington, Mersham			Reference O In the event of construction of the A2070 Option B only, a new Stour Park roundabout circulatory carriageway, shown on sheet 4 of the rights of way and access plans.
Sevington, Mersham			Reference P In the event of construction of the A2070 Option B only, a new length of highway from the new Stour Park roundabout circulatory carriageway to the new A2070 roundabout circulatory carriageway, shown on sheet 4 of the rights of way and access plans.

PART 3

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)Area</i>	<i>(2)PMA to be stopped up</i>	<i>(3)Extent of stopping up</i>	<i>(4)New PMA to be substituted/provided</i>
Mersham	-	-	<p>Reference 1</p> <p>A new private access to pond 3 from a point on the A20 Hythe Road, 60 metres north-west of the merge with the M20 Junction 10A circulatory carriageway, to where it meets pond 3, a distance of 75 metres, as shown on sheets 1 and 2 of the public rights of way and access plans.</p>
Mersham	Reference c Access to field north of the A20 Hythe Road	At a point 60 metres north west of the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.	<p>Reference 2</p> <p>A new private access to field north of the A20 Hythe Road 95 metres from the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.</p>
Sevington	Reference f Access to field north of the Old Mill Stream and south of the M20 main carriageway	A length from its junction with the local road that joins Church Road, just north of the Church Road footbridge, to a point 45 metres south of the Old Mill Stream, a distance of 278 metres, as shown on sheet 3 of the rights of way and access plans.	<p>Reference 3</p> <p>A new private access to pond 2 and field north of the Old Mill Stream, from a point on the southbound carriageway of the A2070, 88 metres north of the A2070 roundabout, to the Old Mill Stream, a distance of 153 metres, as shown on the rights of way and access plans sheet 3.</p>
Sevington	-	-	<p>Reference 4</p> <p>A new private access to pond 1 from a point on the eastbound carriageway of the new A2070 link road, 370 metres west of the new M20 Junction 10a</p>

			circulatory carriageway, to where it meets pond 1, a distance of 150 metres, as shown on the rights of way and access plans sheet 3.
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PART 4

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)Area</i>	<i>(2)PMA to be stopped up</i>	<i>(3)Extent of stopping up</i>
Mersham	Reference a Access to Sweatman Mowers from the A20 Hythe Road	At a point 200 metres north-west of the junction with Highfield Lane as shown on sheet 1 of the rights of way and access plans.
Mersham	Reference b Access to the Wyevale Garden Centre from the A20 Hythe Road	At a point 110 metres north-west of the junction with Highfield Lane as shown on sheets 1 and 2 of the rights of way and access plans.
Mersham	Reference d Access to field north of the A20 Hythe Road	At a point 140 metres south east of the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.
Sevington	Reference e Access to field from Kingsford Street	At a point 310 metres south east of the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.

SCHEDULE 5

Article 24

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)Plot reference number shown on land plans</i>	<i>(2)Purpose for which rights over land may be acquired</i>	<i>(3)Relevant part of the authorised development</i>
Land Plans – Sheet 2		
2/3/a	New right to install, operate and maintain lighting columns and cables including access with or without vehicles plant and machinery.	Work No. 16
2/4/b	New right to construct, divert, remove, use and maintain utility connections and equipment including a mains gas pipeline including access with or without vehicles plant and machinery. New right to construct and maintain noise bund No.1.	Work No. 22
Land Plans – Sheet 3		
3/14/a	New right to construct, operate and maintain the Church Road overbridge and related works and mitigation measures including access with or without vehicles	Work No. 8

	plant and machinery.	
3/16/d	New right to construct, divert, remove, use and maintain utility connections and equipment including a mains gas pipeline including access with or without vehicles plant and machinery.	Work No. 22
3/16/g	New right to construct, divert, remove, use and maintain utility connections and equipment including a mains gas pipeline including access with or without vehicles plant and machinery.	Work No. 22
Land Plans – Sheet 4		
4/1/d	New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery.	Work Nos. 1-29
4/16/a	New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery.	Work Nos. 1-29
4/16/b	New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery.	Work Nos. 1-29

SCHEDULE 6

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

68. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

69.—(1) Without limitations on the scope of paragraph 1, the Land Compensation Act 1973^(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(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 4—

- (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”.

