



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

A63 Castle Street Improvement-Hull

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

Peter Willows BA MRTPI

24 December 2019

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OVERVIEW

File Ref: TR010016

The application, dated 20 September 2018, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 20 September 2018.

The Applicant is Highways England

The application was accepted for examination on 18 October 2018.

The examination of the application began on 26 March 2019 and was completed on 26 September 2019.

The development proposed comprises improvements to approximately 1.5km of the A63 and connecting side roads in Hull between Ropery Street and the Market Place/Queen Street junction. There are clear benefits of the scheme, including improved traffic flow and journey times and reduced congestion along the A63. It would improve access to the Port of Hull and would bring economic and safety benefits. However, this is a major scheme being routed through a highly sensitive urban location, rich in built heritage. The scheme will have a harmful impact on some heritage assets, including the dismantling of a listed building. There will also be harmful impacts on the wider local townscape and the scheme will affect the options available for pedestrians and other non-motorised users wishing to cross the A63.

Summary of Recommendation:

Having considered the scheme as a whole, the Examining Authority finds conflict with the relevant National Policy Statement and recommends that the Secretary of State should withhold consent. If, however, the Secretary of State decides to grant consent, then the Examining Authority recommends that the Order should be in the form attached at Appendix D. The Examining Authority also make recommendations relating to the Applicant's compulsory acquisition proposals.

REPORT TABLE OF CONTENTS

1.	INTRODUCTION.....	1
1.1.	INTRODUCTION TO THE EXAMINATION	1
1.2.	APPOINTMENT OF THE EXAMINING AUTHORITY	1
1.3.	THE PEOPLE INVOLVED IN THE EXAMINATION	1
1.4.	THE EXAMINATION AND PROCEDURAL DECISIONS.....	2
1.5.	ENVIRONMENTAL IMPACT ASSESSMENT	6
1.6.	HABITATS REGULATIONS ASSESSMENT.....	7
1.7.	UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS.....	7
1.8.	OTHER CONSENTS	8
1.9.	STRUCTURE OF THIS REPORT	9
2.	THE PROPOSAL AND THE SITE	10
2.1.	THE APPLICATION AS MADE	10
2.2.	THE APPLICATION AS EXAMINED.....	14
2.3.	RELEVANT PLANNING HISTORY	15
3.	LEGAL AND POLICY CONTEXT	17
3.1.	INTRODUCTION.....	17
3.2.	THE PLANNING ACT 2008.....	17
3.3.	NATIONAL NETWORKS NATIONAL POLICY STATEMENT.....	18
3.4.	UK LEGISLATION	18
3.5.	EUROPEAN DIRECTIVES.....	19
3.6.	MADE DEVELOPMENT CONSENT ORDERS	20
3.7.	TRANSBOUNDARY EFFECTS	21
3.8.	OTHER RELEVANT POLICY STATEMENTS	21
3.9.	LOCAL IMPACT REPORTS.....	22
3.10.	THE DEVELOPMENT PLAN	22
4.	THE PLANNING ISSUES	24
4.1.	MAIN ISSUES IN THE EXAMINATION	24
4.2.	TRANSPORTATION, TRAFFIC AND MOVEMENT.....	25
4.3.	AIR QUALITY AND RELATED EMISSIONS.....	40
4.4.	BIODIVERSITY	50
4.5.	HISTORIC ENVIRONMENT.....	58
4.6.	TOWNSCAPE AND VISUAL IMPACT	78
4.7.	SOCIAL, ECONOMIC AND LAND-USE EFFECTS	90
4.8.	WATER ENVIRONMENT	102
5.	FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT	116
5.1.	INTRODUCTION.....	116
5.2.	PROJECT LOCATION	116
5.3.	HRA IMPLICATIONS OF THE PROJECT.....	117
5.4.	ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE).....	118

5.5.	CONSERVATION OBJECTIVES.....	121
5.6.	FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI).	121
5.7.	HRA CONCLUSIONS	122
6.	CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT	123
6.1.	INTRODUCTION.....	123
6.2.	SCHEME OBJECTIVES AND BENEFITS	123
6.3.	THE PLANNING BALANCE	124
6.4.	OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT.....	127
7.	COMPULSORY ACQUISITION AND RELATED MATTERS.....	131
7.1.	INTRODUCTION.....	131
7.2.	LEGISLATIVE REQUIREMENTS.....	131
7.3.	THE REQUEST FOR CA AND TP POWERS	132
7.4.	THE PURPOSES FOR WHICH LAND AND RIGHTS ARE REQUIRED	133
7.5.	EXAMINATION OF THE CA AND TP CASE.....	133
7.6.	EXA's ASSESSMENT	134
7.7.	HUMAN RIGHTS.....	160
7.8.	CONCLUSION	161
8.	DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS .	164
8.1.	INTRODUCTION.....	164
8.2.	ARTICLE 44 – CROWN RIGHTS	191
8.3.	POTENTIAL AMENDMENTS TO THE DCO ARISING FROM REPRESENTATIONS BY EPIC (NO2) LTD	191
8.4.	LEGAL AGREEMENTS AND OTHER CONSENTS	192
8.5.	NUISANCE.....	192
8.6.	CONCLUSIONS	193
9.	SUMMARY OF FINDINGS AND CONCLUSIONS	194
9.3.	RECOMMENDATION.....	195

APPENDIX A: THE EXAMINATION.....	(A:I)
APPENDIX B: EXAMINATION LIBRARY	(B:I)
APPENDIX C: LIST OF ABBREVIATIONS	(C:I)
APPENDIX D: THE BEST ACHIEVABLE DCO.....	(D:I)
APPENDIX E: CONDITIONAL DCO CHANGES (EPIC (NO2) LTD).....	(E:I)

List of Figures (all figures from the Environmental Statement unless otherwise stated)

Figure 1: Location Plan	10
Figure 2: Illustrative outline of the scheme (from the Planning Statement)....	11
Figure 3: The proposed Mytogate underpass, looking eastwards	12
Figure 4: The A63 as part of the E20 Corridor.....	20
Figure 5: The Study Area (Figure 2.1 of the Transport Assessment Report) ...	28
Figure 6: Journey Time Route (Figure 4.8 of the Transport Assessment Report)	29
Figure 7: Summary of casualties - Table 5.5 from the Transport Assessment Report	37
Figure 8: Hull AQMA No1(A) (from ES Volume 2 Figure 6.1).....	42
Figure 9: ES Table 6.15: Annual mean NO ₂ at selected receptors - Clive Sullivan Way flyover to the Mytongate Junction	47
Figure 10: ES Table 6.16: Annual mean NO ₂ at Mytongate Junction to Market Place receptors.....	47
Figure 11: ES Figure 9.1 – The Old Town Conservation Area	69
Figure 12: View from the ES showing the central reserve barrier.	82
Figure 13: The Porter Street Bridge (from ES Figures 9.6)	85
Figure 14: The proposed Princes Quay bridge	86

List of Tables

Table 1: Withdrawn representations.....	6
Table 2: Instances where CA of Rights is proposed and the Statement of Reasons indicates that an agreement has not or may not have been sought.	139
Table 3: Instances where CA of Land is proposed and the Statement of Reasons indicates that an agreement has not or may not have been sought.	143
Table 4: Open space rights land	151
Table 5: Amenity and landscaping plots.....	151
Table 6: Resolved CA objections.....	160
Table 7: CA Conclusions.....	161
Table 8: DCO Provisions Not Recommended to be Changed	166
Table 9: DCO Provisions Recommended to be Changed	170
Table 10: Minor DCO corrections	187



**Examining authority’s Report of Findings and Conclusions and
Recommendation to the Secretary of State for Transport, dated 24
December 2019**

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

Page No.	Paragraph	Error	Correction
5	1.4.27	Delete “EPR” and replace	Replace with “Infrastructure Planning (Examination Procedure) Rules 2010 (EPR)”
17	3.2.1	Delete “s104 of the Act”	Replace with “S104 of the PA2008”
27	4.2.13	Delete “import”	Replace with “important”
28	4.2.18	Delete “caries”	Replace with “carries”
44	4.3.26	Delete “Requirement 4”	Replace with “R4”
53	4.4.25	Delete “EN”	Replace with “NE”
53	4.4.25	Delete “with in”	Replace with “within”
63	4.5.28	Delete “Highways England” both times	Replace with “Applicant”
70	4.5.60	Delete “though” in first sentence	Replace with “through”
93	4.7.21	No definition of “GVA”	Define “GVA” and add to definitions in appendix c
99	4.7.55	In last sentence “in terms” used twice	Replace last sentence with “The Scheme is therefore acceptable in terms of its impact from noise and vibration”
110	4.8.48	“the” missing before “surrounding” in the first sentence	Insert “the”

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

- 1.1.1. The application for the A63 Castle Street Improvement-Hull (the proposed development) (Ref: TR010016) was submitted by Highways England (the Applicant) to the Planning Inspectorate on 20 September 2018 under section 31 of the Planning Act 2008 (PA2008) [\[APP-003\]](#) and accepted for Examination under section 55 of the PA2008 on 18 October 2018 [\[PD-003\]](#).
- 1.1.2. The proposed development comprises the upgrading of approximately 1.5km of the A63 and connecting side roads in Hull between Ropery Street and the Market Place/Queen Street junction.
- 1.1.3. The location of the proposed development is shown in the Location Plan [\[APP-004\]](#). The site lies within the administrative boundary of Hull City Council (HCC), with a proposed temporary storage compound within the administrative area of East Riding of Yorkshire Council (ERYC).
- 1.1.4. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Ministry of Housing, Communities and Local Government (MHCLG) in its decision to accept the Application for Examination in accordance with section 55 of PA2008 [\[PD-003\]](#).
- 1.1.5. The Planning Inspectorate agreed with the Applicant's view stated in the application form [\[APP-003\]](#) that the proposed development is an NSIP within the meaning of section 14(1)(h) of the PA2008 as it is for the improvement of a highway within the meaning of section 22(1)(c). The scheme accords with s22(5) in that it is wholly within England, Highways England, a strategic highways company, is the highway authority for the highway and the improvement is likely to have a significant effect on the environment.
- 1.1.6. Since the scheme is an NSIP it requires development consent in accordance with s31 of PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 7 January 2019 I, Peter Willows, was appointed as the Examining Authority (ExA) for the application under s78 and s79 of PA2008 [\[PD-008\]](#).

1.3. THE PEOPLE INVOLVED IN THE EXAMINATION

- 1.3.1. The people involved in the Examination were:
 - People who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP.

- Affected Persons (APs) who were affected by a compulsory acquisition (CA) and/or temporary possession (TP) proposal made as part of the application and objected to it at any stage in the Examination.
- Other people who were invited to participate in the Examination because they were either affected by it in some other relevant way or because they had particular expertise or evidence that I considered to be necessary to inform the Examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination began on 26 March 2019 and concluded on 26 September 2019.

1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

The Preliminary Meeting

1.4.3. On 22 February 2019, I wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) [[PD-004](#)].

1.4.4. The PM took place on 26 March 2019 at DoubleTree by Hilton Hull, 24 Ferensway, Kingston upon Hull, HU2 8NH. An audio recording [[EV-001](#)] and a note of the meeting [[EV-003](#)] were published on the [Planning Inspectorate National Infrastructure website](#).

1.4.5. My procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [[PD-005](#)], dated 1 April 2019.

Key Procedural Decisions

1.4.6. Key procedural decisions are set out in documents with a 'PD' prefix in the Examination Library, so there is no need to reiterate them here. They were generally complied with by the Applicant and relevant IPs.

Site Inspections

1.4.7. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the proposed development within its site and surroundings and its physical and spatial effects.

1.4.8. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and/or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.

I held the following USIs:

- USI1, 25 March 2019 was carried out before the start of the Examination to get a general understanding of the site and surroundings [[EV-013a](#)];
- USI2 was carried out on 17 July in order to note some additional areas of the site and also to experience the site travelling along the A63 and through the Mytongate junction by car [[EV-014a](#)].

A brief note of the USIs can be found in the Examination Library under the above references.

- 1.4.9. I held an ASI on 4 June in order to see particular elements of the site which had been raised in representations or which could not be seen from public land. The sites visited were: Holiday Inn; Kingston Retail Park; Spruce Road; High Street; Fish Street/Trinity Court; Staples and units at Myton Street.

Hearings

- 1.4.10. Hearings are held in PA2008 Examinations in two main circumstances:
- To respond to specific requests from persons who have a right to be heard - in summary terms:
 - where people affected by compulsory acquisition (CA) and/or temporary possession (TP) proposals (Affected Persons) object and request to be heard at a Compulsory Acquisition Hearing (CAH); and / or
 - where IPs request to be heard at an Open Floor Hearing (OFH).
 - To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear. In these circumstances an Issue Specific Hearing (ISH) may be held.
- 1.4.11. I held a number of hearings to ensure the thorough examination of the issues raised by the Application.
- 1.4.12. Hearings were held at the KCOM Stadium, West Park, Hull HU3 6HU (ISH1-4 and CAH1) and at DoubleTree by Hilton Hull, 24 Ferensway, Hull HU2 8NH (ISH5 and CAH2). Both of these were located outside the scheme boundaries but within Hull and with good public transport links and were suitable venues.
- 1.4.13. Five ISHs were held under s91 of PA2008 as follows:
- ISH1 - 4 June 2019 - Traffic and movement. The Agenda and audio recording are available respectively at [[EV-003a](#)] and [[EV-006](#)];
 - ISH2 - 5 June 2019 - Water and flood risk [[EV-003b](#)] and [[EV-007](#)];
 - ISH3 - 6 June 2019 - Historic environment [[EV-003c](#)] and [[EV-008](#)];
 - ISH4 - 6 June 2019 - Draft development consent order [[EV-004](#)] and [[EV-009](#)];

- ISH5 - 18 July 2019 - draft DCO and any outstanding matters [[EV-015](#)] and [[EV-010](#)]

1.4.14. Two CAHs were held under s92 of PA2008 as follows:

- CAH1 – 7 June [[EV-005](#)] and [[EV-013](#)]
- CAH2 – 18 July 2019 [[EV-014](#)] and [[EV-011](#)]

1.4.15. All those affected by compulsory acquisition (CA) and/or temporary possession (TP) proposals (Affected Persons or APs) were provided with an opportunity to be heard. I also used these hearings to examine the Applicant's case for CA and/or TP in the round. The examination of the Applicant's general case primarily took place at CAH1, although aspects of it – Crown land and special category land/open space – were returned to at CAH2.

1.4.16. An Open Floor Hearing (OFH) was held under s93 of PA2008 at DoubleTree by Hilton Hull, 24 Ferensway, Hull HU2 8NH on 26 March 2019. There was no agenda for this hearing but the audio recording is available at [[EV-002](#)]. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

Written Submissions

1.4.17. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the Application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in my conclusions. I have considered all important and relevant matters arising from them.

1.4.18. Key written sources are set out further below.

Relevant Representations

Twenty RRs were received by the Planning Inspectorate [[RR-001 to RR-020](#)]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered.

Written Representations and Other Examination Documents

1.4.19. The Applicant and other IPs were provided with opportunities to:

- make written representations (WRs) (Deadline (D1));
- comment on WRs made by others (D2);
- summarise their oral submissions at hearings in writing (D3 and D5);
- make other written submissions I requested or accepted; and
- comment on documents issued by me for consultation including:

- A Report on Implications for European Sites (RIES) [[PD-010](#)] published on 11 July 2019 by D5; and
- A Schedule of proposed changes to the dDCO [[PD-012](#)] published on 11 July by D5.

1.4.20. All WRs and other examination documents have been fully considered.

Local Impact Report

1.4.21. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the proposed development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 PA2008.

1.4.22. One LIR was received from HCC [[REP2-016](#)]. The LIR has been taken fully into account in this Report.

Statements of Common Ground

1.4.23. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them.

1.4.24. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:

- The Environment Agency [[REP5-034](#)]
- Historic England [[REPR17-009](#)];
- Natural England [[REP5-035](#)];
- Hull City Council [[REP7-007](#)];
- EPIC (No2) Ltd [[REP7-006](#)]; and

1.4.25. The SoCGs have been taken fully into account in all relevant chapters of this Report.

Written Questions

1.4.26. I asked 2 rounds of written questions.

- First written questions (ExQ1) [[PD-006](#)] were set out in the Rule 8 letter [[PD-005](#)], dated 1 April 2019.
- Second written questions (ExQ2) [[PD-011](#)] were issued on 11 July 2019.

1.4.27. The following request(s) for further information and comments under Rule 17 of the EPR were issued:

- 11 June 2019 [[PD-009](#)] to confirm the position regarding an objection to assist in the scheduling of a CAH; and
- 13 September 2019 [[PD-017](#)] seeking further information from the Applicant.

1.4.28. All responses to the written questions have been fully considered and taken into account in all relevant chapters of this Report.

Requests to Join and Leave the Examination

- 1.4.29. There were no requests to join the Examination by persons who were not already IPs at or after the PM.
- 1.4.30. During the Examination, the following persons advised in writing that that their issues were settled and/or their representations were withdrawn:

Table 1: Withdrawn representations

Person	Status	Document advising of withdrawal or settlement of issue
The Coal Authority	IP	[RR-005]
Marine Management Organisation	IP	[REP6-018]
Princes Quay Estates Ltd	AP	[REP5-060]
Princes Quay Retail Ltd	AP	[REP-059]
Holiday Inn (HIN Hull Ltd and HICP Ltd)	AP	[REP5-053]
Mytongate Development Company Ltd	AP	[REP6-019]

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

- 1.5.1. The proposed development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.5.2. On 4 March 2013, the Applicant submitted a Scoping Report to the SoS under Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263) (as amended) (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). It follows that the Applicant is deemed to have notified the SoS under Regulation 6(1)(b) of the EIA Regulations that it proposes to provide an ES in respect of the Project.
- 1.5.3. In April 2013 the Planning Inspectorate provided a Scoping Opinion [\[APP-067\]](#). Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES dated September 2018 [\[APP-022\]](#). The ES was revised in March 2019 [\[AS-011\]](#).

- 1.5.4. The current EIA legislation for NSIP cases is the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations). They revoke the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the 2009 EIA Regulations) subject to transitional provisions in Regulation 37 of the 2017 EIA Regulations.
- 1.5.5. The 2017 EIA Regulations came into force on 16 May 2017, before the application was made. Nevertheless, Regulation 37(2)(a)(ii) of the 2017 EIA Regulations states that the 2009 EIA Regulations will continue to apply to any application for an order granting development consent or subsequent consent where, before the commencement of the 2017 Regulations, the Applicant has requested the SoS or the relevant authority to adopt a scoping opinion (as defined in the 2009 Regulations) in respect of the development to which the application relates. The Applicant considered that the transitional provisions apply to this application and hence complied with the relevant provisions of the 2009 EIA Regulations (ES Paragraph 1.6.3 [[AS-011](#)]).
- 1.5.6. The Applicant requested a Scoping Opinion from the SoS on 4 March 2013 and that Opinion was adopted by the Planning Inspectorate (on behalf of the SoS) in April 2013. I am therefore satisfied that for this application, the provisions in Regulation 37(2)(a)(ii) of the 2017 EIA Regulations apply and, accordingly, the application should be considered against the 2009 EIA Regulations.
- 1.5.7. On 21 December 2018 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations had been complied with. The s59 notice is not published but the s56 notice is available [[OD-002](#)].

1.6. HABITATS REGULATIONS ASSESSMENT

- 1.6.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report has been provided [[APP-069](#)].
- 1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 5 of this Report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.7.1. By the end of the Examination, the following IPs confirmed that they had entered into formal agreements with the Applicant:
- Holiday Inn [[REP5-053](#)]
 - Princes Quay Estates Ltd [[REP5-060](#)]
 - Mytongate Development Company Ltd [[REP6-019](#)]
- 1.7.2. These are commercial agreements rather than development consent obligations pursuant to the Town and Country Planning Act 1990 (TCPA1990) or equivalent undertakings and copies of the signed

agreements have not been provided to the Examination. However, the matters they address have been aired during the Examination and I have had due regard to the agreements and address them in the relevant sections of this report. They are relevant considerations for the SoS.

- 1.7.3. At the close of the Examination, an agreement between the Applicant and EPIC (No2) Ltd [[AS-071](#)] had been drafted but not signed. I address this at Chapters 7 and 8.

1.8. OTHER CONSENTS

- 1.8.1. The Applicant's Consents and Agreements Position Statement [[APP-017](#)] identifies the consents that may be required in addition to Development Consent under PA2008. These are:

- Trade effluent consent (e.g. for welfare facilities) (Water Industry Act 1991);
- Mobile plant licenses for crushing operations or site permits if not using a subcontractor with their own mobile licenses (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2010);
- Exemptions for operations such as U1 (import of waste for use in construction) and T15 (crushing of aerosols to minimize hazardous waste) (if exemption limits can be met) (Pollution Prevention Control Act 1999, Environmental Permitting (England and Wales) Regulations 2010);
- Section 61 consent if requested by the Local Authority (LA) (Control of Pollution Act 1974);
- Notification to EA of Japanese Knotweed removal or burial (Waste (England and Wales) Regulations 2011);
- CL:aire Materials Management Plan;
- Land Drainage Consent to culvert an Ordinary Watercourse (Section 23 of The Land Drainage Act 1991);
- Vehicle Special Order(s) from the Vehicle Certification Agency under Section 44 of the Road Traffic Act 1988.

- 1.8.2. I have considered the available information relating to these consents and, without prejudice to the exercise of discretion by future decision-makers, have concluded that there are no apparent impediments to the implementation of the Proposed Development, should the SoS grant Development Consent.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes the site and its surroundings, the proposed development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS's decision.
- **Chapter 4** considers the planning issues that arose from the Application and during the Examination.
- **Chapter 5** considers effects on European Sites and Habitats Regulations Assessment (HRA).
- **Chapter 6** sets out the balance of planning considerations arising from Chapters 4 and 5, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 7** sets out my examination of Compulsory Acquisition (CA) and Temporary Possession (TP) proposals.
- **Chapter 8** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 9** summarises all relevant considerations and sets out my recommendation to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Events.
- **Appendix B** – the Examination Library.
- **Appendix C** – List of Abbreviations.
- **Appendix D** – the best achievable DCO (baDCO)
- **Appendix E** – Potential changes to the baDCO in the event that a settlement agreement between the Applicant and EPIC (No 2) Limited is not reached. The details of this are explained in Chapter 8 of this report.

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The Site is within the urban area of Hull. The location is shown below.



Figure 1: Location Plan

2.1.2. The application as made is described in the Planning Statement [[APP-070](#)] as follows:

The Scheme comprises the following improvements to approximately 1.5km of the A63 and connecting side roads in Hull between Ropery Street and the Market Place/Queen Street junction:

- Lowering the level of the A63 by approximately 7m into an underpass at the Mytongate Junction and raising Ferensway and Commercial Road by approximately 1m creating a grade separated (split-level) junction. New east and west bound slip roads would link the A63 and Mytongate Junction
- Widening the eastbound carriageway of the A63 to three lanes between Princes Dock Street and Market Place, with the nearside lane being marked for local traffic
- Removing all existing signal controlled and uncontrolled pedestrian crossings on the A63
- Providing a new bridge over the A63 for pedestrians, cycles and disabled users at Porter Street
- Providing a new bridge over the A63 for pedestrians, cycles and disabled users south of Princes Quay shopping centre
- Upgrading the existing route from Market Place under the A63 using High Street to allow pedestrians, cycles and disabled users to cross underneath the A63
- Restricting access to the A63 by closing some junctions and restricting movements on some side roads to improve safety

- Changes and enhancements to existing highways to maintain access to all properties
- Vegetation clearance, exhumation and reburial works within Trinity Burial Ground resulting in the permanent loss of approximately one third of the site to accommodate the new Mytongate Junction
- Demolition of the Myton Centre to enable the development of replacement public open space for the permanent loss of land at Trinity Burial Ground
- Demolition and rebuilding of the Grade II listed Earl de Grey Public House
- Improvement works to Castle Buildings
- Localised diversion of statutory utilities that currently cross beneath the existing A63
- A water storage and pumping station structure to collect the drainage from the underpass and pump it away for discharge

2.1.3. A fuller description can be found in Chapter 2 of the Environmental Statement [\[AS-011\]](#).

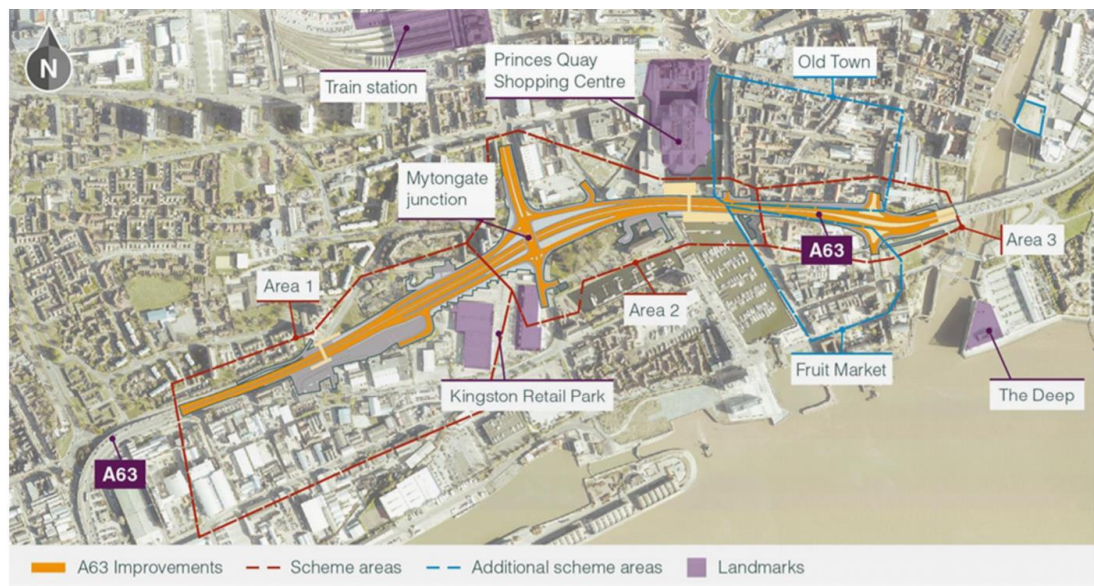


Figure 2: Illustrative outline of the scheme (from the Planning Statement)



Figure 3: The proposed Mytogatge underpass, looking eastwards

2.1.4. It should be noted that, as originally submitted, the scheme included 2 options for the required batching site compound – the Arco site (Option A) and the Staples site (Option B). The application made clear that only one of these sites would be acquired. At the Preliminary Meeting (PM) [EV-001] Highways England advised that a decision regarding which site to pursue would be made relatively early in the examination process. I return to this matter in the following section.

2.1.5. A useful summary of the character of the area can be found at paragraphs 2.2.1-2.3.4 of the Applicant’s Planning Statement [APP-070], as follows:

The Scheme is located within the administrative boundary of HCC with a temporary storage compound located within the administrative area of East Riding of Yorkshire Council (ERYC). The Scheme is on the north bank of the Humber Estuary. The area to the south of the Humber Estuary – and outside of the Scheme Footprint – is within the jurisdiction of North Lincolnshire Council. The Humber Bridge provides a link between Hull and North Lincolnshire.

Hull Dock Marina and the Kingston Retail Park are located immediately adjacent to the south of the Scheme and the Princes Quay Shopping Centre is located to the north. The Humber is located approximately 500m to the south of the Scheme, beyond the Hull Dock Marina, with the River Hull to the east.

The existing A63 Castle Street comprises of approximately 1.5km of dual carriageway from the eastern side of Rawlings Way; a grade separated

junction in the vicinity of Ropery Street; and the Market Place and Queen Street junctions.

The A63 Castle Street forms part of an east to west route connecting Hull city centre to the Port of Hull and the docks to the east; the M62 and strategic road network to the west; and the Humber Bridge and the A15 and M180 to the south. The A63 is also part of the E20 Trans-European Network Route, which connects Hull to Liverpool in the United Kingdom.

The A63 Castle Street is approached from the west along a dual, two lane all-purpose carriageway known as A63 Clive Sullivan Way and Hessle Road. Hessle Road becomes Castle Street near its junction with Porter Street. Continuing eastwards, the road becomes Garrison Road (now known as Roger Millward Way) at the junction with Market Place and Queen Street, and then crosses the River Hull via Myton Bridge.

The area surrounding the Scheme is made up of a variety of land uses, consistent with the urban location and adjacent waterfrontLand uses in the locality include:

- Residential properties, comprising semi-detached and terraced houses, small scale flats, residential tower block and waterfront apartment developments
- Commercial properties including Arco Ltd site, Marina Court offices (Humber Dock Street) and Island Wharf offices (Humber Quays)
- Retail premises including Kingston Retail Park, Princes Quay Shopping Centre and associated car parks, retail outlets along Ferensway and retail outlets along High Street
- Leisure facilities including Holiday Inn, Hull Arena, Vue Cinema, Ask restaurant, restaurants and bars on Humber Dock Street and within the Fruit Market area and the Spurn Lightship which is moored on Humber Dock
- Development land including land at Quay West (off Myton Street and Waterhouse Lane and currently under development with the Hull Venue), Fruit Market area and Humber Quays
- Public open space at Trinity Burial Ground and small parks at Great Passage Street (adjacent to Mytongate Junction), off Porter Street (Jubilee Arboretum) and off William Street
- Humber Dock (Humber Dock, south swing bridge and lock south side of Castle Street), Earl De Grey Public House and Warehouse No. 6 (Ask Restaurant) Grade II Listed Buildings
- Public Rights of Way (PRoW). These include Route 23 which ends at A63 Castle Street; Route 24 which runs west from Humber Dock Street along the southern edge of the Humber Dock and along Wellington Street; and Route 25 which begins at A63 Castle Street. Footways align both sides of the A63 and a combined footway and cycleway is located on the north side of Hessle Road and on the north east, south east and south west sides of Mytongate Junction
- Marinas at Humber Dock and Railway Dock
- The Humber Estuary

2.2. THE APPLICATION AS EXAMINED

- 2.2.1. The application as examined was fundamentally the same as applied for. However, the proposals were firmed up during the Examination in two respects – the options for drainage and the options for a temporary site batching compound. Additionally, Work No 18 was split into two separate items – 18A and 18B. I consider these changes below.
- 2.2.2. As submitted, the scheme included a number of options for draining the proposed underpass. The preferred option was for a short rising main connecting to an existing Yorkshire Water sewer. However, consent for this had not been obtained from Yorkshire Water at the time that the application was made. Consequently, the scheme included the option of draining the underpass directly to the Humber Estuary. The construction of a rising main, together with 3 different options for the outfall, were shown on the drawings (identified as Work Nos 21A-21D).
- 2.2.3. During the Examination, Yorkshire Water gave consent for its sewer to be used [\[REP3-017\]](#). Consequently, the Applicant confirmed [\[REP3-006\]](#) its intention of relying solely on that option for draining the underpass, and the other options were deleted from the scheme. Because of this change, Work Nos 21A-21D do not feature in the Applicant's preferred DCO [\[REPR17-004\]](#). The document still makes reference to Work No 21 but records it as 'Not used'.
- 2.2.4. The scheme includes provision for a temporary bentonite batching compound for use during the construction phase. Although there was a preferred site (the Arco site), planning and legal matters relating to this were still being resolved at the time of the application. Consequently, the non-preferred Staples site was included in the scheme in an 'Option B' set of proposals. This was recorded as Work No 45 in the original dDCO. There were 2 other works exclusive to Option B. Work No 43 was for 'Construction of private means of access to the Arco site from St James Street' and Work No 44 was for, 'Alterations to (Arco's) car park and service roads, including modifications to St James Street, Waverley Street and Spruce Road'. With the use of the Arco site as the batching compound as now proposed, neither of these sets of works would take place.
- 2.2.5. Once matters relating to the Arco site were fully resolved, a revised set of proposals removing Option B from the scheme were provided, including a revised DCO, which accompanied a letter dated 17 June 2019 [\[REP3-006\]](#). Consequently, Work Nos 43, 44 and 45 are now recorded as 'Not used' in the Applicant's preferred dDCO.
- 2.2.6. Work No 18 in the original dDCO [\[APP-015\]](#) was described as 'Alterations to Kingston Retail Park car park.' However, following discussion as CAH1, it was split into 18A and 18B. The bulk of the affected land is included in Work No 18B and continues to be described as, 'Alterations to Kingston Retail Park car park.' However, a strip of land next to the proposed road now falls within Work No 18A and is described as 'Working room for construction'. This more accurately reflects the works actually being

carried out. Because of this change, Work No 18 is recorded as 'Not used' in the Applicant's preferred dDCO and Work Numbers 18A and 18B have been added.

- 2.2.7. The recording of work numbers as 'not used' in these instances is not in accordance with SI drafting conventions – a matter I address further in Chapter 8.
- 2.2.8. On 1 July 2019 I issued a letter under Rule 9 [[PD-016](#)] accepting the revised documents for examination and confirming my view that the changes set out in the documents did not amount to a material change to the scheme. I reached that view having regard to the fact that no significant new proposals arose from the revised documents, their effect instead being to narrow down options that were already set out in the submitted documents.
- 2.2.9. Having considered the provisions of the PA2008 and Examination Guidance it is clear that the changes to the application highlighted above have not resulted in significant change to that which was applied for and do not affect the planning merits of the scheme.
- 2.2.10. I have considered whether the changes recorded above have led to any significant additional adverse effects to those recorded and assessed in the ES [[AS-011](#)]. However, the ES has taken the different options for the site compound and underpass drainage into account. It was clear from the outset that only one of the options for drainage of the underpass and the batching compound site would be taken forward, and the effect of the revised scheme is to narrow down options rather than to introduce new matters. The Applicant provided addendums to the ES, which conclude that there are no significant implications to the findings of the ES from the removal of the Staples site or the non-preferred drainage options from the DCO ([\[AS-049\]](#) and [\[AS-050\]](#)). It follows from this that the revised scheme lies within the worst-case parameters (Rochdale Envelope) assessed by the ES. Accordingly, the SoS has the power to make the DCO in the form provided in Appendix D to this report.

2.3. RELEVANT PLANNING HISTORY

- 2.3.1. The proposals to upgrade this section of the A63 have evolved over many years but have not been the subject of any previous application. However, one element of the current proposal – the Princes Quay Bridge – was granted planning permission with various amendments under references 15/00965/FULL, 18/00429/NMA and 18/01187/NMA. The construction of the bridge also required listed building consent due to works to walls of Humber Dock and Princes Dock (Refs 15/00966/LBC, granted 7 October 2015) and necessitated the temporary relocation of the Spurn Lightship visitor attraction to a new mooring in Hull Marina, for which planning permission was granted 31 August 2018 (Ref 18/00889). Construction of the bridge is now well advanced.
- 2.3.2. Also relevant to this scheme is planning permission and listed building consent granted on 5 June 2019 (references 19/00333/FULL and

19/00334/LBC) for development of a site adjoining the NSIP site. The scheme would include the erection of a new hotel and allows for the Earl de Grey public house, which lies within the NSIP site, to be demolished and rebuilt in a new location. This is discussed further in the Historic Environment section of Chapter 4.

- 2.3.3. On 24 April 2019 planning permission was granted for a mixed-use scheme, including a multi-storey car park and a B1 office (Ref 19/00103/FULL) on land to the south of Blackfriargate. This will facilitate the relocation of the company Arco from its existing Waverley Street site, which is required for a site compound for the NSIP.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

3.1.1. The purpose of this section is to identify some of the main legislation and policy relevant to this NSIP. Other than reference to some key matters from the Planning Act 2008 (as amended) (PA2008), it does not deal with the content of documents, which is addressed, where relevant, in my consideration of the issues in subsequent chapters. It is not an exhaustive list and many other sources of legislation and policy will be relevant to the scheme as a whole.

3.2. THE PLANNING ACT 2008

3.2.1. The PA2008 forms the basis of the development consent regime for NSIPs. Where, as in this case, a relevant National Policy Statement has been designated (and 'has effect'), s104 of the Act establishes that, in deciding the NSIP application, the SoS must have regard to:

- any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement");
- the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;
- any local impact report (within the meaning given by PA2008 s60(3)) submitted to the SoS before the specified deadline for submission;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the decision.

3.2.2. S104(3) requires the SoS to decide the application in accordance with any relevant national policy statement, except to the extent that one or more of the exceptions in subsections (4) to (8) applies, creating a presumption in favour of NNNPS compliant development. The exceptions are that SoS is satisfied as follows:

- deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations;
- deciding the application in accordance with any relevant national policy statement would lead to the SoS being in breach of any duty imposed on her/him by or under any enactment;
- deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment;
- the adverse impact of the proposed development would outweigh its benefits; and/ or
- any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

3.3. NATIONAL NETWORKS NATIONAL POLICY STATEMENT

- 3.3.1. The National Policy Statement for National Networks (the NNNPS) sets out the need for, and Government's policies to deliver, development of NSIPs on the national road and rail networks in England. The SoS must decide an application for a national networks NSIP in accordance with this NNNPS unless he/she is satisfied that one of the exceptions specified in s104 of the Act applies. No other NPS is relevant to the scheme.

3.4. UK LEGISLATION

Marine and Coastal Access Act 2009 (MCAA)

- 3.4.1. Section 58(3) of the MCAA applies to this project and requires that a public authority must have regard to the appropriate marine policy documents in taking any decision— (a) which relates to the exercise of any function capable of affecting the whole or any part of the UK marine area, but (b) which is not an authorisation or enforcement decision. Under s104(2)(aa) of PA2008 the SoS must have regard to 'the appropriate marine policy documents'. The appropriate marine policy documents include the UK Marine Policy Statement (MPS) and any relevant Marine Plan.
- 3.4.2. Although in this case most of the site falls outside any marine plan area, it potentially affects the East Inshore Marine Plan area due to the extension of a marina platform to support the foundations for the Princes Quay Bridge. Additionally, there is the possibility of effects on the Humber Estuary (which falls outside but close to the scheme site). Accordingly, the SoS must have regard to the MPS and the East Inshore Marine Plan.
- 3.4.3. The MSP is the framework for preparing Marine Plans and taking decisions affecting the marine environment. In this case it is not necessary to consider it further, since its aims and purpose are reflected in the East Inshore Marine Plan.
- 3.4.4. I sought clarity from the Applicant as to whether or not the scheme had been considered against the East Marine Plan (ExQ1.10.5 [[PD-006](#)] and Action Point 1 – ISH5 [[EV-012](#)]). The Applicant responded by providing a review of the East Inshore Marine Plan in an addendum to the Environmental Statement (Volume 1 Addendum 3) [[REP6-016](#)].

The Wildlife and Countryside Act 1981

- 3.4.5. The Wildlife and Countryside Act 1981 (as amended) is the primary legislation which protects certain species and habitats in the UK.

The Countryside and Rights of Way Act 2000

- 3.4.6. The Countryside and Rights of Way Act 2000 (as amended) includes provisions in respect of public rights of way (PRoW) and access to land.

Natural Environment and Rural Communities Act 2006

- 3.4.7. The Natural Environment and Rural Communities Act 2006 (as amended) (NERCA2006) makes provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads.
- 3.4.8. S40(1) includes a duty that every public body (including the ExA and SoS) must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of conserving biodiversity. In complying with this duty, s40(2) provides that regard must be had to the United Nations Environment Programme (UNEP) Convention on Biological Diversity 1992.

Environmental Permitting (England and Wales) Regulations 2010

- 3.4.9. The environmental permitting regime requires operators to obtain permits for some facilities, to register others as exempt and provides for ongoing supervision by regulators. The Applicant's Consents and Agreements Position Statement [[APP-017](#)] has identified that the Regulations may apply to some elements of the project

The Equality Act 2010

- 3.4.10. This Act contains the public sector equality duty (PSED). Section 149(1) of the Act, amongst other things, requires that a public authority or person exercising a public function must, in the exercise of its functions, have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The PSED is applicable to me in the conduct of this Examination and reporting and to the SoS in decision-making.

Infrastructure Planning (Decisions) Regulations 2010

- 3.4.11. Where a listed building is affected, Regulation 3 requires Examining Authorities and the Secretary of State to have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest it possesses.

3.5. EUROPEAN DIRECTIVES

The Water Framework Directive

- 3.5.1. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. The Regulations place a general duty on the Secretary of State to exercise his or her relevant functions so as secure compliance with the WFD. In England, the Regulations also require the Environment Agency to prepare a plan for each River Basin District and place a specific

duty on the Secretary of State to have regard to the relevant River Basin Management Plan (RBMP) in exercising their functions. In this instance, the relevant plan is the Humber River Basin Management Plan.

- 3.5.2. The ES [[AS-011](#)] includes a WFD Assessment at section 11.9. It concludes that the scheme is not considered to impact on the current status of the WFD 'Humber Middle' or 'Fleet Drain' surface water bodies. Neither does it contribute to the failure of these water bodies or affect their ability to achieve the WFD water body objectives or affect the delivery of the River Basin Management Plan actions to maintain their moderate overall status. I accept that assessment.

The Air Quality Directive (AQD)

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

Trans-European Networks (TEN)

- 3.5.4. The EU defines certain projects affecting Trans-European Networks relevant to energy (TEN-E) and transport (TEN-T) as projects of common interest (PCIs) and makes these subject to common procedures. The A63 forms part of the strategic E20 TEN route, which runs roughly east-west between Ireland and Russia.



Figure 4: The A63 as part of the E20 Corridor

3.6. MADE DEVELOPMENT CONSENT ORDERS

- 3.6.1. The Applicant made reference to the following existing DCOs in its Explanatory Memorandum [[APP-016](#)]:

- A19/A1058 Coast Road (Junction Improvement) Order 2016
- A14 Cambridge to Huntingdon Improvement Order 2016
- M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016
- A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014
- London Overground (Barking Riverside Extension) Order 2017

3.6.2. Reference is also made to the High Speed Rail (London - West Midlands) Act 2017.

3.7. TRANSBOUNDARY EFFECTS

3.7.1. A Transboundary Screening under Regulation 24 of the 2009 EIA Regulations was undertaken on behalf of the SoS on 22 March 2013 and updated on 5 August 2019 [[OD-003](#)] following the receipt of the application documents. No significant effects were identified which could impact on another European Economic Area member state. The regulation 24 duty is an ongoing duty and I have considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination, but none have.

3.8. OTHER RELEVANT POLICY STATEMENTS

The National Planning Policy Framework

3.8.1. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied when making Development Plans and deciding applications for planning permission. The NPPF does not contain specific policies for NSIPs. However, references to NPPF policy are made within the NNNPS. The NNNPS advises at paragraph 1.18 that the NPPF is likely to be an important and relevant consideration in decisions on nationally significant infrastructure projects, but only to the extent relevant to that project.

The UK Air Quality Strategy

3.8.2. The Air Quality Strategy for England, Scotland, Wales and Northern Ireland established the UK framework for air quality improvements. Individual plans prepared beneath its framework provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Air Quality Management Areas (AQMAs).

3.8.3. A number of European countries, including the UK, now experience issues with the achievement of NO₂ LV compliance due to widespread use of diesel vehicles. The environmental non-governmental organisation ClientEarth has brought various proceedings against the UK Government for breaching the AQD. Successive judgments by the Supreme Court ordered the SoS for Environment, Food and Rural Affairs to prepare new air quality plans to achieve NO₂ LV compliance.

- 3.8.4. A revised draft 'Air Quality Plan for NO₂' in response to this litigation was published by DEFRA on 26 July 2017 (AQP2017). This refers to Zone Plans for action in a large number of localities. However, a High Court Order was made on 21 February 2018 (ClientEarth No 3), providing that whilst the AQP2017 remains in force, it and its supporting Zone Plans are unlawful because they do not contain measures sufficient to ensure substantive compliance with the AQD in a number of local authority areas. Nor do they include the information necessary to demonstrate compliance with Schedule 8 of the Air Quality Standards Regulations 2010 in respect of these local authority areas.
- 3.8.5. The remedy required was the production of a supplement to the 2017 plan ensuring necessary information and feasible compliance measures are in place. This was published in October 2018 and sets out measures which the Government has directed relevant local authorities to take to bring forward compliance on a number of road links. None of these affect the location of this NSIP in Hull.
- 3.8.6. The Government's Clean Air Strategy was published in January 2019 and sets out how the government seeks to tackle all sources of air pollution.
- 3.8.7. This NSIP runs through an AQMA - the Hull AQMA No1(A). Further details are set out in Chapter 4.

A Green Future: Our 25 Year Plan to Improve the Environment

- 3.8.8. This sets out the Government's strategy for England's wildlife and ecosystem services.

3.9. LOCAL IMPACT REPORTS

- 3.9.1. Hull City Council (HCC) provided a Local Impact Report (LIR) [[REP2-016](#)].

3.10. THE DEVELOPMENT PLAN

- 3.10.1. The Applicant identified the following development plan documents within its Planning Statement [[APP-070](#)]:
- Hull Local Plan 2016-2032
 - East Riding Local Plan 2016
 - Kingswood Area Action plan
 - Joint Waste Local Plan
 - Joint Minerals Local Plan
- 3.10.2. Of these, the Hull Local Plan is clearly the most relevant. The only element of the project falling within the East Riding is a temporary site compound on land allocated for mixed use under Policy HES-H and no concerns have been raised regarding this. The scheme does not fall within the Kingswood area and is not a waste or minerals scheme, so those elements of the development plan are not relevant.