(a) 1973 c.26.

(3) In section 58(1)(a) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over or restrictive covenant affecting land consisting of a house, building or manufactory can be taken or imposed without material detriment or damage to the house, building or manufactory; or
- (b) a right over or restrictive covenant affecting land consisting of a park or garden belonging to a house can be taken or imposed without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right or the imposition of the restrictive covenant but also the use to be made of the right or restrictive covenant proposed to be acquired or imposed, and, in a case where the right or restrictive 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 to be made of the other land.”

Application of the 1965 Act

70.—(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 to—

- (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 limitation on the scope of 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 imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

71. 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 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.”

72. For section 8 (other provisions as to divided land) of the 1965 Act substitute—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and

(a) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land; and
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the M20 Junction 10a Development Consent Order 201[] S.I. []/[] (“the Order”), in relation to that person, ceases to authorise the purchase of the right or imposition of the restrictive covenant and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

73. 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.

74. 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) (unauthorised entry) and 13(c) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

75. Section 20(d) (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

(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.

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.

76. 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.

SCHEDULE 7

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)Location</i>	<i>(2)Plot Reference Number(s) shown on land plans</i>	<i>(3)Purpose for which temporary possession may be taken</i>	<i>(4)Relevant part of the authorised development</i>
Land Plans - Sheet 1			
Ashford	1/1/a	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	1/1/b	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Land Plans - Sheet 2			
Ashford	2/1/c	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	2/1/d	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	2/1/e	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	2/1/g	The strengthening of the existing Swatfield Bridge on the A20 Hythe Road. Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment, water pipeline and power cables.	Work Nos. 11, 16, 24, 25, 26, 27 and 28
Ashford	2/2/a	Use as a site compound area.	Work Nos. 1-29
Ashford	2/5/a	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24, 25
Ashford	2/5/aa	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24 and 25
Ashford	2/6/a	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24, 25
Ashford	2/6/aa	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24 and 25
Ashford	2/8/aa	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment, water pipeline and power cables.	Work Nos. 16, 24, 25, 26, 27 and 28
Land Plans – Sheet 3			

Ashford	3/14/c	Traffic sign amendments.	Work No. 9
Ashford	3/16/c	Use as a site compound area.	Work Nos. 1-29
Land Plans – Sheet 4			
Mersham	4/1/b	Realignment of the A20 Hythe Road. Diversion works to telecoms equipment, water pipeline and power cables.	Work Nos. 17, 25, 26, 27 and 28
Mersham	4/1/bb	Re-alignment of the A20 Hythe Road.	Work No. 17
Mersham	4/1/g	Alteration work to the existing Kingsford Street. Diversion works to telecoms equipment and power cables.	Work Nos. 5, 24 and 28
Mersham	4/1/h	Alteration work to the existing A20 and installation of new traffic signs.	Work No. 17

SCHEDULE 8

Article 39

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1) Type of tree</i>	<i>(2) Work to be carried out</i>	<i>(3) Relevant part of the authorised development</i>
TPO No. 15 1997 (Ashford Borough Council) TPO group containing field maple (<i>Acer campestre</i>), hazel (<i>Corylus avellana</i>) and Italian alder (<i>Alnus cordata</i>).	Tree group to be removed to enable works	Work Nos. 9, 20
TPO No. 22 1998 (Ashford Borough Council) Woodland area, alder (<i>Alnus glutinosa</i>), sycamore (<i>Acer pseudoplatanus</i>), ash (<i>Fraxinus excelsior</i>) with occasional mature willow (<i>Salix</i> spp.), poplar (<i>Populus tremula</i>). Elder (<i>Sambuca</i>) understory. Corner bordering Pilgrims' Hospice is subject to a TPO.	Localised disturbance to tree roots or removal of individual trees adjacent to the Swatfield Bridge, to enable strengthening and level adjustment works to be carried out.	Work Nos. 11, 16

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

77. 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.

78. 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), belonging to or maintained by that utility 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 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 utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; 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; and

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (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 utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

79. 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

80.—(1) Where any street is stopped up under article 15 (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 14 (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

81. The undertaker, in the case of the powers conferred by article 19 (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

82. 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

83.—(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 (7).

(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 in question 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.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

84.—(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

85.—(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) are to 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.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

Expenses and costs

86.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 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 must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must 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.