- 3.10.3. In the first round of written questions I asked the Applicant to ensure that the information relating to planning policy was up to date and complete at the Examination's close (ExQ1.0.2) [[PD-006](#)]. No changes to relevant policies were reported.
- 3.10.4. Section 6 of HCC's LIR [[REP2-016](#)] considers compliance with a wide range of local plan policies. It sees the scheme as supportive of a number of strategic priorities, such as supporting sustainable economic growth (Strategic Priority 1) and promoting the role of the city centre (Strategic Priority 3). Of the other policies cited, the following appear to me to be the most relevant:
- Policy 9 – City centre
 - Policy 10 – City centre mixed use sites
 - Policy 16 – Heritage considerations
 - Policy 25 – Sustainable travel
 - Policy 29 – New roads and road improvements
 - Policy 36 – Walking, cycling and powered two-wheelers
 - Policy 39 – Sustainable drainage
 - Policy 40 – Addressing flood risk in planning applications
 - Policy 42 – Open space
 - Policy 14 – Biodiversity and wildlife
 - Policy 45 - Trees
 - Policy 47 – Atmospheric pollution
 - Policy 49 – Noise pollution
 - Policy 52 – Infrastructure and delivery
- 3.10.5. Additionally, HCC identifies the following relevant supplementary planning documents (SPDs):
- Supplementary Planning Document 2: Heritage and Archaeology
 - Supplementary Planning Document 10: Trees
 - Supplementary Planning Document 11: Protecting existing and providing new open space.
 - Supplementary Planning Document 12: Ecology and Biodiversity
- 3.10.6. These are not part of the Development Plan but are designed to explain how some of the policies should be implemented. Additionally, there is a draft Supplementary Planning Document 13: City Centre key sites design guide.

3.11. EUROPEAN DERIVED LEGISLATION

- 3.11.1. The European Union Withdrawal Act 2018 (EUWA) provides for the UK's exit from the European Union which is now expected to take place on 31 January 2020. The EUWA provides for the retention of relevant legislation until such time as it specifically changed by parliament and this recommendation report has been drafted accordingly. It will be a matter for the SoS to satisfy itself as to the position on any relevant legislation at the time of its decision.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. As required by section 88 of the Planning Act 2008 (PA2008) and the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) Rule 5, I made an Initial Assessment of Principal Issues (IAPI) arising from the application within 21 days of the day after receipt of the s58 certificate of compliance [[OD-002](#)] (s56 notice) under the PA2008 provided by the Applicant. The issues identified in that initial assessment were as follows:

- Air Quality and Related Emissions
- Biodiversity
- Compulsory Acquisition and Temporary Possession
- Draft Development Consent Order (dDCO)
- Historic Environment
- Social, Economic and Land-Use Effects
- Townscape and Visual Impact
- Transportation and Traffic
- Utility Infrastructure
- Water Environment

4.1.2. The issues I had identified were discussed at the Preliminary Meeting (PM), but there was no request for any further issues to be considered. Nor did I consider that any of the matters raised during the course of the Examination – either orally or in any of the written submissions – fell outside of these broad issues identified in the IAPI.

4.1.3. As the Examination progressed, it appeared to me that there was, in fact, no need to consider matters relating to utility infrastructure as a discrete issue. Those matters which had a bearing on utility infrastructure related to wider issues to be addressed elsewhere. For example, matters relating to the sewer network are considered under the Water Environment heading. I do not, therefore, consider utility infrastructure as a specific issue in this report.

4.1.4. All of the matters raised in written submissions, including HCC's Local Impact Report (LIR) [[REP2-016](#)], fall within the broad headings of the principal issues I identified at the outset. Accordingly, it was not necessary to change the list of issues as a result of those representations. I have, however, added the word 'Movement' to the issue of Transportation and Traffic, to better reflect issues relating to non-motorised users (NMUs).

4.1.5. It follows from the above that the issues to be considered in this report are those identified at the outset, other than utility infrastructure. Compulsory acquisition/temporary possession and the DCO are dealt with separately (Chapters 7 and 8). Accordingly, the issues to be addressed in this Chapter are:

- Transportation, Traffic and Movement
- Air Quality and Related Emissions

- Biodiversity
- Historic Environment
- Townscape and Visual Impact
- Social, Economic and Land-Use Effects
- Water Environment

4.1.6. The revised (non-alphabetical) order of the issues is to ensure that the report is set out in a logical order without undue repetition.

4.1.7. I address each of these issues below, using a common structure:

- Introduction;
- **Policy Background** identifies the main policy against which the topic has been examined, principally from the NNNPS;
- **Examination and Issues** introduces the key matters to be considered under each topic heading, with brief reference to relevant documents and Examination events.
- **ExA's Assessment** sets out my reasoning on the issues, drawing in greater depth on Examination documents and policy where relevant;
- **Conclusion** summarises my findings in bullet point form so that they can be taken into account later in the report.

4.2. TRANSPORTATION, TRAFFIC AND MOVEMENT

Introduction

4.2.1. This section of the report considers all effects relating to the movement of vehicles and people. This includes movement on the A63 itself and also on the surrounding road network. It also considers road safety.

Policy Background

4.2.2. The NNNPS identifies an overarching need for development of the strategic road network. Paragraph 2.23 identifies that specific network improvements will be a necessary part of addressing the identified need. Relevant enhancements supported in policy terms include junction improvements to address congestion and improve performance and resilience at junctions, which are a major source of congestion.

4.2.3. Paragraph 3.17 advises that there is a direct role for the national road network to play in helping pedestrians and cyclists. The Government expects applicants to use reasonable endeavours to address the needs of cyclists and pedestrians in the design of new schemes. The Government also expects applicants to identify opportunities to invest in infrastructure in locations where the national road network severs communities and acts as a barrier to cycling and walking, by correcting historic problems, retrofitting the latest solutions and ensuring that it is easy and safe for cyclists to use junctions.

4.2.4. NNNPS Paragraph 3.20 emphasises the need to take account of the accessibility requirements of all those who use, or are affected by, national networks infrastructure, including disabled users, while Paragraph 3.21 reminds applicants of their duty to promote equality and

to consider the needs of disabled people, with reference to the Equality Act 2010.

- 4.2.5. Paragraph 3.22 advises that, where appropriate, applicants should seek to deliver improvements that reduce community severance and improve accessibility.
- 4.2.6. Paragraph 5.211 and 5.212 make clear that the SoS must consider impacts on the local transport network and local transport policies, including those in local plans. However, the scheme must be decided in accordance with the NNNPS unless a legislated exception arising from PA2008 s104(4) – (8) applies.
- 4.2.7. Paragraph 4.66 says that the Secretary of State should not grant development consent unless satisfied that all reasonable steps have been taken and will be taken to minimise the risk of road casualties arising from the scheme and contribute to an overall improvement in the safety of the Strategic Road Network.

Examination and Issues

- 4.2.8. The Applicant has identified 4 key objectives for the scheme. These are set out at section 2.7 of the Planning Statement [[APP-070](#)] and are as follows:
- Improve access to the Port of Hull
 - Relieve congestion
 - Improve safety
 - Improve connections between the city centre to the north and developments and tourist and recreational facilities to the south
- 4.2.9. The Applicant's case that the scheme meets these objectives is set out in a variety of documents, including:
- Planning Statement [[APP-070](#)]
 - Environmental Statement (ES) [[AS-011](#)], Volume 1 Chapter 15 (Effects on all travellers) and associated appendices [[APP-060](#)]
 - Transport Assessment Report [[APP-073](#)]
 - ES Volume 3, Appendix 14.2 – People and communities – equality impact assessment [[APP-059](#)]
- 4.2.10. During the Examination I asked questions on the topic of transport and movement at ExQ1 (ExQ1.8.1-ExQ1.8.8) [[PD-006](#)] and ExQ2 (ExQ2.8.1-2.2.2) [[PD-011](#)]. The subject was discussed in detail at Issue Specific Hearing 1 (ISH1) (Traffic and Movement) [[EV-006](#)] and relevant matters were also raised at the OFH [[EV-002](#)]. The Applicant's response to these Examination events is set out in its *Response to Examining Authority's Written Questions* [[REP2-003](#)], *Applicant's Comments on the Examining Authority's Further Written Questions* [[REP5-004](#)] and *Written Submission of Applicant's case put orally at ISH on 4th June 2019* [[REP3-007](#)].

- 4.2.11. The potential of the scheme to address congestion and traffic flow issues was not a matter of particular contention during the Examination. It was, however, raised by Mr John Cullen at the OFH [[EV-002](#)]. In any event, given the nature of the scheme and the first 2 key objectives cited by the Applicant of improving access to the Port of Hull and relieving congestion, it is important to consider the effect of the scheme on vehicle movement and distribution in and around the scheme, and I do so as the first issue in this section.
- 4.2.12. The scheme has significant effects on the movement of pedestrians and other non-motorised users (NMUs) around and across the A63. Moreover, the improvement of connections between the city centre to the north and developments and tourist and recreational facilities to the south is one of the 4 key scheme objectives, and the means available for NMUs to cross the A63 is a key element of this. Additionally, the proposals relating to crossing the road was raised in the LIR [[REP2-016](#)], in oral submissions at the OFH [[EV-002](#)] and written submissions, including from Hull Access Improvement Group (HAIG) [[RR-011](#)], [[REP2-012](#)] and East Yorkshire and Derwent Area Ramblers [[REP1-001](#)], [[AS-020](#)]. Accordingly, the effect on pedestrians and other non-motorised users, including movements across the A63, is the second main issue in this section.
- 4.2.13. In view of the emphasis in the NNNPS on road safety is it import to consider it in this section of the report, and it is the third issue in this section.
- 4.2.14. Finally, given the lengthy period the scheme will take to construct (about 5 years) and the challenges of carrying out such a project in a dense, urban environment, I have considered effects that would arise during construction of the scheme. This has been raised by a number of IPs in writing and orally.
- 4.2.15. Accordingly, in the ExA's Assessment that follows, I have considered the following issues in the order set out below:
- The effect on vehicle movement and distribution in and around the scheme.
 - The effect on pedestrians and other non-motorised users, including movements across the A63
 - The effect on road safety.
 - Effects during construction of the scheme.

ExA's Assessment

The effect on vehicle movement and distribution in and around the scheme.

- 4.2.16. The Transport Assessment Report [[APP-073](#)] considered traffic flows and journey times, with and without the scheme. A SATURN-based highway model was developed for the preliminary design assessment of the proposed Scheme (Transport Assessment Report, paragraph 2.1.2). The study focused on urban Hull, as shown in the Study Area below.



Figure 5: The Study Area (Figure 2.1 of the Transport Assessment Report)

- 4.2.17. The A63 Castle Street is already reputed to be the busiest road in the region, with existing daily two-way AADT (Annual Average Daily Traffic) flow of around 47,000 vehicles between Clive Sullivan Way and Market Place. (Transport Assessment Report, Paragraph 1.2.1) [[APP-073](#)].
- 4.2.18. The Transport Assessment Report [[APP-073](#)] carries out an analysis of forecast AADT flows along the A63 Castle Street for both with and without the scheme scenarios for 2025, 2033 and 2040 and shows that traffic levels are predicted to increase with either scenario.
- 4.2.19. However, it is clear that traffic flows on the A63 would increase more with the scheme. For example, the section of Castle Street between Princes Dock Street and Dagger Lane would see a 34% increase by 2040 compared to the situation without the scheme (Transport Assessment Report, Table 4.3) [[APP-073](#)]. There would be an average increase of approximately 29% in the AADT (two-way) traffic flow along Castle Street with the scheme.
- 4.2.20. There would be reductions in some surrounding roads as vehicles move onto the Castle Street route to take advantage of the improved traffic flow. The largest changes would occur within the city centre and in roads running parallel to Castle Street. The majority of changes in flow volumes would be fewer than 100 passenger car units (pcus) per hour but with some larger changes (100-500 pcus/hr) around Mytongate on the A63. Outside the city centre, the changes in highway flows would be much

smaller – generally less than 25 pcus per hour (Transport Assessment Report, Paragraph 4.2.8) [[APP-073](#)].

- 4.2.21. It is clear that the scheme would lead to shorter journey times. Journey times were modelled along a route between Priory Way (well to the west of the scheme) to Little Fair Roundabout (well to the east). The findings are summarised at Table 4.4 of the Transport Assessment Report [[APP-073](#)].

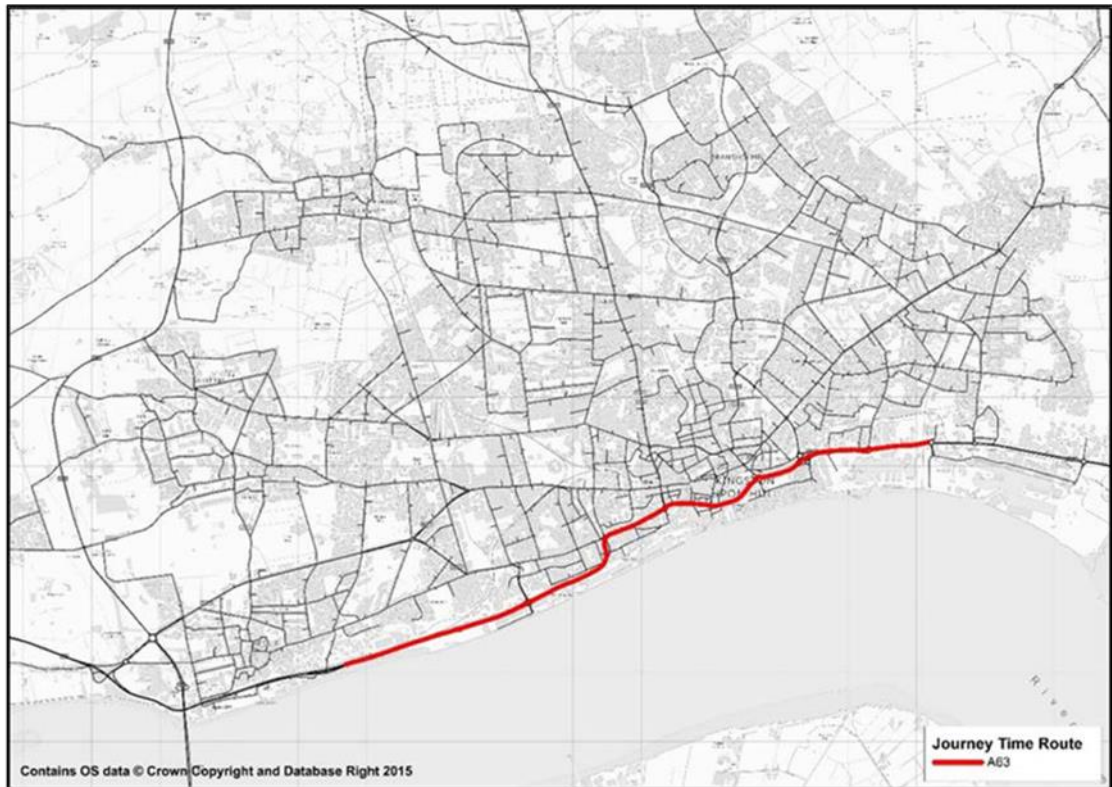


Figure 6: Journey Time Route (Figure 4.8 of the Transport Assessment Report)

- 4.2.22. The modelling summarised at Table 4.4 [[APP-073](#)] indicates that, by 2040, an eastbound afternoon journey could be 14 minutes 28 seconds with the scheme, compared to 17 minutes 46 seconds without it, a reduction of 3 minutes 18 seconds. In the westbound direction there would also be significant improvements in journey times at peak hours as a result of the scheme, while smaller reductions (the smallest being 1 minute and 9 seconds) would be achieved in all inter-peak scenarios.
- 4.2.23. Since the scheme will attract some additional traffic to the A63, I considered whether there would be any effect of simply moving traffic congestion to other sections of the road. However, traffic flow and resultant congestion was taken into account when considering the overall transport benefit provided by the scheme. The travel time savings for typical journeys along the A63, as quoted in Table 4.4 of the Transport Assessment Report [[APP-073](#)] includes the sections of the A63 to the west and east of the Scheme. Consequently, the improved journey times

quoted allow for the negative effects of additional traffic on unimproved sections of the road.

- 4.2.24. The key change for vehicles travelling north-south across Castle Street would be for vehicles on Ferensway/Commercial Road, where the need to negotiate the existing light-controlled Mytongate junction would be removed, with vehicles travelling north-south now passing over the A63 (albeit with the potential for flow to be interrupted by pedestrian crossings and turning vehicles). This will clearly be beneficial in terms of lessening the severance between the commercial core of Hull and the area to the south of Castle Street.
- 4.2.25. Overall, the evidence before me shows that the scheme would succeed in its aim of reducing congestion and improving the flow of traffic along the improved section of the A63. Movement of vehicles across Castle Street at the Mytongate junction would also be improved. Although traffic on Castle Street would increase as a result of the scheme, the anticipated reduced journey times show that congestion would be eased, while traffic would be reduced on some nearby roads.

The effect on pedestrians and other non-motorised users

Crossing the A63

- 4.2.26. One of the 4 key objectives of the scheme identified by the Applicant is to improve connections between the city centre to the north and developments and tourist and recreational facilities to the south (Planning Statement, 2.7) [[APP-070](#)]. This is consistent with Paragraph 3.22 of the NNNPS, which says, '*Severance can be a problem in some locations. Where appropriate applicants should seek to deliver improvements that reduce community severance and improve accessibility*'.
- 4.2.27. The starting point is that the A63 is currently a significant barrier for non-motorised users (NMUs) moving between the city centre and the area to the south of the road, alongside the Estuary. This latter area contains much of Hull's maritime heritage and now has a range of cultural and leisure attractions. It is also continuing to be developed and improved, the mixed-use Fruit Market scheme being an example. I have no doubt that the barrier formed by the A63 is a significant impediment to local people and users of the city centre. This is recognised by the ES (Paragraph 14.7.12) [[AS-011](#)].
- 4.2.28. Currently, there are 6 signalised crossings along this section of the A63 and one uncontrolled crossing (ES, 15.8.31) [[AS-011](#)]. All of these would be removed and replaced with new means of crossing the road as part of the scheme. This would affect the distance NMUs would need to travel to cross the road and the time it would take. I raised this in ExQ1.8.3 and ExQ1.8.4 [[APP-006](#)]. The Applicant responded at D2 [[REP2-003](#)] as did HCC [[REP2-013](#)] and HAIG [[REP2-012](#)].
- 4.2.29. The existing and proposed crossing points are shown at ES Chapter 15 Figures 15.1 and 15.2 [[APP-040](#)]. The effect of the scheme on NMUs

wishing to cross the A63 is set out in summary form in ES Table 15.13 *Permanent impacts of the Scheme on NMUs* [[AS-011](#)]. Each of the locations referred to in Figure 15.1 and Table 15.13 is numbered, and I have referred to those numbers below.

- 4.2.30. In the Porter Street area, at the western end of the scheme (Location No 4, ES Fig 15.1) [[APP-040](#)], a signalised crossing would be lost and replaced with a bridge for pedestrians, cycles and disabled users (Work No 12, Schedule 1 of the dDCO) [[REPR17-004](#)]. With the current crossing, there can be a delay waiting for the signalised lights to operate, and this is repeated when lights have to be operated again from the central reserve to cross the traffic coming the other way. Nevertheless, the route is direct and at grade.
- 4.2.31. The bridge, on the other hand, would require users to walk up steps or use lengthy ramps, increasing journey length by about 100m if using the ramps according to the ES [[AS-011](#)] at Table 15.13. Accordingly, the bridge would be marginally less convenient and direct than the current crossing in my view. This is consistent with the assessment in the ES at Table 15.13, which records the impact as 'Adverse, not significant'. Separating NMUs from traffic on the A63 here, as in the rest of the scheme, would be beneficial in safety terms, a point made by both the Applicant (ES Table 15.13) and HCC [[REP2-013](#)].
- 4.2.32. At the Mytongate junction (Location Nos 5 and 6, ES Fig 15.1) [[APP-040](#)], using the existing light-controlled crossings involves several individual crossings over very busy lanes of traffic and is not a rewarding experience. With the new scheme, the main carriageways would pass beneath Ferensway/Commercial Road, and pedestrians would only need to negotiate the slip roads rather than the A63 itself. Signalised crossings would be provided at the slip roads on both sides of Ferensway and Commercial Road. There would be a gradient as Ferensway and Commercial road rise to pass over the A63, but this would not be excessive, the total change in elevation being about 1m (ES, 2.6.3) [[AS-011](#)]. The ES (Table 15.13) [[AS-011](#)] records that there would be a minor increase in journey length for all NMUs and categorises the effect as 'adverse, not significant'. HCC, on the other hand, refer to reduced travel distances and improved connectivity [[REP2-013](#)]. In my view, pedestrians would benefit overall from a simpler, more pleasant experience when crossing Castle Street at this point as a result of passing over the main carriageway, away from the traffic.
- 4.2.33. As the A63 passes the Princes Quay Shopping Centre, an existing signalised pedestrian crossing (Location No 7, ES Fig 15.1) [[APP-040](#)] would be replaced with the Princes Quay Bridge (Work No 31, Schedule 1 of the dDCO) [[REPR17-004](#)]. The pros and cons of replacing a signalised, at-grade crossing with a bridge would be similar to those discussed in relation to the bridge at Porter Street. However, many pedestrians may regard using the Princes Quay Bridge as a more rewarding experience due to its interesting design and wide deck. Table 15.13 of the ES states that there would an increase in journey length of 250m for NMUs

compared to using the existing crossing and categorises the impact as 'adverse, not significant'.

- 4.2.34. HAIG considered that the bridge should be equipped with lifts [[REP2-012](#)] in order to minimise journey lengths for those who would otherwise need to use the ramps. While I understand that it has been designed to allow the addition of lifts in the future (Deadline 3 Submission (*Applicant's Comments on Responses to the Examining Authority's First Written Questions*) [[REP3-012](#)], lifts are not included in the current scheme, which I have considered accordingly. Since the bridge is already under construction, having been granted planning permission as a separate project (see section 2.3 of this report), it seems certain to be provided, irrespective of whether the NSIP goes ahead.
- 4.2.35. Those wishing to cross the A63 between the Princes Quay Shopping Centre and High Street would be affected by the removal of 2 further existing signalised crossings – at Humber Dock Street/Princes Dock Street (Location No 8, ES Fig 15.1) [[APP-040](#)] and at Market Place/Queen Street (Location No 9, ES Fig 15.1) [[APP-040](#)]. There would not be any entirely new crossings to replace them but an existing route under the A63, alongside High Street (Location No 12, ES Fig 15.1) [[APP-040](#)], would be improved (Work No 41, Schedule 1 of the dDCO) [[REPR17-004](#)].
- 4.2.36. The loss of the above 2 crossings means that there would be a long section of the road with no crossings between the new Princes Quay Bridge to the west and the High Street underpass crossing to the east. Thus, many who want to cross this section of the A63 would be faced with longer journeys. For example, the ES [[AS-011](#)] indicates that an NMU wishing to cross at Market Place would face a 330m diversion in order to use the High Street underpass (Table 15.13). If the Princes Quay Bridge were used instead, the steps or lengthy ramps would need to be negotiated. Anyone wanting to cross at the point of the existing crossing at Humber Dock Street would face a 650m diversion if using the ramped access to the Princes Quay Bridge. The ES records both of these impacts as 'adverse significant' and I agree with that assessment.
- 4.2.37. Moreover, the ES (Table 15.13) [[AS-011](#)] recognises that restricted mobility user groups could be disproportionately affected by the loss of the signalised crossings at Humber Dock Street and Princes Dock Street. In some locations, the proportion of restricted mobility groups using existing crossings is small, such as at the Porter Street crossing. However, Table 15.13 notes that restricted mobility user groups make up about 10% of NMU activity at the Humber Dock Street crossing (based on the September 2016 counts), which I regard as a significant proportion. In my view, the effect on these groups is a particular concern. While both new bridges would be designed to take account of the needs of those with restricted mobility, that would not change the distances that would need to be covered or the need to negotiate steps or ramps.