87.—(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) 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 utility 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 and, if such consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

88. 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 its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

89. 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

90. For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

91. 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

“operator” means the operator of an electronic communications code network.

92. The exercise of the powers conferred by article 33 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker’s works) to the Telecommunication Act 1984(d).

93.—(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 the authorised development—

- (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 the authorised development), 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 which, if it withholds 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

(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.

(c) See section 106 of the 2003 Act.

(d) 1984 c. 12. Paragraph 23 was amended by section 190 of, and paragraph 68 of schedule 25 and part 1 of schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and schedule 18 to, the Electricity Act 1989 (c. 29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of schedule 3 to, the Communications Act 2003.

- (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 THE ENVIRONMENT AGENCY

94. The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

95. In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes placing, altering, replacing, relaying, removing and excavation and “construct” and “constructed” are to be construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“plans” includes sections, drawings, specifications calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

96.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 29.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work, fishery or water resources or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) Any requirement made by the Agency under sub-paragraph (3)(c) may include—

- (a) a requirement for the undertaker to carry out monitoring during the implementation of any de-watering scheme approved by the Agency under this paragraph and to supply data arising from that monitoring to the Agency; and
- (b) a requirement for the undertaker not to prevent or materially restrict the Agency's use of any access route during construction of the specified work or, where that is not possible owing to the nature of the work, a requirement for the undertaker to provide for use by the Agency during construction of the specified work a reasonably suitable alternative to the access route.

(5) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

97. Without limitation on the scope of paragraph 20, but subject always to the provisions of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased

by reason of any specified work.

98.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 21, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) if, within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the

reasonableness of any requirement of such a notice, the Agency must not except in the case of an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 29.

99.—(1) Subject to sub-paragraph (6), the undertaker must from the commencement of the construction of a specified work until the date falling 12 months from the date of completion of such specified work (“the maintenance period”), maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence. Upon the expiry of the maintenance period, the drainage work must be maintained by the highway authority of the highway to which the specified work relates.

(2) If any such drainage work is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the person liable for maintenance to repair and restore the work, or any part of such work, or (if the person liable for maintenance so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the person liable for maintenance, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from that person.

(4) If there is any failure by the Applicant to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective Provisions the Agency may serve written notice requiring the Applicant to cease all or part of the specified works and the Applicant must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in the case of an emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 29.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of this Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

100. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in doing so from the undertaker.

101. If by reason of construction of a specified work the Agency’s access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to access the flood defence or equipment no less effectively that was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

102.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in a fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are required under sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the undertaker.

103.—(1) The undertaker must repay to the Agency all costs, charges, expenses, damages and losses not otherwise provided for in this Part of this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the examination or approval of plans under this Part of this Schedule;
- (b) the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule;
- (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works; or
- (d) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) The fact that any act or thing may have been done—

- (a) by the Agency on behalf of the undertaker; or
- (b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Agency, or in a manner approved by the Agency, or under its supervision or the supervision of its duly authorised representative,

does not excuse the undertaker from liability under the provisions of this paragraph.

(3) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any costs, charges, expenses, damages or losses to the extent that they are attributable to the act, neglect or default of the Agency, its officers, servants, contractors or agents.

(4) The Agency must give the undertaker written notice of any such claim or demand as is referred to in sub-paragraph (1) as soon as it becomes aware of such claim or demand, and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker, such consent not to be unreasonably conditioned, withheld or delayed.

104. If following construction of the authorised development the Agency's access to the Aylesford Stream is materially obstructed or any pre-existing rights of access to the Aylesford Stream over the Order land are extinguished, the undertaker must provide such alternative means of access and grant such rights over the Order land as will allow the Agency to access the Aylesford Stream no less effectively than was possible before the obstruction or extinguishment of rights.

105. Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined by arbitration under article 46 (Arbitration).