- 4.2.38. Concerns about NMUs wishing to cross the section of Castle Street (between the Princes Quay Shopping Centre and High Street) were raised during the Examination. The East Yorkshire & Derwent Area Ramblers felt that a light-controlled pedestrian crossing over the A63 should be provided at Market Place [[AS-020](#)].
- 4.2.39. During ISH1 (Traffic and movement) [[EV-006](#)] I asked whether consideration had been given to retaining an at-grade crossing at Market Place. The Applicant's response [[REP3-007](#)] indicates that retaining an at-grade crossing was not considered because it would undermine the objective of reducing journey times on the A63 and also the separation of pedestrians and traffic was regarded as a safer option.
- 4.2.40. The High Street underpass already exists but will be improved as part of the scheme (Work No 41, Schedule 1 of the dDCO) [[REPR17-004](#)]. It would be reached (on the north side of the A63) by a new pedestrian/cycle route and would be enhanced with new paving and lighting. HCC would also like to see CCTV as part of the scheme (*Deadline 6 Submission - Comments on the Applicant's Deadline 5 Submissions*) [[REP6-017](#)]. A final improvement scheme has not yet been settled upon, but the Applicant has carried out consultation and has provided illustrations of how the route might look (*Deadline 6 Submission - High Street Underpass Draft Sketchbook*) [[REP6-015](#)].
- 4.2.41. In my view, despite the improvements suggested, the High Street underpass would remain a less attractive option for NMUs than the current at-grade crossing at Market Place/Queen Street. It is a more circuitous route and would be less obvious and intuitive than simply crossing the road. Additionally, there are the inherent personal security worries arising from an underpass. That said, improved lighting would improve matters, as would CCTV. At Chapter 8 I recommend that a Requirement concerning the design of the High Street underpass be included in the DCO. The Requirement proposed would secure the provision of both lighting and CCTV.
- 4.2.42. Overall, the picture for pedestrians and other NMUs wishing to cross the A63 is a mixed one, depending on the point of crossing and the nature of the NMU. While there would be benefits associated with the new bridges and upgraded underpass, journey lengths would often increase – particularly at the eastern end of the scheme. As the ES (Table 15.13) [[AS-011](#)] recognises, in some instances the effect would fall disproportionately on mobility-impaired user groups. Having regard to the emphasis on meeting the needs of such groups in paragraphs 3.20-3.21 of the NNNPS, this is a particular concern. Moreover, the Equality Act 2010 establishes that age and disability are protected characteristics. Accordingly, the SoS must have regard to the disproportionate effect on mobility-impaired users in applying the PSED to this scheme.
- 4.2.43. Viewing these matters as a whole, and having regard to the safety benefits in separating NMUs from traffic, I conclude that the scheme would have a marginal negative effect overall on NMUs seeking to cross

the A63, and that this would fall disproportionately on mobility-impaired users.

NMU travel alongside the A63

4.2.44. Proposals for NMU travel alongside the A63 were amended during the Examination, following my raising an inconsistency between the submitted drawings and the ES [\[AS-011\]](#) at ISH1 [\[EV-006\]](#). By the close of the Examination the revised proposals shown in the Non-Motorised User Route Plans [\[REPR17-020\]](#) included:

- A proposed pedestrian/cycle route along the northern side of the A63 throughout the length of the scheme. This would link into the existing shared footpath/cycleway to the west of the scheme and continue eastwards until joining the ramp down to High Street to go under the A63 to link into the route on the southern side of the road.
- A pedestrian/cycle route along much of the southern side of the A63, linked by pedestrian-only footways as it passes the Kingston Retail Park, Trinity Burial Ground and Holiday Inn.

4.2.45. Much of the route on the northern side of the road would replace an existing multi-user route, but the section to the east of Mytongate would replace a pedestrian-only footway, as shown on the NMU Route Plans [\[REPR17-020\]](#).

4.2.46. Hull City Council has been critical of the fragmented nature of the south-side route, most recently in its *Comments on the Applicant's Rule 17 Deadline Submissions* [\[REPR17-049\]](#). Those comments were based upon the Applicant's final version of the NMU Route Plans [\[REPR17-020\]](#).

4.2.47. I agree that it is desirable that provision is made for cyclists wishing to follow the route of the A63. However, the Applicant has explained the difficulties arising from the limited width available in places, which has necessitated the proposal for a footway rather than a multi-user route in places. HCC suggests that the Applicant could have acquired more land to enable a continuous shared route to be constructed [\[REPR17-049\]](#). While that may be so, I can only consider the scheme before me.

4.2.48. Moreover, the scheme as proposed will deliver some benefits on the south-side route, including additional sections of shared-user route and the closure of the access from the A63 to Humber Dock Street, resulting in a safety benefit for NMUs. The ES (Table 15.13) [\[AS-011\]](#) records the improved safety and amenity arising from this closure as a significant benefit, a view I share. While a continuous shared route on the southern side of the road may have been preferable for cyclists, the scheme is an improvement on the current position in my view.

4.2.49. Overall, I consider that the scheme makes satisfactory provision for NMUs alongside the A63.

Other effects on NMUs

4.2.50. The removal of vehicle traffic from some routes, such as Humber Dock Street and the intersection of Dagger Lane, Fish Street and Vicar lane

with the A63 (ES 5.8.30) [\[AS-011\]](#), would be beneficial to NMUs using those routes.

- 4.2.51. The Applicant's assessment of the effects on NMUs includes an assessment of impacts during the Freedom Festival, which takes place annually and results in increased pedestrian movement across the A63. The Princes Quay Bridge has been designed to take the increase movement associated with the festival into account (ES, 15.8.34) [\[AS-011\]](#). Nevertheless, the ES concludes that, when compared to the existing situation, effects are likely to be adverse for NMUs wishing to access the Freedom Festival at this location (ES, 15.8.35) [\[AS-011\]](#).

The effect on road safety.

Policy compliance and general approach

- 4.2.52. The NNNPS sets out a series of requirements relating to road safety at Paragraphs 4.60-4.66. These were the subject of a written question (ExQ 1.8.2) [\[PD-006\]](#) and were subsequently pursued at ISH1 [\[EV-006\]](#) and further addressed in the Applicant's subsequent written submissions [\[REP3-007\]](#).
- 4.2.53. The NNNPS establishes that, even where safety is not the main driver of a development, the opportunity should be taken to improve safety (Paragraph 4.60). The Applicant should undertake an objective assessment of the impact of the proposed development on safety including the impact of any mitigation measures. This should use the methodology outlined in the guidance from DfT (WebTAG) and from the (former) Highways Agency (Paragraph 4.61).
- 4.2.54. There should also be arrangements for undertaking the road safety audit process. Road safety audits are a mandatory requirement for all trunk road highway improvement schemes in the UK (Paragraph 4.62).
- 4.2.55. Paragraph 4.66 of the NNNPS states that the Secretary of State should not grant development consent unless satisfied that all reasonable steps have been taken and will be taken to:
- minimise the risk of road casualties arising from the scheme; and
 - contribute to an overall improvement in the safety of the Strategic Road Network.
- 4.2.56. The Applicant advises that the scheme design has been developed in accordance with the requirements of the Design Manual for Roads and Bridges (DMRB) and Highways England's Project Control Framework (PCF) (*Written Submission of Applicant's case put orally at ISH on 4th June 2019* – Paragraph 7.1.6) [\[REP3-007\]](#). Where it has not been feasible to meet the requirements of the DMRB, a Departure from Standards (DfS) process has been followed to ensure that any residual risk is as low as reasonably practicable.
- 4.2.57. In accordance with DMRB and the PCF, a series of Road Safety Audits (RSAs) must be carried out, the first of which was undertaken at the completion of the scheme Preliminary Design. Subsequent RSAs will be

undertaken at completion of the Detailed Design, completion of Construction, and post-opening of the scheme to traffic (*Written Submission of Applicant's case put orally at ISH on 4th June 2019 – Paragraph 7.1.7*) [[REP3-007](#)].

4.2.58. Any operational hazards identified through the audit process have been entered on the scheme hazard log. This is a live document, updated throughout the development of the project, in which potential hazards are identified and their management recorded. Management entails elimination where possible through development of the design, or else reduction and mitigation, and communication of residual risks (*Written Submission of Applicant's case put orally at ISH on 4th June 2019 – Paragraph 7.1.8*) [[REP3-007](#)].

4.2.59. Having regard to the above, I am satisfied that suitable procedures and processes are in place to ensure the proper management of risks and that safety has been to the fore in the design of the scheme.

Predicted road safety impacts

4.2.60. Accident savings resulting from the Scheme were assessed using the DfT's Cost and Benefit to Accidents – Light Touch (COBALT) program. (Transport Assessment Report) [[APP-073](#)]. The accident appraisal was only undertaken over a limited impact area, where traffic flow changes would be significant enough to affect the number of accidents (Transport Assessment Report – Paragraph 5.2.1) [[APP-073](#)]. That was a reasonable approach in my view.

4.2.61. The existing casualties are summarised in Table 5.1 of the Transport Assessment Report [[APP-073](#)]. This shows an annual total of around 1,200 casualties per year between 2011 and 2016. Most of the casualties were classified as 'slight', but there was a total of 831 serious casualties and 32 fatalities over this 6 year period. In response to ExQ1.8.1 [[PD-006](#)], the Applicant advised that the current safety record is good in comparison to the national average for similar roads.

4.2.62. The scheme is predicted to see a small reduction in the number of accidents – 72 over the 60 year scheme lifespan. This would result in 7 fewer serious casualties and 91 fewer slight casualties. There is not predicted to be any change in the number of fatalities.

Scenario	Casualties						Total Casualties saved by Scheme		
	Without Scheme			With Scheme			Fatal	Serious	Slight
	Fatal	Serious	Slight	Fatal	Serious	Slight			
2025	3	40	409	3	40	406	0	0	3
2033	3	38	388	3	38	386	0	0	2
2040	3	38	385	3	38	384	0	0	1
Appraisal Period (60 Years)	161	2,247	23,167	160	2,240	23,077	0	7	91

Figure 7: Summary of casualties - Table 5.5 from the Transport Assessment Report

4.2.63. Thus, the scheme would be likely to achieve a small reduction in accidents and a commensurately modest reduction in casualties.

Specific safety issues

4.2.64. The following specific safety issues were considered during the Examination:

- The pedestrian crossings at the Market Street and Queen Street slip roads
- The speed limits on the same slip roads

4.2.65. Both of these matters were raised by HCC (LIR, 5.9.3) [[REP3-016](#)] and ISH1 [[EV-006](#)], who considered that changes were needed to ensure the safety of pedestrians crossing the slip roads. The Applicant responded to both of these matters with changes to the scheme as follows:

4.2.66. First, light-controlled crossings are now proposed at the slip roads at Market Place and Queen Street, as shown on the most recent NMU provisions plan (Rule 17 Deadline Submission - 2.8 NMU Provisions) [[REPR17-020](#)]. I regard this as an important change which will enhance the safety of the scheme and make the scheme more pedestrian-friendly. Following the change to the scheme, this is recorded as an agreed point in the SoCG with HCC [[REP7-008](#)].

4.2.67. Second, revisions have been made to the point at which the speed limit changes from 30mph to 40mph on the Market Place and Queen Street slip roads. A dialogue between the Applicant and HCC continued throughout the Examination on this matter, but it was recorded as a point 'Not Agreed' in the SOCG with HCC, submitted by the Applicant at D7 [[REP7-008](#)]. Subsequent to this, the Applicant submitted its final dDCO [[REPR17-004](#)] and Traffic Regulation Plans on 20 September [[REPR17-024](#)]. This shows a 30mph zone on part of each slip road.

4.2.68. I have no detailed explanation from the Applicant regarding how the specific 30mph/40mph thresholds now proposed have been arrived at, but the SOCG indicated that an assessment was being undertaken at that time. HCC has not commented on the change. Consequently, it is not clear whether the change would be beneficial or whether it would address HCC's concerns. However, this is not a matter that is relevant to the

fundamental design of the scheme. It appears to me that, if HCC were to have further concerns about the location of the 30mph/40mph threshold, that could be the subject of further dialogue outside the NSIP process. Consequently, it does not affect my views regarding the inherent safety of the scheme.

Effects during construction of the scheme

- 4.2.69. The Applicant has provided a Temporary Traffic Management Plan (TTMP) at Appendix 15.2 of the ES [[APP-060](#)]. During construction, right turns at Mytongate onto Commercial Street and Ferensway would not be allowed. The TTMP explains that this would give a markedly improved flow along Castle Street but means that vehicles would need to access the area to the south of Castle Street – including the Kingson Retail Park – via alternative routes to the east and west, increasing the length of these journeys. However, the TTMP argues that, *'in reality, by improving through-put at Mytongate, (by the removal of the right turn facility and associated traffic signals) ultimately even though their journey length may increase, the journey time may not be greatly affected, and in a number of cases there will even be a marked improvement on travel times over those with the right turns retained'*.
- 4.2.70. NMUs would be adversely affected during the construction period due the increased journey times and a deterioration in journey experience. Construction effects on the main NMU journeys are summarised in Table 15.11 of the ES [[AS-011](#)]. The ES advises that measures to minimise adverse effects for NMUs during construction would include temporary diversions around the work site to be clearly signed and phased. All NMU diversions would be hard surfaced, and fenced, braced and fitted with high visibility strips to aid visibility at night for pedestrians and cyclists. In addition, a Community Relations Strategy would be implemented, and the Scheme would be delivered in accordance with the Considerate Constructors Scheme. The ES considers that, 'With these measures in place, the balance of effects during construction is considered to be adverse but not significant for NMUs' (ES, Paragraph 15.9.6) [[AS-011](#)].
- 4.2.71. HCC advises that diversions in place during the construction period may create legibility issues affecting both residents and businesses, with a more significant effect on the visually impaired and some residents with learning disabilities (LIR, 5.8.3) – [[REP2-016](#)]. However, the LIR also advises that such impacts should be minimised through Traffic Management Plans by the DCO. I agree with that assessment. The Construction Environmental Management Plan (CEMP), which must be prepared in accordance with R4 and the OEMP [[APP-072](#)], would include a Traffic and Transportation Management Plan. However, it is important to bear in mind that the effect of diversions will vary in their severity on different NMUs. Cyclists may be less inconvenienced by increased travel distances than pedestrians, while the impact will be greater on many of those with restricted mobility.
- 4.2.72. During the Examination, the Applicant identified that it could mitigate adverse effects on NMU connectivity by providing a shuttle bus service across parts of the works 'if feasible' [[REP3-007](#)]. This could pick up and

drop off pedestrians at predetermined locations either side of the A63 and could include wheelchair access facilities. In my view, this proposal could, in principle, provide a very beneficial mitigation measure, which could directly help to address some of the impact of diversions on pedestrians in general and those with restricted mobility in particular. However, in the absence of any firm proposals or security, I give it little weight.

- 4.2.73. Overall, it is clear that, in some instances NMUs would be faced with significantly longer journeys during construction. However, it is difficult to see how this could be avoided, given the nature of the project and the constraints of the area. It is unfortunate that the Applicant was unable to commit to or firm up the shuttle bus proposal during the Examination. However, I accept that this may be dependent on detailed planning of the construction phase and the Applicant is committed to it 'if feasible' (ES 15.7.4) [[AS-011](#)]. In all other respects, I consider that the Applicant has done all it reasonably can at this stage to anticipate and mitigate the harmful temporary effects on NMUs. It is important that further work is carried out in parallel with the detailed planning of the project to ensure that the impact of the scheme on all users, particularly NMUs with restricted mobility, is mitigated as far as reasonably possible and I have no reason to doubt that this will be done, in accordance with the requirements of R4 and the CEMP.
- 4.2.74. There were objections to the scheme due to its effect on nearby businesses, including the Kingston Retail Park and the Holiday Inn, during the construction period. These are addressed elsewhere under the heading *Social, Economic and Land-Use Effects* and in Chapter 7.
- 4.2.75. I conclude that the scheme would have some adverse impacts during construction, commensurate with a scheme of this scale in an urban location, but appropriate mitigation measures are proposed.

Conclusion – Transportation, Traffic and Movement

- 4.2.76. I conclude that:
- The scheme would improve the flow of traffic along this section of the A63. Consequently, it would succeed in the objectives of improving access to the Port of Hull and relieving congestion. These are key benefits of the scheme and weigh in its favour.
 - Connections between the city centre to the north and developments and tourist and recreational facilities to the south would be improved for cars, and this also weighs in favour of the scheme.
 - The effect of the scheme on NMUs is mixed. There are some safety benefits in separating NMUs from traffic and there are some new means of crossing the A63. However, the loss of at-grade crossings reduces options for pedestrians and is a negative aspect of the scheme, particularly given the aim of improving connections across the road.
 - The adverse impacts on NMUs crossing the A63 will particularly affect some people with restricted mobility. Due regard must be had to the

disproportionate effect of the scheme on those who have protected characteristics under the Equality Act 2010.

- Provisions for NMUs alongside the A63 are satisfactory, and there are benefits associated with the removal of vehicles from some routes.
- The information provided by the Applicant meets the requirements of Paragraph 4.60-4.65 of the NNNPS in respect of road safety.
- I am satisfied that all reasonable steps have been taken and will be taken to minimise the risk of road casualties arising from the scheme and contribute to an overall improvement in the safety of the Strategic Road Network. Accordingly, Paragraph 4.66 of the NNNPS has been addressed.
- There would be a modest reduction in accidents and casualties. I am satisfied that all relevant safety considerations and potential safety improvements have been taken into account.
- The scheme will have some adverse impacts during construction, commensurate with a scheme of this scale in an urban location, but appropriate mitigation measures are proposed.

4.3. AIR QUALITY AND RELATED EMISSIONS

Introduction

- 4.3.1. This section of the report considers all matters relating to air quality arising from the construction and operation of the scheme.

Policy Background

Overarching strategy

- 4.3.2. The overarching European and UK strategy is outlined in Chapter 3.

The National Networks National Planning Statement (NNNPS)

- 4.3.3. The NNNPS addresses the issue of emissions at paragraphs 3.6 to 3.8 and refers to the important part transport will play in meeting the Government's legally binding carbon targets and other environmental targets. However, it advises that, over the next decade, the biggest reduction in emissions from domestic transport is likely to come from more efficient vehicles, including pure electric vehicles and hybrids. The impact of road development on aggregate levels of emissions is considered likely to be very small, both in terms of carbon emissions and air quality.

- 4.3.4. At Paragraph 5.10, the NNNPS states:

The Secretary of State should consider air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the scheme. In all cases the Secretary of State must take account of relevant statutory air quality thresholds set out in domestic and European legislation. Where a project is likely to lead to a breach of the air quality thresholds, the applicant should work with the relevant authorities to secure

appropriate mitigation measures with a view to ensuring so far as possible that those thresholds are not breached.

4.3.5. Thus, the question of whether or not the scheme would cause any breach of domestic or European air quality thresholds is central to my consideration of this issue. At Paragraph 5.11 it continues:

Air quality considerations are likely to be particularly relevant where schemes are proposed:

- within or adjacent to Air Quality Management Areas (AQMA);
- roads identified as being above Limit Values or nature conservation sites (including Natura 2000 sites and SSSIs, including those outside England); and
- where changes are sufficient to bring about the need for a new or change the size of an existing AQMA; or bring about changes to exceedences of the Limit Values, or where they may have the potential to impact on nature conservation sites.

4.3.6. Accordingly, the location of this scheme within an AQMA is a key consideration.

4.3.7. Paragraphs 5.12 and 5.13 establish that adverse local air quality impacts are a matter of substantial weight and can provide a reason for refusal of consent if, after mitigation, a proposal results in an area that is currently reported as compliant with the Air Quality Directive (AQD) becoming non-compliant, or adversely affects the ability of a non-compliant area to achieve compliance.

The Air Quality Management Area (AQMA)

4.3.8. The Scheme lies within an AQMA – Hull AQMA No1(A). The AQMA was declared in 2005 due to exceedences of the annual mean objective for nitrogen dioxide (NO₂), primarily as a result of road traffic emissions. The extent of the AQMA is shown shaded pink on the map below.

4.3.9. Hull City Council (HCC) published its Air Quality Action Plan (AQAP) in 2007 in response to declaring the AQMA (ES, 6.3.24) [AS-011]. It is clear that the A63 is the primary cause of the poor air quality within the AQMA. The Action Plan notes that the road carries 55,000 vehicles a day, up to 15% of which are HGVs, and advises that, at 64%, by far the largest single source for the Oxides of Nitrogen (NO_x) is road traffic. HGVs account for about 60% of the total NO_x emissions from traffic.

4.3.10. The primary objective of the AQMA is to achieve the National Air Quality objective for NO₂ (annual average), of 40 µg/m³, within the AQMA (ES, 6.3.25) [AS-011]. The AQAP proposes a number of measures to achieve this. However, it advises that, due to the varied nature and differing timescales of the proposals, it is difficult to state conclusively that the measures will be enough to meet the air quality objectives.



Figure 8: Hull AQMA No1(A) (from ES Volume 2 Figure 6.1)

Hull Local Air Quality Strategy

- 4.3.11. The Hull Air Quality Strategy [[REP5-041](#)] was published in June 2017. Its primary aim is to improve the quality of air for the people of Hull and to provide the framework with which to enable the improvement of air quality in Hull, in line with both National Air Quality Standards and the principles of best practice.

Hull Local Plan

- 4.3.12. The local plan includes a number of policies which address air quality, and which are in general accordance with EU and Government policy. Accordingly, separate assessment against local plan policies is not necessary.

Examination and Issues

- 4.3.13. Air quality was not widely referred to in the representations received. However, this is a major road scheme running through an urban area, with sensitive receptors such as housing nearby. In operation, the scheme would affect air quality due to a change in the flow, speed and composition of traffic on the road network, while the change in road layout would affect the distance between vehicles and receptors. Moreover, the road runs through an Air Quality Management Area (AQMA) (Hull AQMA No.1(A)). Accordingly, it was important to consider air quality as a principal issue of the Examination.

The Applicant's overall position is set out in its Planning Statement [[APP-070](#)] and the Environmental Statement (ES) [[AS-011](#)] – notably Chapter 6 and the associated figures and appendices [[APP-026](#)] and [[APP-046](#)].