SCHEDULE 10

Article 44

ENVIRONMENTAL STATEMENT DOCUMENTS TO BE CERTIFIED

Document and description
the environmental statement contained in document reference 6.1
the figures accompanying the environmental statement contained in document reference 6.2 (subject to the substitutions set out below)
the appendices accompanying the environmental statement contained in document reference 6.3 (subject to the substitutions set out below)
the statement of statutory nuisances contained in document reference 6.4
the non-technical summary contained in document 6.5
the assessment of implications for European sites contained in document 6.6
the revised arboricultural implications assessment contained in document 341755-09-300-RE-003-A Revision D (which substitutes the arboricultural implications assessment contained in appendix 7.3 in document reference 6.3)
the revised figure 2.1 the main scheme contained in document HA514442-MMGJV-GEN-SMW-DE-Z-60201 Revision B (which substitutes figure 2.1 the main scheme contained in document reference 6.2)
the revised outline construction environmental management plan contained in document HA514442-MMGJV-GEN-SMW-RE-Z-631701 Revision B (which substitutes the outline construction environmental management plan contained in appendix 17.1 in document reference 6.3)
the revised flood risk assessment contained in document HA514442-MMGJV-GEN-SMW-RE-Z-631402 Revision B (which substitutes the flood risk assessment contained in appendix 14.2 in document reference 6.3)
the flood risk assessment summary contained in document HA514442-MMGJV-GEN-SMW-RE-Z-14401 Revision A
the flood risk assessment – depth and hazard mapping contained in document HA514442-MMGJV-GEN-SMW-RE-Z-15401 Revision A
the FRA – additional submission at deadline 8 contained in document HA514442-MMGJV-GEN-SMW-RE-Z-15501 Revision A
the environmental update report contained in document HA514442-MMGJV-GEN-SMW-RE-Z-101301
the arboricultural survey report contained document 341755-09-300-RE-02-E Revision E
the geophysical survey report contained in document J2780
the site location and overview of survey areas contained in document 2780 figure no. 01

Document and description

the site plan showing location of survey grids and referencing contained in document 2780 figure no. 02

the plot of raw gradiometer data contained in document 2780 figure no. 03

the colour plot of raw gradiometer data showing extreme magnetic values contained in document 2780 figure no. 04

the plot of processed gradiometer data contained in document 2780 figure no. 05

the interpretation of gradiometer anomalies contained in document 2780 figure no. 06

the archaeological walkover survey, metal detecting and evaluation trenching report contained in document 86670.02

the site investigation report contained in document 15/2718 – FR 01

the minerals safeguarding assessment contained in document HWY/HDS/341755/TR010006

the environmental masterplan for the main scheme contained in documents HA514442-MMGJV-GEN-SMW-DE-Z-60213 Revision E, HA514442-MMGJV-GEN-SMW-DE-Z-60214 Revision E, HA514442-MMGJV-GEN-SMW-DE-Z-60215 Revision C, HA514442-MMGJV-GEN-SMW-DE-Z-60216 Revision B, HA514442-MMGJV-GEN-SMW-DE-Z-60217 Revision B, HA514442-MMGJV-GEN-SMW-DE-Z-60218 Revision B and HA514442-MMGJV-GEN-SMW-DE-Z-60219 Revision D, all stated as Revision C at 26 May 2017 (which substitutes the environmental masterplan for the main scheme contained in figures 2.6a, 2.6b, 2.6c, 2.6d, 2.6e, 2.6f and 2.6g of document reference 6.2)

the environmental masterplan for the alternative scheme contained in documents HA514442-MMGJV-GEN-SMW-DE-Z-60220 Revision E, HA514442-MMGJV-GEN-SMW-DE-Z-60221 Revision E and HA514442-MMGJV-GEN-SMW-DE-Z-60222 Revision B, all stated as Revision C at 26 May 2017 (which substitutes figures 2.7a, 2.7b and 2.7c in the environmental masterplan for the alternative scheme contained in figures 2.7a, 2.7b, 2.7c, 2.7d, 2.7e, 2.7f and 2.7g of document reference 6.2)

the environmental masterplan update report for deadline 8 contained in document HA514442-MMGJV-GEN-SMW-RE-Z-13501 Revision A, stated as Revision C at 26 May 2017

the archaeological intrusive evaluation, written scheme of investigation contained in document HA514442-MMGJV-GEN-SMW-RE-Z-13901 Revision D

the traffic management plan draft contained in document HE514443-TW-TTM-00-RP-ZM-0001 Version 01

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to construct a new junction 10a on the M20 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 makes provision in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, book of reference and environmental statement mentioned in this Order and certified in accordance with article 44 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Highways England, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.