- 4.3.14. The Applicant's assessment of air quality has been conducted following the guidance of the Design Manual for Roads and Bridges (DMRB)

Volume 11 Section 3 Part 1, (HA207/07) – Air Quality and Interim Advice Notes (IANs) IAN 170/12; IAN 174/13; IAN 175/15 and IAN 185/15 (ES, 6.2.6) [[AS-011](#)]. The Applicant has carried out a scheme-specific monitoring survey of 98 receptors to supplement available pre-existing data (ES, 6.8.14), [[AS-011](#)]. Residential receptors were selected for the assessment at worst case locations within 200m of the affected road network.

- 4.3.15. DMRB advises that the pollutants of most concern near roads are NO₂ and particles (PM₁₀) in relation to human health and NO_x in relation to vegetation and ecosystems. The assessment of local effects focuses on NO₂ and PM₁₀, which reflects the DMRB and IAN174/13 advice and also the NO₂ exceedance within the AQMA.
- 4.3.16. In its Planning Statement [[APP-070](#)] the Applicant identifies the effect on local air quality as a benefit of the scheme, stating at paragraph 4.3.9 that:
- Detailed assessment and appraisal has been undertaken to consider the local air quality impacts of the Scheme. Overall there is a positive impact on local air quality. This can be attributed to the increase in flow and speed of traffic on the A63 Castle Street. The monetised value of the impact on local air quality is forecast to be £1.27 million.*
- 4.3.17. However, it also advises that there would be an increase in greenhouse gas emissions, saying that,
- The Scheme will lead to an increase in carbon dioxide emission. The monetised value of this impact is forecast to be £4.49 million. (Planning Statement, 4.3.10) [[APP-070](#)].*
- 4.3.18. Overall, the Applicant considers the effect to be very limited, advising that:
- the Scheme is not predicted to result in air quality exceedances and it is concluded that the air quality impact is not significant. The Scheme would not lead to non-compliance with the Ambient Air Quality Directive (Planning Statement, 4.3.11) [[APP-070](#)].*
- 4.3.19. HCC considered air quality in its LIR [[REP2-016](#)] at section 5.1. It does not query the Applicant's assessment. It recognises the potential for negative effects during construction and also that there would be PM₁₀ increases during operation, although below exceedance levels. It also notes the positive impact arising from the reduction in NO₂ in some locations, removing some exceedances of relevant objectives for NO₂ at some sensitive receptors and reducing the magnitude of exceedance at others. This, it says, 'represents a significant positive impact of the scheme for the city in terms of the health and well-being of residents, visitors, and travellers within the AQMA, and the environmental experience for all'.
- 4.3.20. I raised the issue of Air Quality in the first round of written questions. At ExQ 1.1.1 [[PD-006](#)] I asked whether an improvement in air quality should have been an objective of the scheme and what the scheme

should seek to achieve in terms of air quality. The Applicant's response [[REP2-003](#)] indicated that reducing congestion would help to tackle air quality. It also advised that scheme impacts have been assessed in accordance with the criteria set out within Interim Advice Note (IAN) 174/13 '*Updated advice for evaluating significant local air quality effects for users of DMRB Volume 11, Section 3, Part 1 'Air Quality (HA207/07)'*', which takes into account the requirements of the European Union's Limit Values, national air quality objectives and local Air Quality Management Areas (AQMA).

- 4.3.21. Both the Applicant (in the ES) [[AS-011](#)] and HCC (LIR) [[REP2-016](#)] identify that air quality will be affected during the construction period, and this therefore forms the basis of the first air quality issue I consider.
- 4.3.22. The second issue is air quality during operation. In considering this matter, I have had particular regard to the question of air quality within the AQMA, given the focus in policy at all levels on addressing air quality failings.
- 4.3.23. Finally, the site lies close to the Humber Estuary – a designated Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. Consequently, given the high conservation status of this site, it is important to consider any likely effects of changes in air quality associated with the scheme affecting it. This is the final issue under this topic heading.
- 4.3.24. In summary, the key issues relating to air quality and related emissions are:
- Air quality during construction;
 - Air quality during operation (including effects on the Air Quality Management Area);
 - The effect on ecological designated sites.

I also discuss briefly the somewhat separate matter of carbon emissions and climate change.

ExA's Assessment

Air quality during construction

- 4.3.25. Construction of the Scheme would comprise of 8 phases which are expected to last a total of 56 months (ES, 6.5.8) [[AS-011](#)]. Air quality during construction can be affected by dust, changes in traffic distribution and construction plant and traffic.
- 4.3.26. A qualitative assessment of potential dust effects has been undertaken, based on a review of likely dust raising activities and identification of sensitive receptors within 200m of the Scheme Site (ES, 6.5.3) [[AS-011](#)]. The assessment indicates that potential dust effects would be suitably controlled using best practice mitigation measures. These would be delivered via the Construction Environmental Management Plan (CEMP), to be secured by Requirement 4 of the Development Consent Order (DCO) [[REPR17-004](#)].

- 4.3.27. Sensitive receptors were identified along the key roads which would be affected during the construction phase (ES, 6.8.1) [[AS-011](#)]. Total NO₂ concentrations were predicted at the identified sensitive receptors for the Base Year, Do Minimum (the position without the scheme) (and Do Something (i.e. if the scheme goes ahead) construction scenarios for the year 2021. The location of the receptors considered in the Construction Phase assessment are shown in ES Figure 6.8 *Construction Phase: Construction traffic receptors* [[APP-026](#)].
- 4.3.28. PM₁₀ was not considered for the construction phase because it was clear from existing data that background PM₁₀ concentrations are significantly below the Air Quality Strategy Objectives (AQOs) in the study area (ES 6.5.12) [[AS-011](#)].
- 4.3.29. During construction, there is expected to be an increase in traffic along the A63 Hessle Road, west of Mytongate Junction, resulting in a temporary worsening in air quality at receptors in this area. However, resultant annual mean NO₂ concentrations would remain below relevant air quality objectives. Elsewhere, east of Mytongate Junction, there would be improvements in air quality as the traffic management measures during construction would lead to reductions in vehicle flows on this section of the A63 (ES, 6.1.3) [[AS-011](#)].
- 4.3.30. The highest annual mean NO₂ concentration in 2021 is predicted at receptors 74 and 75, where concentrations of 37.4µg/m³ are predicted in the Do Something construction scenarios (ES, 6.8.4) [[AS-011](#)]. These receptors would also experience the greatest increase in annual mean NO₂ concentrations of 3.0-3.1µg/m³ as a result of the construction of the scheme. Nevertheless, annual mean NO₂ concentrations are predicted to be below the AQOs at all receptors on the A63 Hessle Road in both the Do Minimum and Do Something scenarios (ES, 6.8.3).
- 4.3.31. Along Castle Street there would be a marginal improvement in NO₂ concentrations at the receptors showing the highest concentrations and there would be no new exceedances as a result of construction of the scheme (ES Table 6.13) [[AS-011](#)].
- 4.3.32. The highest predicted annual mean NO₂ concentration in 2021 in the wider study area is predicted at receptor 61 (ES, 6.8.10) [[AS-011](#)]. This receptor is located on the A165 (George Street) where concentrations of 27.7µg/m³ (Do minimum) and 28.3µg/m³ (Do Something) are predicted. Annual mean NO₂ concentrations are predicted to be below the AQOs at all receptors in the wider study area in both scenarios.
- 4.3.33. Overall, in light of this evidence, I conclude that there would be no unacceptable effects on air quality during the construction phase.

Air quality during operation

- 4.3.34. In order to establish the existing environmental baseline, the Applicant's assessment uses a combination of background data from HCC, Defra and from the 12 month scheme-specific monitoring survey.

- 4.3.35. The UK Air Quality Strategy sets the concentration limits for both NO₂ and PM₁₀ as 40µg/m³ (averaged over a year). Emission rates used within dispersion modelling are based on NO_x to represent all nitrogen-oxygen forms emitted in exhaust gases. In considering local air quality, modelled road-traffic NO_x has been converted to annual mean NO₂ using the Defra 'NO_x to NO₂' calculator (ES 6.5.26-6.5.27) [[AS-011](#)].
- 4.3.36. Paragraph 6.5.19 of the ES [[AS-011](#)] states that the local air quality assessment has compared predicted concentrations against the AQO and assessed compliance with the UK Air Quality Strategy limits on ambient air quality for the Opening Year of the Scheme only (2025). The Opening Year of the scheme is expected to be worst case in terms of local air quality impacts, as forecast annual traffic growth along the affected sections of the A63 (where greatest traffic and air quality effects arise) is lower than the anticipated annual rate of improvement in air quality.
- 4.3.37. The Applicant's assessment indicates that PM₁₀ values are within UK Air Quality Strategy limits. The ES [[AS-011](#)] advises at paragraph 6.8.17 that the greatest increase in PM₁₀ is predicted at Receptor 14, close to the Queen Street junction, which has a predicted change in annual PM₁₀ concentration in 2025 of 2.3µg/m³, resulting in a concentration at this receptor of 21.2µg/m³ if the scheme goes ahead (ie in the Do Something scenario). This is well within the Limit Value of 40µg/m³.
- 4.3.38. NO₂ values are more critical, with the baseline including a range of exceedances and marginal compliance (see ES Table 6.9: Scheme NO₂ diffusion tube data (2015) [[AS-011](#)]). Moreover, the AQMA was designated due to exceedances of NO₂.
- 4.3.39. Analysis of the data shows that the increase in traffic on the A63 will lead to increased congestion in some instances, resulting in increased emissions. On the section of the A63 from the Clive Sullivan Way flyover to the Mytongate junction, the highest annual mean NO₂ concentration in the Opening Year would be at Receptor 75 (Hessle Road), where a concentration of 33.4µg/m³ is predicted in the 'Do Something' scenario, compared with 31.9µg/m³ in the 'Do Minimum' scenario. Thus, the scheme would result in an increase of 1.5µg/m³. Nevertheless, the resulting figure is still comfortably within the 40µg/m³ limit (ES paras 6.8.20-6.8.26 and Table 6.15) [[AS-011](#)].

Sensitive receptor ID	NO ₂ Annual mean concentration (µg m ⁻³)			
	2015 Base	2025 DM	2025 DS	Change
75	41.9	31.9	33.4	1.5
25	39.6	29.3	31.2	1.9
17	38.9	30.1	28.5	-1.6

Note: Exceedance of annual mean NO₂ objective (40 µg m⁻³) shown in bold.

Figure 9: ES Table 6.15: Annual mean NO₂ at selected receptors - Clive Sullivan Way flyover to the Mytongate Junction

4.3.40. Improved traffic flows would result in a general improvement (reduction) in NO₂ concentrations in the section of the scheme between Mytongate Junction and Market Place. Here, the greatest increase in NO₂ would be at Receptor 3, where there is predicted to be an increase of 1.9µg/m³ as a result of the scheme. However, at 32.6µg/m³, the resulting concentration would still be below the AQO of 40µg/m³.

4.3.41. Set against this, there would be an improvement at a number of locations. For example, there would be a reduction of 4.1µg/m³ at Receptor 11. It is important to note that at 3 receptors, concentrations would be brought below the exceedance threshold of 40µg/m³ and at a number of others they would be brought very close to it. Table 6.16 from the ES summarises the position.

Sensitive receptor ID	NO ₂ Annual mean concentration (µg m ⁻³)			
	2015 Base	2025 DM	2025 DS	Change
3	41.6	30.7	32.6	1.9
6	55.5	41.2	39.4	-1.8
7	58.3	43.3	40.4	-2.9
8	58.7	43.6	40.5	-3.1
9	59.2	44	40.7	-3.3
10	59.8	44.4	40.8	-3.6
11	61.6	45.8	41.7	-4.1
12	61.5	45.8	41.6	-4.2
68	56.1	41.6	39.3	-2.3
69	54.7	40.6	38.7	-1.9

Note: Exceedance of annual mean NO₂ objective (40 µg m⁻³) shown in bold.

DM = Do Minimum (without Scheme); DS = Do Something (with Scheme); Change = DS minus DM

Figure 10: ES Table 6.16: Annual mean NO₂ at Mytongate Junction to Market Place receptors

4.3.42. Overall, I am satisfied that the Applicant has properly assessed local air quality during the operation phase. Although there would be increased concentrations of PM₁₀ and NO₂ at some locations, there would be reductions at others. There would be no exceedances as a result of the scheme and, significantly, 3 locations would be brought below the NO₂ exceedance threshold. Thus, the scheme would contribute to the aims of the AQMA and would not adversely affect the ability of a non-compliant area to achieve compliance.

Ecological designated sites

4.3.43. Elevated NO_x concentrations can adversely affect ecosystems. IAN 174/13 requires that, where NO_x concentrations exceed the annual objective (30µg/m³) and scheme-associated changes in NO_x are greater than 0.4µg/m³, then nutrient nitrogen deposition should also be calculated and used to determine the overall significance of the Scheme impact (ES 6.5.45) [[AS-011](#)].

4.3.44. The Humber Estuary – a designated Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site - is located within 200m of the affected road network (ES, 6.5.47) [[AS-011](#)]. The Applicant's assessment modelled the annual mean NO_x concentrations at three receptor transects within the Humber Estuary with and without the Proposed Development (see ES Table 6.19: Annual mean NO_x at ecological designated site receptors) [[AS-011](#)]. Where NO_x concentrations exceeded the annual objective, and scheme-associated changes in NO_x were greater than 0.4µg/m³, then nutrient nitrogen deposition was also calculated and used to determine the overall significance of the scheme's impact.

4.3.45. The assessment concluded that no air emissions arising from the construction and operation of the proposed development would have a significant effect on the qualifying features of the European protected sites.

4.3.46. The Scheme is predicted to lead to increases in NO_x in the designated site (along all three receptor transects), due to a predicted increase in traffic on the adjacent section of the A63 (ES Table 6.19) [[AS-011](#)].

4.3.47. However, only the first modelled point of Transect 1 has a predicted change greater than 0.4 µg/m³ and total concentrations above 30µg/m³. The Applicant advises that nitrogen deposition at this location has been assessed using APIS (Air Pollution Information System) deposition rates and critical loads for the habitat classification of coastal saltmarsh. The results were discussed with the Scheme Ecologist to determine significance of effects (ES, 6.8.45) [[AS-011](#)]. This is in accordance with the guidance in IAN 174/13 referred to above.

4.3.48. The outcome of this is that it has been concluded that the air quality effects of the scheme are not significant for ecological receptors in view of the magnitude of increase and because the flushing action from tides is likely to reduce the input of atmospheric nitrogen to the saltmarsh ecosystem (ES, 6.8.49) [[AS-011](#)].

4.3.49. This assessment conducted for the Applicant has not been challenged and I accept its findings. The question of impact on the European designations is considered further in Chapter 5. My findings in that Chapter are relevant to the Humber Estuary SSSI, which would not be harmed.

Carbon emissions and climate change

4.3.50. The NNNPS (paragraph 5.18) points out that the Government has an overarching national carbon reduction strategy (as set out in the Carbon Plan 2011) which is a credible plan for meeting carbon budgets. Consequently, it advises that any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. This scheme is not of sufficient scale to have such an effect. Greenhouse gases have been taken into account in the Applicant's Economic Case Overview and BCR (Planning Statement, Chapter 4) [[APP-070](#)].

Conclusion - Air Quality and Related Emissions

Taking all relevant documents and policies into account, I have reached the following conclusions:

- During operation, the development will not compromise the prospects of the exceedance of NO₂ levels within the Hull AQMA No.1(A) being addressed and will secure some improvements.
- Outside the AQMA there would be some increases in NO₂ concentrations, but these would not result in any new exceedances of Limit Values.
- The construction phase will give rise to dust impacts that will be negative, but these are capable of being mitigated. The construction impact on NO₂ emissions would also be mitigated and would be acceptable.
- The scheme would have some effect on particulate matter, but concentrations would remain within Limit Values.
- The air quality effects of the scheme would not be significant for ecological receptors.
- The scheme would not cause any breach of domestic or European air quality thresholds.
- In view of the above, the scheme complies with the NNNPS and the broader UK strategy.
- Appropriate construction stage mitigation measures have been put forward and would be secured through the CEMP and the DCO.
- Carbon emissions from the scheme would not have a material impact on the ability of Government to meet its carbon reduction targets.

4.3.51. Overall, therefore, the scheme is satisfactory in terms of its impact on air quality.

4.4. BIODIVERSITY

Introduction

- 4.4.1. This section discusses the biodiversity and nature conservation aspects of the site and its environs and the likely impact of the proposed development. There is some linkage with the matters addressed at Chapter 5, although I have sought to avoid covering the same ground so far as possible.

Policy Background

- 4.4.2. NNNPS paragraphs 5.24 to 5.35 identify the biodiversity considerations to which the SoS must have regard.
- 4.4.3. Paragraph 5.20 identifies the Natural Environment White Paper as an important and relevant consideration, together with the need to move progressively from net biodiversity loss to net gain. Paragraph 5.23 requires the Applicant to *'show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.'*
- 4.4.4. Paragraphs 5.27 to 5.31 explain how the proposed development should respond to international, national, regional and local designations. Paragraph 5.31 makes clear that regionally and locally designated sites (including LWSs) should receive due consideration but, given the need for national networks infrastructure, will not in themselves provide a basis for refusing an application for development consent.
- 4.4.5. Paragraph 5.35 explains that protected species should be protected from the adverse effects of development. Requirements and planning obligations should be used to secure the necessary levels of investigation and protective action. Development consent should be refused where harm would result, unless the benefits of the development (including need) clearly outweigh that harm.
- 4.4.6. Paragraphs 5.36 to 5.38 identify that appropriate construction and operational mitigation should be secured.
- 4.4.7. Hull Local Plan Policy 44 (Biodiversity and wildlife) seeks to resist development which would have an adverse effect on protected species. Policy 45 (Trees) requires replacement tree planting in an appropriate location on a ratio of two new trees for every one lost.

4.4.8. Examination and Issues

- 4.4.9. The Applicant's case is set out primarily in the following documents:
- Planning Statement [[APP-070](#)]
 - ES (chapter 10) [[AS-011](#)]
 - Appendices to ES Chapter 10, comprising:
 - Appendix 10.1: Preliminary ecological appraisal [[APP-050](#)]
 - Appendix 10.2: Bat survey report [[APP-050](#)]

- Appendix 10.3: Breeding bird survey report [[APP-050](#)]
 - Appendix 10.4: Wintering bird report [[APP-050](#)]
 - Ecology and Nature Conservation Assessment [[APP-065](#)]
- 4.4.10. Chapter 10 of the ES (Paragraph 10.1.2) [[AS-011](#)] advises that Ecological receptors of value relevant to the Scheme include the Humber Estuary (Special Area of Conservation (SAC), Special Protection Area (SPA), Ramsar and Site of Special Scientific Interest (SSSI) - international and national statutory designated site), Trinity Burial Ground Site of Nature Conservation Interest (Site of Nature Conservation Interest (SNCI) - local non-statutory designated site), mature amenity trees, bats and birds.
- 4.4.11. The Applicant's ecological assessment [[APP-065](#)] considered protected and notable species which could be affected by the proposed development during construction and operation and mitigation.
- 4.4.12. I raised questions relating to biodiversity (ExQ1.2.1-ExQ1.2.8) [[PD-006](#)] and the Applicant responded to these at D2 [[REP2-003](#)].
- 4.4.13. The Applicant advises that the impact of the Scheme on ecology and nature conservation has been assessed in accordance with Highways England guidance within the Design Manual for Roads and Bridges (DMRB) (as updated by IAN 130/10132). Baseline information on ecological receptors was gathered through desk-based studies, survey reports from earlier stages of Scheme development, updated field surveys in 2013, 2014, 2015, 2016, 2017 and 2018 and consultation with relevant organisations. (ES, 10.1.1) [[AS-011](#)].
- 4.4.14. A summary of the assessment of impacts on ecological receptors, including residual impacts following mitigation, is provided at ES Table 10.10 [[AS-011](#)].
- 4.4.15. Early in the Examination it was noted that not all non-statutory designated sites within the study area (within 2Km of the site) were identified in the ES. I asked the Applicant for clarification regarding this (ExQ 1.2.2) [[PD-006](#)]. The Applicant provided a series of amendments to Chapter 10 in an Errata document [[REP2-010](#)]. This has subsequently been amended, the final version being [[REPR17-006](#)]. The amendments confirm that the assessment included all the non-statutory designated sites. The approach used in the Study area has been agreed with NE [[REP5-035](#)].
- 4.4.16. The ES [[AS-011](#)] Chapter 10 considers the following species:
- Bats;
 - Badgers;
 - Otters;
 - Terrestrial invertebrates;
 - Aquatic invertebrates
 - Fish;
 - Reptiles
 - Amphibians;

- Birds;
 - Marine mammals, and
 - Invasive species.
- 4.4.17. Chapter 10 confirms that a desk- based search has been conducted. The Applicant has obtained data from the local biodiversity record centre which show no records of badgers, otters, water voles and fish (ES, 10.6.11) [[AS-011](#)].
- 4.4.18. Field surveys were conducted over a period of years (ES, 10.6.14) [[AS-011](#)] and showed that the habitats present on site are unlikely to support badgers, reptiles or otters in significant numbers.
- 4.4.19. Trinity Burial Ground Site of Nature Conservation Interest (SNCI) and some temporary construction sites were found likely to support common or widespread species of terrestrial invertebrates (ES Table 10.8: Summary of valuation of ecological receptors) [[AS-011](#)] and have been assessed as of local value for biodiversity. Mitigation measures are proposed and secured through R4 of the DCO [[REPR17-004](#)] to avoid significant impact to protected species during construction. However, there will be a permanent loss of habitats within the Trinity Burial Ground SNCI. The adverse residual impact on invertebrates are not considered significant [ES, 10.8.39) [[AS-011](#)] and no IP has raised any objection on this point.
- 4.4.20. The Humber Dock Marina, Railway Dock and Princes Dock are unlikely to have important aquatic invertebrate assemblages present due to the man-made structure of the docks and regular disturbance from boat traffic. These have been assessed as of negligible biodiversity value in the survey area only. The River Hull SNCI is likely to have UKBAP aquatic invertebrates present which would be assessed as of low value for biodiversity in the local area as the SNCI site is not designated for aquatic invertebrate species (ES, 10.6.33) [[AS-011](#)].
- 4.4.21. The Humber Estuary SSSI is designated for aquatic invertebrates and has been assessed as of high value for biodiversity at the national level. Following mitigation implemented during construction, no significant residual impacts are anticipated (ES, 10.8.40) [[AS-011](#)].
- 4.4.22. Notable and protected fish species are recorded within the Humber Estuary and the River Hull. Following mitigation implemented during construction no significant residual impacts are anticipated [ES, 10.8.41] [[AS-011](#)].
- 4.4.23. The invasive shrub cotoneaster was identified during the field survey within areas of introduced shrub to the east of the Scheme Site at the A63 and Market Place junction and A63 and Queen Street junction and in the site compounds at land south east of Mytongate Junction and Staples. Three scattered false acacia trees were identified within the main site on the verge outside of Trinity Burial Ground SNCI (ES, 10.7.43 and 10.7.44) [[AS-011](#)]. Biosecurity method statements would be included in the CEMP (ES, 10.7.43) and it is unlikely that that the

cotoneaster or false acacia trees would return after removal in the Construction Phase (ES, 10.7.75).

- 4.4.24. The Humber Estuary SAC/Ramsar and SSSI adjacent to Humber Dock Marina and site compounds at Wellington Street Island Wharf and Livingstone Road is designated for grey seals (ES, 10.6.44) [[AS-011](#)]. This species could be present adjacent to the site compounds and the Humber Dock Marina. Impacts on this species are discussed in the Applicant's AIES and in Chapter 5 of this report.
- 4.4.25. A SoCG was completed with EN [[REP5-035](#)]. This confirms a wide degree of agreement, and NE does not object to any aspect of the scheme. HCC's LIR [[REP2-016](#)] identifies negative biodiversity impacts due to the loss of trees, especially in and around the Trinity Burial Ground. This, together with lighting, would have a disruptive effect on wildlife within the Burial Ground, including bats and birds. The work carried out for the Applicant to establish the biodiversity impacts of the scheme has served to usefully narrow down those species and habitats that are likely to be affected.
- 4.4.26. Having regard to the matters set out above, the main planning issues to be considered in this section are the effect of the development on:
- Bats
 - Birds
 - The Trinity Burial Ground
 - Trees
 - The Humber Dock Marina/Railway Dock
- 4.4.27. I have also considered the mitigation measures proposed.

ExA's assessment

Bats

- 4.4.28. The ES (Paragraph 10.6.51) [[AS-011](#)] advises that the majority of the scheme site and the potential compound sites are of low value to foraging and commuting bats due to the lack of semi-natural habitats and lack of habitat connectivity. Trinity Burial Ground SNCI contains mature trees and has been assessed as of moderate value for bat activity. Bat activity within the survey boundary was dominated by the migratory common pipistrelle (ES, 10.6.50). A single common pipistrelle bat was found roosting in Castle Buildings in previous survey work by WSP in 2005.
- 4.4.29. Nine buildings and all of the trees within or directly adjacent to the Scheme Site Boundary were assessed for their potential to support roosting bats in 2013 and further assessment was carried out in 2016 (ES, 10.6.45) [[AS-011](#)].
- 4.4.30. Two buildings (the Earl de Grey and Castle Buildings) and trees in Trinity Burial Ground SNCI were found to contain high bat roost potential. The remainder of the buildings and trees outside of Trinity Burial Ground

SNCI were assessed as having negligible bat roost potential and no further surveys of these receptors were undertaken.

- 4.4.31. The Earl de Grey, Castle Buildings and trees in Trinity Burial Ground were subject to dusk emergence and dawn re-entry bat surveys in 2013, 2015 and 2016, 2017. Automated static bat detectors were left to record in the Castle Buildings in 2013 and in Trinity Burial Ground SNCI in 2013 and 2015. The surveys revealed no evidence of bat roosting activity within any of the buildings or Trinity Burial Ground SNCI (ES, 10.6.47) [[AS-011](#)].
- 4.4.32. The ES predicts no significant adverse residual impacts to bats during the construction or operation phases of the scheme. Mitigation measures would include sensitive timing of habitat clearance, erection of bat boxes in Trinity Burial Ground SNCI and new tree and shrub planting, including within the improved road to restore habitat connectivity across the carriageway at Mytongate Junction (ES 10.1.6) [[AS-011](#)].
- 4.4.33. I accept these findings of the ES. Nevertheless, given the potential for the Earl de Grey to support bats roosts, it is important that the presence of bats or otherwise is established before it is dismantled. The 2016 survey of the building was not in line with the 2016 *Bat Surveys for Professional Ecologists: Good Practice Guidelines, 3rd Edition* because only one visit was made to the building. I raised this at ExQ1.2.5 [[PD-006](#)]. In response [[REP2-003](#)], the Applicant advised that, although a bat roost had not been found at the time of writing the Environmental Statement, the Earl de Grey was to have a further 4 emergence/re-entry surveys on separate days undertaken between April and June 2019 to be as certain as possible of the presence or likely absence of a bat roost. This approach is agreed with Natural England (NE) in the SoCG [[REP5-035](#)].
- 4.4.34. In the event of a bat roost being found the Applicant will consult NE regarding obtaining a European Protected Species Mitigation Licence [[REP2-003](#)]. Mitigation measures already included in the OEMP [[APP-072](#)] and the REAC [[APP-068](#)] will require that that the demolition of the Earl de Grey would be overseen by a bat licensed Ecological Clerk of Works (ECoW). In the event of a bat roost being found during demolition, the bat licensed ECoW would cease works and contact NE.
- 4.4.35. Given this additional survey work and the safeguards put in place, I am satisfied that the Applicant has taken adequate measures to identify the presence of bats and ensure that any bats present are protected from the adverse effects of the development.
- 4.4.36. There would be a permanent loss of bat foraging and commuting habitat in Trinity Burial Ground which cannot be adequately mitigated or compensated for. The ES considers that this, together with increased lighting during operation, would have a slight adverse but insignificant residual impact upon bats (Paragraph 10.8.45) [[AS-011](#)]. I accept that assessment.

- 4.4.37. Overall, I conclude that bats would be adequately protected from adverse effects arising from the proposed development.

Birds

Breeding birds

- 4.4.38. Chapter 10 of the ES (Paragraph 10.6.37) [\[AS-011\]](#) states that a suite of four breeding bird surveys was undertaken between May and June 2016 at Wellington Street Island Wharf and Livingstone Road. Table 10.7 summarises the species recorded and their importance. Only linnet and blackbirds were confirmed breeding within Livingstone Road site compound. The Applicant has assessed breeding birds as of low biodiversity value in the local area, a view I accept.

Wintering birds

- 4.4.39. Four wintering bird surveys were undertaken on the same site compounds (ES, 10.6.39) [\[AS-011\]](#) and additionally at Neptune Street in January and February 2017. The survey results also informed the Assessment of the Implications for European Sites (AIES) process.
- 4.4.40. Birds species recorded within/adjacent to these three site compounds included species that the Humber Estuary is designated for and are assessed as of very high biodiversity value within the international/national level. All other bird species have been assessed as of low biodiversity value in the local area (ES, 10.6.43), [\[AS-011\]](#).
- 4.4.41. I asked the Applicant to explain why wintering bird surveys were conducted only during January and February 2017, contrary to the recommended methodology included at, Appendix 10.3 [\[APP-050\]](#) (ExQ 1.2.4) [\[PD-006\]](#). I also asked the Applicant to provide evidence that the concentration of survey effort within only two months had not led to the underestimation of the site's importance for wintering birds or altered the results of the Likely Significant Effects assessment reported in the AIES.
- 4.4.42. The Applicant [\[REP2-003\]](#) explained that the results of the bird surveys recorded only resident birds that would be present throughout the winter. These were not likely to have been present in significantly greater numbers during November and December than January to February. The enclosed nature of the compounds might also affect the suitability of the site as feeding and roosting grounds.
- 4.4.43. I asked NE and the Applicant (ExQ1.2.3) [\[PD-006\]](#) to provide evidence that there is agreement that the level of surveys conducted is enough to reach the conclusions that the project will not have a likely significant effect on birds present within the Humber Estuary all year around. The SoCG between NE and the Applicant [\[REP5-035\]](#) confirmed that NE is satisfied that there will be no Likely Significant effects on the Humber Estuary designations.
- 4.4.44. I accept the Applicant's assessment of these matters.

Trinity Burial Ground SNCI

- 4.4.45. The Trinity Burial Ground has a non-statutory designation as a Site of Nature Conservation Interest (SNCI). It is also identified as UK Biodiversity Action Plan (UKBAP) and Natural Environment and Rural Communities Act 2006 (NERCA2006) Section 41 priority habitat (ES, 10.1.4) [[AS-011](#)]. The ES describes the SNCI as 'a small area of urban parkland with mature broad-leaved trees and amenity grassland, covering an area of 8052m² (0.8ha)'. Species include ash, hybrid poplar, lime, oak, wych elm and sycamore. The trees host nesting and breeding birds including song thrush, a bird of principal importance under s41 of the NERCA2006 (HCC LIR), [[REP2-016](#)].
- 4.4.46. A substantial part of the site would be lost to the development. Additionally, 36 mature trees would be removed from the Trinity Burial Ground SNCI to accommodate the Scheme and a further 36 would be removed to facilitate the disinterment of graves (ES, 10.4.1) [[AS-011](#)]. The ES categorises this as a 'significant adverse residual impact'. The loss of habitat supporting terrestrial invertebrates is not considered significant.
- 4.4.47. There would be mitigation for these losses. At least 55 native mature and semi-mature trees would be planted as compensation and further large, semi-mature trees would be planted within the Mytongate Junction central reserve to create bat hop-overs. Additionally, the understorey of the SNCI would include native shrubs and plants to attract invertebrates. (ES, 10.1.4) [[AS-011](#)].
- 4.4.48. The Burial Ground has the potential to support hedgehogs - a UKBAP (NERCA2006, s41) and LBAP species. Mitigation would involve removing hedgehogs to a place of safety if found as work progresses (ES, 10.7.42) [[AS-011](#)].
- 4.4.49. The ES (Paragraph 10.8.30) [[AS-011](#)] evaluates operational residual impacts on the Burial Ground as moderate adverse due to:
- The permanent loss of a third of the SNCI's footprint.
 - The compensatory tree planting would take many years to achieve the maturity and ecological value of the trees that are to be removed.
 - The SNCI would have additional illumination from the permanent lighting installed within the retained area of the SNCI after the completion of works and light pollution from the new junction, which would be located closer to the SNCI, would increase.
- 4.4.50. I accept the assessment within the ES. It must, however, be seen in the light of Paragraph 5.31 of the NNNPS, which says that regionally and locally protected sites (including LWSs) should receive due consideration but, given the need for national networks infrastructure, will not in themselves provide a basis for refusing an application for development consent.

Trees beyond the Trinity Burial Ground

- 4.4.51. Approximately 245 trees along the length of the rest of the Scheme would need to be removed during construction. The trees would be replaced with 307 new trees in addition to the replacement trees in Trinity Burial Ground SNCI (ES, 10.1.5) [\[AS-011\]](#). Overall, therefore, there would be an increase in the number of trees, but they would take time to reach maturity. The number of replacements does not meet the 2:1 ratio referred to in Local Plan Policy 45, although HCC accepts that this cannot be achieved given the constraints of the site (LIR) [\[REP2-016\]](#). The ES categorises the effect as 'moderate adverse' (Paragraph 10.8.15), a view I accept.

The Humber Dock Marina/Railway Dock

- 4.4.52. Humber Dock Marina contains standing water habitat and is connected to the Humber Estuary SAC, SPA, Ramsar and SSSI by two sets of lock gates across Wellington Street. Railway Dock is connected to Humber Dock Marina by a lock on the eastern side of Railway Dock (ES 10.6.17) [\[AS-011\]](#).
- 4.4.53. The docks may support some species that are designated, in particular grey seals, birds and sea and river lamprey. Because of their likely importance to these species and connectivity to the Humber Estuary they have been assessed as of high/medium biodiversity value within the regional area as areas of standing water habitat. Humber Dock Marina is UKBAP (NERCA2006, s41) priority habitat (ES 10.6.17), [\[AS-011\]](#).
- 4.4.54. Impacts from piling into Humber Dock Marina during construction of Princes Quay Bridge and the re-location of the Spurn Lightship to facilitate this could include noise, vibration, dust, groundwater contamination and silting/sedimentation. (ES 10.7.11), [\[AS-011\]](#). There would also be a loss of habitat under the pile footprints. These are assessed by the ES as having a large adverse significant impact.
- 4.4.55. However, since the bridge already has planning permission and construction is underway, no additional impacts could arise as a result of granting development consent for this scheme. Any impacts arising from the link to the Estuary (via lock gates) and relevant mitigation measures are considered in the HRA.
- 4.4.56. I conclude that no additional impacts to the Humber Dock or Railway Dock marinas arise from this scheme.

Mitigation

- 4.4.57. In response to ExQ1.2.7 [\[PD-006\]](#), the Applicant pointed out that there is limited scope for beneficial biodiversity enhancement to be associated with the scheme due to the constrained urban nature of the scheme Site [\[REP2-003\]](#). The approaches to impact mitigation set out in the REAC [\[APP-068\]](#), the OEMP [\[APP-072\]](#) and secured in the dDCO [\[REPR17-004\]](#) have been considered. In my view, given the constraints of the site, the measures proposed are adequate to ensure that NNNPS and Development Plan policy relevant to biodiversity are met.

Conclusion - Biodiversity

4.4.58. I conclude that

- There will be a direct and harmful impact on the Trinity Burial Ground SCNI due to loss of footprint, extensive loss of mature trees, and lighting during construction and operation. The effect of this can be partially, but not wholly, mitigated. The harm during the construction phase is significant.
- There will be moderate harm from the loss of trees along the remainder of the route.
- There will be a loss of foraging ground for bats as a result of the above effects on the Trinity Burial Ground SCNI, but this is not regarded as significant. Additionally, there is a potential loss of bat roosts arising from demolition of the Earl de Grey, but this can be mitigated with appropriate measures
- There is a major adverse effect to the Humber Dock Marina due to the permanent loss of habitat beneath pile footprint and the impacts from piling. However, the work has commenced and no additional impacts would arise from this scheme.
- There would be no significant adverse impact on the bird population recorded within and adjacent the Humber Estuary. The mitigation proposed is adequate and would be secured.

4.5. HISTORIC ENVIRONMENT

Introduction

4.5.1. The project runs through much of historic Hull and affects a range of designated and non-designated heritage assets. Consequently, this was a major issue for the Examination. This section deals with those matters where heritage matters were the dominant consideration. However, because of the extensive built heritage in this part of Hull, heritage considerations were also relevant to the wider townscape considerations addressed in the next section of this report.

Policy Background

NNNPS

4.5.2. Paragraph 5.130 says that the SoS should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution that their conservation can make to sustainable communities – including their economic vitality.

4.5.3. Paragraph 5.131 says that, when considering the impact of a proposed development on the significance of a designated heritage asset, the SoS should give great weight to the asset's conservation. Given that heritage assets are irreplaceable, harm or loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm

to or loss of a grade II Listed Building or a grade II Registered Park or Garden should be exceptional.

4.5.4. Paragraph 5.132 states that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss.

4.5.5. I have highlighted certain detailed aspects of the NNNPS where relevant in my assessment below.

NPPF

4.5.6. The NPPF outlines essentially the same approach to heritage assets as the NNNPS.

The Hull Local Plan

4.5.7. Policy 16 seeks to protect the City's heritage assets. It is aligned with the similar aim of Strategic Priority 6.

The Infrastructure Planning (Decisions) Regulations 2010

4.5.8. Regulation 3 imposes duties on decision makers dealing with Listed buildings, conservation areas and scheduled monuments:

(1) When 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.

(2) When deciding an application relating to a conservation area, the decision-maker must have regard to the desirability of preserving or enhancing the character or appearance of that area.

(3) 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.

Examination and Issues

4.5.9. The Applicant's case is set out primarily in the following documents:

- Planning Statement [[APP-070](#)]
- ES Chapter 8 [[AS-011](#)]
- ES Appendices 8.1-8.8 [[APP-048](#)]
- ES Figure 8.1 [[APP-028](#)]
- ES Figure 8.2 [[APP-028](#)]
- ES Figure 8.3 [[APP-029](#)]
- ES Figure 8.4 [[APP-030](#)], [[APP-031](#)]
- ES Figure 8.5 [[APP-032](#)]
- Cultural Heritage Assessment [[APP-066](#)]

- 4.5.10. Matters relating to the historic environment were raised in both rounds of written questions [[PD-006](#)] and [[PD-011](#)]. The Applicant's responses to these are set out in [[REP2-003](#)] and [[REP5-004](#)].
- 4.5.11. The Historic Environment was the subject of ISH3 [[EV-008](#)] and the Applicant's case presented is set out at [[REP3-009](#)]. Heritage matters were also discussed at ISH5 (DCO and outstanding matters) [[EV-010](#)].
- 4.5.12. The ES [[AS-011](#)] has identified a study area for the cultural heritage assessment and divided it into 10 zones (ES Table 8.1) [[APP-028](#)]. The assessment methodology follows guidance contained within DMRB Volume 11, Section 3, Part 2 (HA208/07) Cultural Heritage. The work encompasses the following sub-topics:
- Archaeological remains
 - Historic buildings
 - Historic landscapes
- 4.5.13. The Applicant acknowledges that the development would have a harmful effect on a number of designated and non-designated heritage assets. A wide range of assets in and around the project site is identified in the Cultural Heritage Baseline Report, which is ES Appendix 8.1 [[APP-048](#)] and the Gazetteer of assets (Appendix 8.2) [[APP-048](#)]. Indeed, within the wider study area there are 6 Grade I, 13 Grade II* and 242 Grade II listed buildings, together with 128 locally listed and non-designated historic buildings (ES, 8.6.5) [[AS-011](#)]. Paragraph 5.5.22 of the Planning Statement [[APP-070](#)] says, '*Whilst there will be significant adverse impacts on heritage assets in the local area, the public benefits which will be seen by the Scheme, outweigh the harm*'.
- 4.5.14. Historic England made representations throughout the Examination, including a RR [[RR-019](#)], a Written Representation [[REP1-017](#)] and submissions at D2 [[REP2-011](#)], D4 [[REP4-011](#)], D5 [[REP5-054](#)] and D7 [[REP7-011](#)]. A SoCG was completed with Historic England [[REPR17-009](#)].
- 4.5.15. HCC engaged on a range of historic environment matters throughout the Examination, the key matters being identified in the LIR [[REP2-016](#)]. In particular, it pursued its concerns relating to the Earl de Grey public house throughout the Examination.
- 4.5.16. The heritage assets affected by the scheme vary greatly in their value and significance and also in how they would be affected by the scheme, and it is therefore necessary to focus here on the key impacts. The Executive Summary of the Applicant's Cultural Heritage Assessment [[APP-066](#)] identifies adverse effects of the scheme (paras 8.1.1 – 8.1.4). It identifies that:
- During construction of the Scheme there would be a temporary significant adverse effect on the Trinity Burial Ground (MMS144), Statue of King William III and Flanking Lamps (MMS600), Warehouse No. 6 (MMS602), Castle Buildings (MMS603), Princes Dock (MMS673), Humber Dock (MMS761) and the Old Town conservation area (in particular sub-zones A3, B2, B3 and C2).

- As a result of the construction of the Scheme there would be a permanent significant adverse effect on the Trinity Burial Ground (MMS144), Castle Buildings (MMS603), and Earl de Grey public house (MMS604).
- During operation of the Scheme there would be permanent significant adverse effect on the Trinity Burial Ground (MMS144).

4.5.17. In the first round of written questions I asked if these were the key cultural heritage matters on which the Examination should focus (ExQ 1.5.1) [[PD-006](#)]. Historic England responded [[REP2-011](#)] that there was a need to consider also the effect on the Beverley Gate Scheduled Monument, a view I share. Historic England also raised in its submissions to the Examination the adequacy of the Applicant's archaeological strategy and opportunities to enhance heritage assets, and it is important to consider these matters too. An outline of these concerns can be found at its written representation [[REP1-017](#)]. Additionally, revisions to the scheme (NMU Provisions Plan) [[REPR17-020](#)] mean that light-controlled pedestrian crossings are now proposed at Market Place, which will have a permanent effect on the setting of the Grade 1 listed Statue of King William III and Flanking Lamps.

4.5.18. Accordingly, I consider the main planning issues relating to the historic environment to be:

- the effect of the development on:
 - The Grade II listed Earl de Grey public house and the adjacent Castle Buildings, also Grade II listed;
 - The Grade 1 listed Statue of King William III and Flanking Lamps ;
 - The Trinity Burial Ground – in terms of its character and appearance and also its historical significance arising from the buried remains it contains;
 - The Old Town Conservation Area and its setting;
 - The Beverley Gate Scheduled Ancient Monument;
- The temporary effect of the development on heritage assets during construction;
- Whether the scheme makes appropriate use of opportunities to enhance heritage assets or their settings; and
- Whether the proposals include a satisfactory archaeological strategy.

4.5.19. Each of these are considered in my assessment below. Other heritage assets or their settings will be affected by the scheme. These are assessed in the ES [[AS-011](#)] and I accept its findings. None of these effects is such as to alter my assessment of the overall planning merits of the proposed development.

ExA's Assessment

The Earl de Grey

- 4.5.20. The Earl de Grey is a disused pub fronting Castle Street. Historic England describe it in the following terms [[REP1-017](#)]:

The Grade II Listed Earl de Grey Public House (NHLE no. 1297037) (NHLE no. 1297037) (originally known as the Junction Dock Tavern) faces onto Castle Street. It is believed to have been constructed in the early-mid C19 as part of a block comprising 6, 7 and 8 Castle Street. It is a rendered brick with faience (glazed and decorative tile) ground floor of circa 1913, slate roof, three-storeys. It is a good example of a C19 pub altered in the early C20 through the addition of an elaborate faience shopfront. It is one of only a few early buildings left remaining on the western half of Castle Street, one of the oldest routes into Hull, and is important as a physical reminder of dock life in this part of the town.

The Grade II listed Earl de Grey Public House figures prominently in the history of Hull. Communal heritage value derives from people's identification with a place. The Earl de Grey has meaning for the people and diverse communities that frequented the building during its long history as a public house due to its connection to the shipping industry. This gives the building considerable communal heritage value.

- 4.5.21. In my view those words capture the significance of this designated heritage asset. The interior has been heavily altered and is excluded from the listing. A photograph of the building is provided by Historic England at [[REP1-024](#)].
- 4.5.22. When I viewed the building (USI1 and ASI) [[EV-013a](#)] it was largely covered by boarding and hidden from view. The adjacent Castle Buildings, also Grade II listed, is a key, positive feature of the setting of the building. The setting has been eroded by Castle Street, which was widened in the 1970s and runs very close to it.
- 4.5.23. The building cannot remain in place if the road is to be built, not least because of the need to keep traffic a sufficient distance from it during construction works (Written Submission of Applicants case put orally at ISH3 on 6th June 2019) [[REP3-009](#)]. A great deal of Examination time was devoted to the question of rebuilding it. I sought clarification regarding the Applicant's proposals for the building throughout the Examination:
- Questions at ExQ1 [[PD-006](#)] and ExQ2 [[PD-011](#)].
 - ISH3 – Historic Environment [[EV-008](#)]
 - ISH5 – DCO and outstanding matters [[EV-010](#)]
 - Rule 17 request of 13 September [[PD-017](#)].
- 4.5.24. By the close of the Examination, the position was that there were 2 options for the building. The first option ('the DCO scheme') is to move the building 3 metres to the north. This is set out in Work No 30 of Schedule 1 to the Applicant's preferred DCO [[REPR17-004](#)]. The second option ('the permitted scheme') is for the building to be rebuilt as part of

a more comprehensive development of adjoining land – a scheme which already has planning permission and listed building consent (see section 2.3 of this report).

- 4.5.25. The DCO scheme exists entirely within the wording of Work No 30. This was confirmed by the Applicant in its response to the Rule 17 letter of 13 September [[REPR17-002](#)]. As now proposed, Work No 30 says: *'demolition of the Earl de Grey public house and partially rebuilding approximately 3 metres to the north of existing position'*. No plan or other details are provided. However, the dDCO [[REPR17-004](#)] now includes a Requirement (R14) requiring details of the proposals, together with a method statement and timetable and a requirement for the works to be carried out. This was not part of the Applicant's original proposals. However, HCC suggested such a requirement in its LIR [[REP2-016](#)] and I proposed one in the *Schedule of Proposed Changes to the draft Development Consent Order* [[PD-012](#)].
- 4.5.26. The permitted scheme was granted planning permission and listed building consent on 5 June 2019 (references 19/00333/FULL and 19/00334/LBC). The scheme would include the erection of a new hotel and allows for the Earl de Grey to be demolished and rebuilt in a new location, fronting Waterhouse Lane rather than Castle Street.
- 4.5.27. There are clear advantages with this proposal. It has already been through the planning process and has been found to be acceptable. Indeed, it has the support of both Historic England [SOCG – [REPR17-009](#)] and HCC [LIR – [REP2-016](#)]. In considering it, the Council's conservation advisor took the view that, 'with a carefully controlled set of conditions attached to any approval granted, the substantial harm to significance can be mitigated to less than substantial by ensuring key features are restored' [Officer's report – [REP3-183](#)]. HCC offered the view at ISH3 [[EV-008](#)] that, moved in accordance with the permitted scheme, the Earl de Grey could retain its listing. The scheme would secure an active use for the building and integrate it into a development, thereby helping to secure its future.
- 4.5.28. Highways England is supportive of the proposal and a heads of terms document [[REPR17-008](#)] has been submitted to the Examination. This shows that Highways England would make payments to Castle Building LLP (the site owners) as compensation for the works.
- 4.5.29. Be that as it may, the Applicant does not consider that total reliance can be placed on the permitted scheme (D7 Submission – Applicant's response to Hull City Council's Section 106 proposal) [[REP7-005](#)]. I agree with that view. Whatever the merits of the scheme or the current intentions of the parties to it, there can be no guarantee that it will go ahead. Although HCC has submitted to the Examination a 'draft s106 agreement' [[REP6-017](#)] designed to link the permitted scheme to the DCO, this has not been signed by the Applicant. Indeed, the Applicant has significant reservations about it [[REP7-005](#)].

- 4.5.30. Even if a development consent obligation had been completed, I do not see that it would have created certainty that the permitted scheme would go ahead; the permitted scheme is ultimately separate from the NSIP and is dependent on the decisions of those seeking to promote, pursue and invest in it. Nor does the information before me show clearly that it would take place at a time that would fit with the planned programme for the NSIP. Thus, the implementation of the NSIP would be dependent on a separate scheme, largely outside the control of the Applicant. In these circumstances, it is necessary that the NSIP includes clear and satisfactory proposals for the Earl de Grey that can be implemented in the event that the permitted scheme does not go ahead, or does not go ahead at a point in time that fits with the NSIP programme – a ‘backstop’ as the Applicant calls it in its D7 Submission [[REP7-005](#)].
- 4.5.31. Unfortunately, however, the proposals within Work No 30 of the DCO [[REPR17-004](#)] are not clear and, on the basis of the limited information before me, are not satisfactory. The complete dismantling and rebuilding of an historic building is a complex undertaking and full details of it are needed in order to understand the proposal. Yet here it has been reduced to a single line of text without any plans to support it. Not only does this mean that the proposal in the DCO is not clear, it also means that key consultees, including Historic England and HCC, have not had a detailed scheme to comment on.
- 4.5.32. Moreover, to the extent that those bodies have been able to comment, they have indicated real concerns relating to the proposal. In the final agreed SoCG with the Applicant [[REPR17-009](#)], Historic England advise that,
- it is our view that moving the listed portion of the building 3 metres from its current location (the Highways England position) is inadequate and inappropriate and will not secure or enhance its significance. Our preference is that the building, once demolished, is then partially rebuilt as part of the consented development.*
- 4.5.33. HCC has expressed similar views (Response to Examining Authority's Further Written Questions – question 2.5.1) [[REP5-061](#)].
- 4.5.34. The Applicant's assessment of the effect on the Earl de Grey was carried out on the basis that it would be demolished and not rebuilt (ISH3) [[REP3-009](#)]. This is said to represent a worst-case scenario. Clearly, the impact on the significance of the building would be substantial. In the words of the ES ([AS-011](#)):
- The medium value Grade II listed Earl de Grey public house (MMS604) would see a major negative impact caused by its dismantling. This would result in the entire loss of the building and constitutes a permanent large significant adverse effect. (ES, 8.9.7).*
- 4.5.35. While there is a benefit in principle in retaining the building, the Applicant's proposal to rebuild the Earl de Grey about 3m to the north is too vague to enable me to adequately evaluate it. However, as noted above, it is not supported by Historic England or HCC. Accordingly, on

the basis of the very limited information before me, I do not regard it as a satisfactory form of mitigation. Accordingly, the harm to the significance of the listed building would still be substantial.

- 4.5.36. Paragraph 5.131 of the NNNPS advises that substantial harm to or loss of a grade II Listed Building should be exceptional. At paragraph 5.133 it continues:

Where the proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, the Secretary of State should refuse consent unless it can be demonstrated that the substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm, or alternatively that all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

- 4.5.37. In this case it is clear that the Earl de Grey cannot stay in its current location if the scheme is to proceed. Yet, for the reasons I have given, I am not persuaded that there has been an adequate attempt to evolve a DCO scheme which could lead to the best possible alternative outcome for the building in the event that the permitted scheme does not proceed. The DCO proposal does not show how the building would integrate with its surroundings in its proposed location, why that particular location has been chosen (other than the general need to move it away from the road) or whether alternative locations have been actively considered. In short, the DCO does not include a properly thought-through scheme for the relocation of this listed building. It has consequently not been demonstrated that the substantial harm and loss of significance that would arise from the DCO scheme is necessary.

- 4.5.38. The bullet points at NNNPS Paragraph 5.133 of the NNNPS (as set out above) do not easily apply to the circumstances of this case. Nevertheless, with reference to the final bullet point, it is important that the benefits of the scheme are weighed in the overall planning balance. This is done in my conclusion on the case for development consent at Chapter 6.

- 4.5.39. The Applicant argues (Rule 17 Deadline Submission) [[REPR17-002](#)] that the NNNPS at paragraphs 5.120 to 5.142 (Historic Environment) does not state a requirement for the level of information required to support a proposed scheme. However, the fact that there is no such specific requirement within those sections of the NNNPS does not mean that the information provided by the Applicant is satisfactory in this case. In my view it is not, for the reasons I have given.

4.5.40. If the SoS were to grant consent, R14 would provide important controls over how the relocation of the building is addressed. It has been the subject of discussion during the Examination and would require a method statement incorporating full details of how the building would be dismantled and reconstructed. However, this would not address my concern that the proposal could leave the building in a sub-optimal location, without proper analysis of its merits. It is not clear to me on the limited information available whether the building would have a satisfactory relationship with the new road or surrounding buildings. Nor is it clear whether the building's new location would be compatible with it securing a viable future use.

4.5.41. Another concern raised by Historic England is that the building could be demolished before the proposals for rebuilding it are clear [[REP4-011](#)]. Paragraph 5.136 of the NNNPS says:

Where the loss of significance of any heritage asset has been justified by the applicant based on the merits of the new development and the significance of the asset in question, the Secretary of State should consider imposing a requirement that the applicant will prevent the loss occurring until the relevant development or part of development has commenced.

4.5.42. However, here the Applicant is faced with the complexities of building a road scheme in a dense urban area while keeping traffic and people moving and carrying out works in very close proximity to this historic building and I accept the Applicant's evidence (ISH3) [[REP3-009](#)] that the building would need to be removed early in the development. Nevertheless, my finding on this does not alter my view that the lack of a clear scheme to reconstruct the building means that the scheme is unsatisfactory in this regard and runs counter to the NNNPS. There would also be conflict with Policy 16 of the Hull Local Plan.

4.5.43. Drawing these matters together, I conclude that:

- The Earl de Grey needs to be moved or demolished if the scheme is to go ahead.
- The permitted scheme includes an appropriate solution to moving the building.
- However, the DCO needs to include a properly thought-through scheme for reconstructing the building in case the permitted scheme does not proceed.
- The DCO scheme lacks detail, is opposed by Historic England and HCC, and fails to demonstrate that it would be effective in mitigating the harm to the listed building.
- Consequently, there would be substantial harm to the listed building and its significance if the DCO scheme were implemented.
- It appears that this scale of harm and loss of significance is unnecessary, since it has not been demonstrated that this is the best outcome possible for the building.
- This places the proposal at odds with paragraph 5.133 of the NNNPS, Policy 16 of the Hull Local Plan and the aims of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010.

- 4.5.44. Paragraph 5.131 of the NNNPS requires that, when considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State should give great weight to the asset's conservation. In this case the harm I have found and the conflict with the NNNPS weigh heavily against the scheme.

Castle Buildings

- 4.5.45. The Grade II listed Castle Buildings is situated on the junction of Castle Street and Waterhouse Lane, close to the Earl de Grey. The listing entry [[REP1-020](#)] states that it was built in 1900 as offices for steamship owners and brokers. It is constructed of red brick with ashlar dressings and a slate roof in a 'Renaissance Revival' style and curves around its corner plot. The listing notes that it is located close to the docks and is an important physical reminder of Hull's maritime history and trading links. In my opinion, these physical and historical characteristics contribute to its significance. The building was hidden behind wooden hoardings and scaffolding when I viewed it (USI1; ASI). A photograph of the building is provided by Historic England at [[REP1-025](#)].
- 4.5.46. The only work now proposed to the building is the installation of vibration monitoring equipment (DCO Schedule 1 Work No 30) [[REPR17-004](#)]. There is nothing before me to suggest that this would be harmful. However, the setting of the building would be affected by the changes to the A63 and the demolition/relocation of the Earl de Grey. The contribution the Earl de Grey makes to the setting of the building is important to its significance because of their shared past and links to Hull's maritime history.
- 4.5.47. The ES [[AS-011](#)] considers at paragraph 8.9.16 that Castle Buildings would see a permanent, moderate, negative impact caused by changes to its setting resultant from the dismantling of the adjacent Earl de Grey public house, and changes to the layout of the Mytongate Junction. I agree with that assessment. Consequently, there would be a moderate, permanent harm to the significance of the building. The precise effect on the setting of Castle Buildings would depend upon proposals to reconstruct the Earl de Grey, which could see the building relocated on Waterhouse Lane in a new relationship with Castle Buildings (the permitted scheme). However, as set out above, the position regarding this is not clear and have considered the matter based on the Applicant's current proposals and the assessment in the ES.
- 4.5.48. I conclude that the changes to the setting of Castle Buildings would result in moderate harm to its setting and significance.

The Grade I listed Statue of King William III and Flanking Lamps

- 4.5.49. The listing details of this Grade I listed building are provided at [[REP1-021](#)]. It is a larger than life-size gilt statue of the King on a horse and stands on a rectangular ashlar pedestal with cornice and iron guard rail. It has a stepped oval base with 4 pedestals with plinths and cornices, each carrying a cast-iron globe lamp. It is very prominently located at the southern end of Market Place, close to its junction with Castle Street.

Consequently, the junction forms part of its setting. The statue dates from 1734, and the lamps are late 19th Century.

- 4.5.50. Historic England describe the listed building as '*an iconic focal point on Market Street, at the centre of the street. Its location, position and place in the streetscape makes an important contribution to the significance of the Grade I Listed Building*' [[REP1-017](#)]. I agree with that assessment.
- 4.5.51. The ES identifies a temporary negative impact to the setting of the statue during construction, resulting in a moderate significant adverse effect (ES, 8.9.10) [[AS-011](#)]. Table 1.5 of ES Appendix 8.3 [[APP-048](#)] indicates that the setting of the building would not change markedly, but identifies a slight adverse permanent effect due to changes such as the proposed central reserve barrier.
- 4.5.52. The NSIP has been revised during the Examination by the addition of light-controlled pedestrian crossings at the slip roads at Market Place. This was discussed at ISH5 [[EV-010](#)] and I asked the Applicant to engage with Historic England regarding the setting of the listed building. [[EV-012](#)]. This has been done (Deadline 5 Submission - Applicant's Response to Hearing Action Points from Issue Specific Hearing 5) [[REP5-007](#)], but details of the crossings were not finalised at that point. In the SoCG [[REPR17-009](#)], Historic England remarked that it remained willing to work with Highways England and Hull City Council to resolve this new addition to the Scheme. It also commented that more could be achieved with sensitive design and landscaping to enhance the junctions between the A63 and the Old Town Conservation Area.
- 4.5.53. From the information currently available, I do not consider that the effect on the setting of the listed building would fundamentally change due to the crossings now proposed, bearing in mind that there are already light-controlled crossings at the existing junction and I agree with the assessment set out in the ES [[AS-011](#)], as outlined above. The alignment of the road would bring it a little closer to the statue (Table 1.5 of ES Appendix 8.3 [[APP-048](#)]), but the effect of this on the setting of the Statue would be limited.
- 4.5.54. I conclude that there would be a slight, permanent adverse effect on the setting of the listed building as a result of the scheme.

The Old Town Conservation Area

- 4.5.55. The Old Town Conservation Area (OTCA) was designated in 1973 and has subsequently been extended (Character Appraisal – Western and Northern Part) [[REP5-044](#)]. The majority of the Conservation Area is usefully shown in ES Figure 9.1.

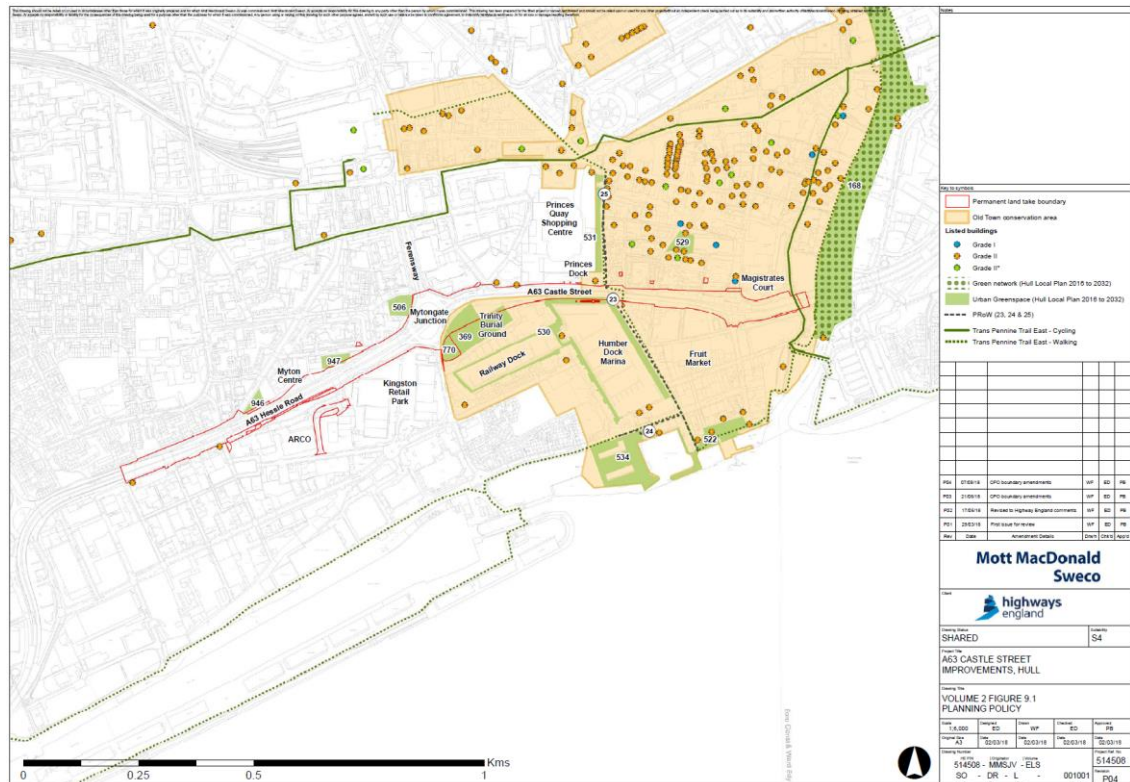


Figure 11: ES Figure 9.1 – The Old Town Conservation Area

- 4.5.56. The size of the OTCA is such that its character as a whole is extremely varied. For the purpose of carrying out character appraisals of the OTCA, HCC split it into 3 appraisal areas – Central and Eastern; Western and Northern; and Southern. The Southern area is to the south of the A63 and includes most of the area between the Mytongate junction and the River Hull. The other 2 areas are to the north of the A63.
- 4.5.57. The character appraisals were carried out in 1999 (Central and Eastern Part) [REP5-042], 2004 (Western and Northern Part) [REP5-044] and 2005 (Southern Part) [REP5-043]. The appraisals sub-divide the character areas into character zones.
- 4.5.58. The Character Appraisal for the Southern Part [REP5-043] notes at Paragraph 3.2 that:
- In area, the whole of the Old Town covers about 54 hectares (133 acres) and contains 158 Listed Buildings (about 35% of Hull's total stock of Listed Buildings). It also contains many other unlisted buildings of historic townscape value and is a major area of archaeological interest.*
- 4.5.59. The Character Appraisal for the Central and Eastern Part notes that, 'The most significant aspect of the Old Town is that its medieval street pattern is largely intact' (Paragraph 4.1) [REP5-042]. That said, there have clearly been many additions and improvements to the roads in the OTCA in later periods, and this is reflected in the varying road widths within the area. Building types in the OTCA vary greatly in age, type and character, from, for example, the Medieval St. Mary's Church (Grade II *) to many post-war buildings, with a range of civic, commercial and residential buildings from the intervening periods. There is variety in materials as

well, although brick is used extensively. Many structures, such as docks and warehouses, reflect the city's maritime role. Key open spaces include Queens Gardens and the Trinity Burial Ground.

- 4.5.60. The project scheme runs up to and through the OTCA and therefore has both direct effects on the OTCA and effects on its setting. I have considered elsewhere in this section the effect of the scheme on the Grade I listed Statue of King William III and Flanking Lamps, Grade II listed Earl de Grey public house, the Grade II listed Castle Buildings and the Trinity Burial Ground. All of these heritage assets lie within the OTCA and contribute to its significance. Accordingly, the harm to these assets results in harm to the OTCA.
- 4.5.61. The OTCA would also be affected by the design of elements of the scheme, including the Mytongate underpass, the central reserve barrier, the pumping station and the Princes Quay Bridge. I have considered these items within the *Townscape and visual impact* section of this report. My findings on those matters lead me to conclude that the central reserve barrier would be visually harmful. Consequently, since the A63 runs through the OTCA, the barrier would have a harmful effect on the character and appearance of the OTCA.
- 4.5.62. Weighing these matters in the balance, and having regard to the views expressed in the ES and by Historic England and HCC, I conclude that there would be harm to the OTCA. Although this would arise from a number of sources, the key ones would be the dismantling of the Earl de Grey and the loss of a substantial part of the Trinity Burial Ground (addressed below). Considering the effect on the OTCA as a whole, the harm would be less than substantial.

Trinity Burial Ground – character, appearance and visual impact

- 4.5.63. Trinity Burial Ground is located at the south-eastern quadrant of the Mytongate junction. It is not designated (ES volume 3, Appendix 8.2) [[APP-048](#)] but is located within the southern part of the OTCA. I regard it as a non-designated heritage asset. It was opened in 1783 to ease overcrowding at Holy Trinity churchyard and remained in use until 1861 (ES, 8.6.24) [[AS-011](#)]. The A63 severs it from other parts of the City and it has a quiet, semi-natural character. It contains many mature trees and a range of structures including walls, memorials and several old gas lamp columns. One wall may be a surviving remnant of the New Gaol of 1785 (ES, Volume 3, Appendix 8.1, Paragraph 2.5.12) [[APP-048](#)].
- 4.5.64. The scheme would cut across the Burial Ground, removing about a third of it, and would also result in the loss of mature trees and structures of significant amenity value. Paragraph 8.9.15 of the ES [[AS-011](#)] says:

There would be a permanent major negative impact on the Trinity Burial Ground....., there would be permanent negative impacts on above ground remains including built heritage assets. Permanent impacts would involve the removal of two lamp posts outside the Trinity Burial Ground (MMS866; non-designated) and the wall of the burial ground on its western, eastern and northern sides which would be removed by

construction work to the A63 Castle Street. Landscaping of the burial ground would return some of the burial ground to amenity use. This would mean only approximately one third of the burial ground being permanently removed by the Scheme. However, there would also be a permanent negative impact to setting of the remaining 70% of the burial ground caused by the presence of the realigned road. Overall these impacts would have a permanent large significant adverse effect.

- 4.5.65. I agree with that assessment. The Trinity Burial Ground is one of the key open spaces within the OTCA and contributes to its significance. Accordingly, I have taken the harm to the Burial Ground into account in my assessment of harm to the OTCA.

Trinity Burial Ground – burials and archaeology.

- 4.5.66. The removal of part of the Burial Ground would lead to the issue of dealing with the buried remains that are present there. I consider that issue here.
- 4.5.67. I asked at ISH3 [[EV-008](#)] if any options for the road could have avoided the Burial Ground, but the Applicant indicated that the proposed scheme engineered out conflict with the Burial Ground as far as possible. It appears to me that any major improvement to the Mytongate junction is likely to affect the Burial Ground to an extent.
- 4.5.68. The Burial Ground is not a designated heritage asset, but it is considered by Historic England as being of national importance (Statement of Common Ground with Historic England, 1.2.6) [[REPR17-009](#)]. It was in use for about 80 years and records indicate about 44,000 burials in that time (ES Appendix 8.1, 2.4.27) [[APP-048](#)]. The Applicant has sought to understand the number of bodies that would need to be removed as a result of the scheme. Analysis of records of burials has been supplemented with trial trenching to understand the conditions of remains in the Burial Ground. The Applicant estimates that potentially 16,000-19,000 burials may be contained within the area affected by the Scheme (ES, 8.5.20). It has secured a faculty from the Diocese of York [[REP3-001](#)] to allow the removal of bodies from the affected part of the site, and plans to re-bury them in the retained part.
- 4.5.69. It is common ground that the buried remains at the site are of archaeological value and that analysis of them needs to be carried out, but there is disagreement about their significance and the approach to their evaluation and, in particular, how many of the exhumed remains should be analysed.
- 4.5.70. It is estimated that 70% of the buried remains to be disturbed are likely to be more than 25% complete and therefore suitable for analysis. This gives an estimated total number of exhumed articulated remains of around 11,200 to 13,300. (ES Appendix 8.1, Paragraph 2.4.29) [[APP-048](#)]. The Applicant's proposal is to analyse a sample of 10% of the buried remains excavated (Written Submission of Applicants case put orally at ISH3 on 6th June 2019, 6.1.3) [[REP3-009](#)].

- 4.5.71. Historic England would like to see a sample size of 3,000-5,000 analysed (D7 submission, Paragraph 2.5) [[REP7-011](#)]. In support of that position it refers to two published documents: '*Guidance for Best Practice for the Treatment of Human Remains Excavated from Christian Burial Grounds in England*' (2017); and '*Large Burial Grounds: guidance on sampling in archaeological fieldwork projects*' (2015), both published by the Advisory Panel on the Archaeology of Burials in England. It regards this site as a 'unique opportunity to understand the way in which populations and places changed at this crucial time in the history of Hull, the region and the nation' (Relevant Representation, 6.5.5) [[RR-019](#)].
- 4.5.72. At ISH3 [[EV-008](#)] I queried the adequacy of the sample size proposed. The Applicant's representative disagreed with Historic England's assessment of the potential value of the Trinity Burial Ground remains for research purposes, largely because of the difficulty in identifying individuals. The Applicant advises that there are no available burial plot records and a limited number of surviving gravestones and memorials (only around 390, with about 300 recognisable names). Consequently, it seems unlikely that a significant proportion of the assemblage could be identified as named individuals. There also appears to be nothing buried with the individuals to help understand the backgrounds of those buried in the various parts of the ground. This reduces the potential for examining specific family groups and case studies for individuals (Written Submission of Applicants case put orally at ISH3 on 6th June 2019, Paragraph 6.1.4) [[REP3-009](#)].
- 4.5.73. At ISH3 [[EV-008](#)] I enquired about the process of analysing the remains and was advised that they would be analysed on the site, before being re-buried in the retained part of the Burial Ground. This is to comply with the terms of the Faculty and also to ensure that the work can be completed in the time available (Written Submission of Applicants case put orally at ISH3 on 6th June 2019, Paragraph 6.1.6) [[REP3-009](#)]. The Applicant advises that, as well as osteological analysis on-site, sub-sampling will be undertaken for biochemical analysis (eg DNA, isotopic) which will involve destructive techniques to be conducted off-site. Details of this are provided in the Trinity Burial Ground Methodology for the Clearance of Burial Remains and Archaeology Works (Statement of Common Ground with Historic England) [[REP7-009](#)].
- 4.5.74. At ISH3 [[EV-008](#)] the Applicant accepted that the guidance referred to by Historic England would generally point towards a larger sample size, but also considered that it should be considered with regard to the circumstances of the case. I agree with that view. It is clear to me that the guidelines must be applied with a large degree of professional judgement. In this case I am mindful that the Applicant's stance was supported by HCC's Principal Archaeologist, who advised during ISH3 that she considered the Applicant's general approach and sampling proposals to be satisfactory.
- 4.5.75. The Applicant proposes to carry out analysis of the buried remains primarily on site. Historic England considers that a better approach, compliant with best practice, would be for the remains to be stored off-

site for up to 10 years to allow for the securing of future funding and research opportunities of the exhumed remains (SOCG with Historic England) [REPR17-009]. However, this approach has to be seen in the context of the constraints imposed by the Faculty, and the timescales and practicalities of the NSIP, including the need to complete the works and landscaping at the Trinity Burial Ground in a reasonable timeframe.

4.5.76. I appreciate that, where sampling is used, larger samples allow more effective understanding of the population by having sufficient numbers of people of differing ages, health and so on. However, this ideal needs to be weighed against the practical considerations of the time and cost of doing so, taking account of the value of the information to be derived.

4.5.77. Overall, having considered all the evidence presented to me during the Examination, including reference to relevant guidance, I regard the Applicant's proposals relating to burials at the Trinity Burial Ground to be satisfactory.

Beverley Gate Scheduled Monument

4.5.78. This scheduled monument lies in a pedestrianised area in the commercial centre of Hull. Excavations in the 1980s revealed a section of Hull's former town wall, and an 'amphitheatre' has been created so that this can be viewed.

4.5.79. I sought clarity regarding how the scheduled monument would be affected throughout the Examination. I raised the matter at both rounds of written questions (ExQ1.5.8 and ExQ2.5.2), ISH3 and ISH5 and also in the Rule 17 request of 13 September [PD-017]. The Applicant indicated that the only potential effect would be as a result of laying services in the vicinity of the Scheduled Monument and has engaged with the utility company on the matter. By the close of the Examination, the Applicant had established that any services would be shallowly laid and would consequently not intrude into the scheduled area, which starts at 500mm below existing ground level (Rule 17 Deadline Submission - Applicant's Comments on additional requests for information from rule 8(3) and Rule 17) [REPR17-002].

4.5.80. However, there is not complete certainty on this point. When I sought clarification in the 13 September Rule 17 request [PD-017], the Applicant advised (Applicant's Comments on additional requests for information from rule 8(3) and Rule 17) [REPR17-002]:

The provision for works affecting the Scheduled Monument should be retained and amended in the DCO with a requirement, should it prove that the service infrastructure is at a deeper level, works will be halted in order to allow the contractor time to liaise with Historic England and agree a revised scheme of work and appropriate archaeological strategy. (Rule 17 Deadline Submission - Applicant's Comments on additional requests for information from rule 8(3) and Rule 17) [REPR17-002].

4.5.81. This response was accompanied by the Applicant's final preferred dDCO [REPR17-004], which includes a new Requirement (R16) setting out a

procedure to be followed in the event that services do, in fact, need to intrude into the scheduled area. In my view the wording of the submitted Requirement needs to be amended, a matter I deal with in Chapter 8. Nevertheless, subject to that, the matter can be addressed with a Requirement.

4.5.82. Historic England outlined its views on the Scheduled Monument in its D7 response [REP7-011] and sets out steps that it regards as necessary in order to address its concerns. These include clearly establishing that the works will be in the uppermost 500mm in a revised archaeological strategy, requiring archaeological supervision of the works and stopping works and consulting with Historic England in the event that service infrastructure is deeper than 500mm. A revised Requirement would be consistent with this.

4.5.83. I conclude that, subject to the necessary revisions to R16, the proposal would be satisfactory in terms of its effect on the Beverley Gate Scheduled Monument.

Archaeological strategy.

4.5.84. Historic England is critical of the Applicant's Archaeological strategy, regarding it as inconsistent and not in line with current Historic England or Chartered Institute for Archaeology guidance on good practice (Written Representation – D1) [REP1-017] and (Deadline 7 Submission - comments on the Applicant's Final Preferred DCO) [REP7-011]. I sought clarity on this at the first round of questions (ExQ1.5.6). I also raised the issue at ISH3 [EV-008].

4.5.85. Historic England considers that:

The proposed improvement of the A63 offers an unparalleled opportunity to understand the archaeology and origins of a provincial English city. The long, horizontal transect through the southern and western part of the city has the potential to allow investigation from the earliest prehistoric deposits to the early modern character of Hull. (Deadline 2 Submission - Response to Examining Authority's Questions) [REP2-011].

4.5.86. It criticises the Applicant's strategy for being spread over several documents and says it is confused and contradictory (Written Representation – D1) [REP1-017]. It also says that it is unclear about the impact of the scheme on archaeological deposits and that mitigation proposals are inadequate.

4.5.87. Relevant guidance is provided by the Chartered Institute for Archaeology (CIfA) 'Standards and guidance for archaeological excavation' (December 2014) ('the CIfA Standards') and also in Paragraph 189 of the NPPF, which advises that:

Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

- 4.5.88. Although there is no single document to encapsulate the Applicant's 'archaeological strategy', I see no reason why there should be one. That said, it is important that the Applicant's approach is clear, coherent and in reasonable accordance with relevant guidance and good practice.
- 4.5.89. In this case there has, so far, been a heavy reliance on desk-based assessments ISH3 ([EV-008](#)), but that is not surprising. The scheme involves upgrading an existing road in an urban area, with consequent limited opportunity for field investigation (Written Submission of Applicants case put orally at ISH3, Paragraph 7.3.5) [[REP3-009](#)]. Once the scheme is underway, a watching brief will be maintained. At ISH3 [[EV-008](#)], both the Applicant and HCC's Principal Archaeologist regarded this as a correct approach, in line with current guidance. Moreover, some significant field work has taken place where possible, notably at Trinity Burial Ground, as well as at Humber Dock Street and Princes Dock Street (Written Submission of Applicants case put orally at ISH3, Paragraph 7.3.5) [[REP3-009](#)].
- 4.5.90. The Applicant confirmed during ISH3 [[EV-008](#)] that the archaeological project design for the watching brief for the road had not yet been prepared. I was advised that this was because it was dependent on the detailed design of the scheme, which would clarify detailed design on matters such as utilities. However, an archaeological project design management plan is a requirement of the CEMP, as required by R4. The CEMP will be based on the existing OEMP [[APP-072](#)], which sets out some of the archaeological project design requirements. Archaeological Project Designs have been completed for the Trinity Burial Ground and the Princes Quay Bridge (ES Appendix 8.7 and 8.8) [[APP-048](#)].
- 4.5.91. Clearly, the reliance on a watching brief during the development means that there is currently some uncertainty regarding the effect of the scheme on archaeological deposits. However, the Applicant has sought to reduce uncertainty with the desk-based work and the limited digging and analysis it has been able to carry out. This has included the geotechnical investigation of ground deposits, which helped an understanding of the depths to which archaeology might survive (Written Submission of Applicants case put orally at ISH3, Paragraph 7.3.5) [[REP3-009](#)]. I was advised at ISH3 [[EV-008](#)] that this has indicated that archaeology is not likely to survive in the initial 700 – 800mm depth below the existing road surface, although there may be high value surviving archaeology at depth. Such deeper deposits would only occur around sewer diversions and the Mytongate Junction where works would be at depth. The Applicant advises that the rest of the Scheme would involve formation works at up to 1m depth and, as such, impacts on remains would be fairly minimal along the route of the A63 [[REP3-009](#)].
- 4.5.92. Overall, given the constraints that apply to this site, I consider that the Applicant has adopted an appropriate approach to addressing archaeology along the route of the road, in accordance with the CiFA standards. While I have considered carefully the representations from Historic England, the CiFA standards rely heavily on judgement, and I am mindful also of the positive views offered by the Applicant's

representatives and HCC's Principal Archaeologist at ISH3 [[EV-008](#)] regarding the Applicant's approach.

- 4.5.93. Clearly there is still much detail and additional work to be provided, but that would be forthcoming as the project progresses, and is secured via R4 and R9 [[REPR17-004](#)]. The Applicant has amended R9 to improve its clarity, a change that Historic England supports (Historic England's Response to ExAs Further Questions) [[REP5-054](#)]. Although Historic England has identified some apparent inconsistencies in some of the Applicant's documentation about archaeological potential along the route, I am not persuaded that this undermines the overall suitability of the Applicant's approach.

Temporary effects during construction

- 4.5.94. The road is a major feature in this locality and the setting of a wide range of heritage assets would be temporarily affected during construction. These are identified in ES Appendix 8.3, Table 1.2 (Predicted temporary construction effects on key historic buildings) [[APP-048](#)]. Key ones include:

- Statue of King William III and Flanking Lamps - moderate adverse
- Trinity Burial Ground - large adverse
- Old Town conservation area - varies. The impact would be greatest in the area of the Trinity Burial Ground and the Docklands, where the effect would be moderate adverse.
- Warehouse No. 6 – Moderate adverse
- Castle Buildings – Moderate adverse
- Princes Dock – Slight adverse
- Humber Dock – Slight adverse

- 4.5.95. While any adverse effect is undesirable, it is an inevitable outcome of carrying out a project such as this in an area rich with heritage assets. In my judgement, none of the temporary construction effects is of an importance comparable with the permanent effects I have highlighted elsewhere. Furthermore, they can be mitigated by good construction practice, which can be secured through R4 (the CEMP). Accordingly, these matters weigh only very lightly against the scheme.

Opportunities to enhance heritage assets or their settings.

- 4.5.96. Paragraph 5.130 of the NNNPS advises that the SoS should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. Paragraph 5.137 says that applicants should look for opportunities for new development within CAs and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance.
- 4.5.97. In ExQ1.5.7 [[PD-006](#)] I asked whether the scheme takes any opportunities to enhance heritage assets or their settings and what else, if anything, could be reasonably achieved. In its response (Response to Examining Authority's Written Questions) [[REP2-003](#)] the Applicant refers

to the need for the scheme to remain within budget and achieve value for money. It advises that consultation with regard to the reinstatement of Trinity Burial Ground have been undertaken with the Diocese of York, with a view to retaining the existing character of the area and the look and feel of a burial ground.

4.5.98. The Applicant also advises [[REP2-003](#)] that Highways England has a series of ring-fenced funds to address a range of issues beyond the traditional focus of road investment, known as *Designated Funds*. One of these funds deals with improvements to the environment, including cultural heritage elements. The A63 Castle Street scheme has secured additional funding from Designated Funds to support cultural heritage as follows:

- A £90,000 feasibility study to assess the proposal to create a visitor attraction to exhibit South Block House, a fortification built by Henry VIII in 1541-42.
- £4,000,000 to support Hull Minster. This funding will allow for a number of improvements to Hull Minster including a new extension, which will include a visitor and heritage centre with an exhibition space included within.
- A £50,000 feasibility study to assess creating a dry dock for the Spurn Light Ship.

4.5.99. It is not clear from the information before me that the designated funds are dependent on the delivery of this NSIP. Overall however, and setting aside the specific instances of harm to heritage assets which I have already taken into account, I find that the Applicant has generally taken the opportunity to enhance heritage assets where appropriate.

Conclusion - the Historic Environment

4.5.100. My conclusions on this topic are as follows:

- Work No 30 of the Applicant's preferred DCO [[REPR17-004](#)] would result in substantial harm to the Grade II listed Earl de Grey public house and there is conflict with the NNNPS and the Hull Local Plan as a result. If the alternative 'permitted scheme' were implemented instead of Work No 30 in respect of the Earl de Grey, the harm to the building would be less than substantial.
- There would be harm to the setting of the Grade II listed Castle Buildings arising primarily from the demolition of the Earl de Grey.
- There would be a limited negative effect on the setting of the Grade I listed Statue of King William III and Flanking Lamps.
- There would be permanent visual harm to the Trinity Burial Ground, a non-designated heritage asset.
- The proposals relating to archaeology throughout the scheme and buried remains within the Trinity Burial Ground are satisfactory.
- A range of impacts to the buildings and open space within the OTCA (including those cited above) means that there would be less than substantial harm to the OTCA.

- There would be less than substantial harm to the setting of a range of designated heritage assets, as set out in the ES. This would result in less than substantial harm to the significance of those assets.
- There should be no harm to the Beverley Gate Scheduled Monument or to its setting. Unforeseen circumstances could be addressed with R16.
- There would be a range of negative impacts on heritage assets during the construction stage, but these are within acceptable bounds
- Aside from specific issues set out above, the Applicant has generally taken the opportunity to enhance heritage assets where appropriate, in accordance with paragraphs 5.130 and 5.137 of the NNNPS.

4.6. TOWNSCAPE AND VISUAL IMPACT

Introduction

- 4.6.1. Since the A63 runs through the historic core of Hull, there is a strong interrelationship between townscape matters and the historic environment. Nevertheless, some matters relating to the new road and structures have a more general effect rather than an impact solely on the City's historic fabric, and I address those matters here. Matters whose impact relates principally to the historic environment are considered in the previous section.

Policy Background

- 4.6.2. The NNNPS establishes that projects need to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate (paragraph 5.149)
- 4.6.3. Outside nationally designated areas, the SoS should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation (paragraph 5.157).
- 4.6.4. Paragraph 5.158 states that the SoS will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development.
- 4.6.5. The Hull Local Plan includes a range of relevant policies including:
- Strategic Priority 6 - Protect and enhance the city's historic assets
 - Strategic Priority 9 - Protect and enhance the city's natural assets
 - Strategic Priority 11 - Make Hull more attractive to residents, businesses and tourists
 - Policy 9 – City Centre
 - Policy 14 – Design

- Policy 15 - Local distinctiveness
- Policy 16 - Heritage considerations
- Policy 29 – New Roads and road improvements
- Policy 45 - Trees

Examination and Issues

- 4.6.6. The Applicant has carried out an analysis of the visual effects of the scheme in a range of documents. It carried out a landscape and visual impact assessment (LVIA) of the construction and operation Phases of the Scheme. The assessment is set out in chapter 9 of the ES [[AS-011](#)]. The method statement for the assessment is set out in Appendix 9.2 'Landscape and visual method statement' [[APP-049](#)].
- 4.6.7. The ES [[APP-011](#)] identifies at Paragraph 9.6.24 that 'The 'on line' nature of the Scheme means that most of the visual receptors already experience views of the existing highway infrastructure and associated traffic movements. This will moderate the degree of visual change that would be experienced as a consequence of the Scheme'. I agree with that view and have considered the scheme accordingly.
- 4.6.8. The LVIA identifies a range of 9 Project Landscape Character Areas (PLCAs) which are considered to capture the principal variations in landscape character and sensitivity within the study area surrounding the final Scheme (ES Appendix 9.4, Paragraph 1.1.6) [[APP-049](#)] and considers the effect of individual elements of the scheme on these. It also considers landscape features and identifies 12 representative viewpoints and various categories of visual receptor. (ES, 9.5.4) [[AS-011](#)]. Detailed assessments of the effects of the Scheme on various landscape and visual receptors are set out in Appendices 9.3 to 9.6 [[APP-049](#)].
- 4.6.9. At ES Paragraph 9.8.55 [[AS-011](#)] the Applicant identifies principal sources of visual change arising from the scheme. As it points out, the context for this is that this is a highway scheme largely located within an existing highway corridor. The sources of visual change identified are:
- the proposed Princes Quay and Porter Street Bridges
 - the comprehensive reconfiguration of the Mytongate Junction
 - other sections of highway widening – especially as a consequence of the new slip roads around the new Mytongate Junction but also at other junctions including those at Market Place and High Street
 - increased visual openness between the highway and surrounding areas as a consequence of tree removal
 - the introduction of a 900mm high central solid concrete step barrier (CSB)
 - changes to the appearance of the Trinity Burial Ground and Holiday Inn frontage
 - the introduction of new signage and lighting
 - the removal of the Myton Centre building and the creation of a new area of public open space
 - the dismantling of the Grade II listed Earl de Grey public house

- the introduction of the proposed new pumping station close to the vehicular entrance of the Holiday Inn
- 4.6.10. I agree that these matters are all relevant to the visual effect of the scheme. I have considered the effect of the scheme on the Trinity Burial Ground and the Earl de Grey in the previous section and do not return to them here.
- 4.6.11. During the Examination, HCC raised the matter of the central reserve barrier proposed as part of the scheme. This was raised in the LIR [[REP2-016](#)] and was subsequently discussed at ISH1 (Traffic and Movement), [[EV-006](#)] and again at ISH5 (DCO and outstanding matters) [[EV-010](#)]. It was the subject of a written question (ExQ2.7.1) [[PD-011](#)] in which I sought to establish whether a design which would be acceptable to both the Applicant and HCC could be achieved.
- 4.6.12. At ISH1 it was agreed that the Applicant would arrange a workshop to allow the matter to be discussed. This took place on 27 June 2019 and was attended by representatives of Highways England and HCC (SoCG with HCC) [[REP7-008](#)]. The Applicant subsequently (at D6) produced a *Review of Central Barrier Options* [[REP6-014](#)].
- 4.6.13. The SoCG with HCC [[REP7-008](#)] records the issue as 'Not agreed'. This is clearly a significant disputed matter and it is the first main issue in this section of the report.
- 4.6.14. The scheme proposes 2 bridges for NMUs – The Porter Street Bridge and the Princes Quay Bridge. The visual impact of these structures was not widely raised during the Examination. Nevertheless, they would be significant new structures which will have a townscape effect, and they form the second main issue.
- 4.6.15. The scheme will have a very substantial effect in terms of trees, green space and landscaping. Effects include:
- The loss of significant areas of amenity green space, in particular part of the Trinity Burial Ground.
 - The provision of a significant new green open space at land at the Myton Centre.
 - The removal of a large number of trees and the planting of new trees
 - New surfacing and hard landscaping proposals
- 4.6.16. All of these matters are raised in the LIR [[REP2-016](#)]. Historic England raised the question of the Applicant's landscape proposals in its written representation [[REP1-017](#)] and pursued the matter in subsequent submissions. The Applicant's landscaping proposals are set out in an illustrative plan annexed to the ES (ES Figure 9.8) [[APP-035](#)] and the tree removal proposals are set out in ES Figure 9.9 [[APP-035](#)].
- 4.6.17. Trees, green space and landscaping consequently are the third main issue in this section.

- 4.6.18. The visual effect of the Mytongate junction was not widely referred to during the Examination. However, it is the single most substantial element of the scheme and it is important to consider its visual effect. I have also considered the lesser impact of changes to the Market Place junction. Together, these form the fourth issue in this section.
- 4.6.19. The proposed pumping station would be located on the southern side of the Mytongate junction. The site lies within the OTCA and is opposite the Whittington and Cat public house, a non-designated heritage asset, and close to the Grade II listed Railway Dock and the non-designated Trinity Burial Ground (LIR) [[REP2-016](#)]. The question of the appearance of the pumping station was raised by HCC in the LIR [[REP2-016](#)] and is the fifth issue in this section.
- 4.6.20. Finally, I consider visual effects during construction of the scheme.
- 4.6.21. Accordingly, the main issues to be considered in this section are:
- The central reserve barrier
 - The proposed NMU bridges
 - Trees, green space and landscaping
 - Changes to the Mytongate and Market Place/Queen Street junctions
 - The proposed pumping station
 - Effects during construction

ExA's assessment

The central reserve barrier

- 4.6.22. The scheme includes a central reserve barrier along its length. It is common ground that some form of barrier is needed for safety reasons, but the particular design proposed was the subject of considerable debate during the Examination.
- 4.6.23. The Applicant's proposal for the central reserve barrier is described at paragraph 2.6.8 of the ES [[AS-011](#)] as follows:
- The central reserve would be a minimum width of 1.8m, widening to accommodate sight lines as necessary. A 900mm high rigid concrete step barrier (CSB) would be installed.*
- 4.6.24. The barrier is shown in section in some of the engineering drawings and sections, for example TR010016/APP/2.6(L) [[APP-009](#)]. It is also shown in various viewpoints, for example Drawing No 514508 - MMSJV - ELS - SO - DR - L - 000019-162 in ES Appendix 9.3, which is reproduced below.



Figure 12: View from the ES showing the central reserve barrier.

- 4.6.25. The ES takes account of the barrier in its assessment of the visual effect of the scheme on various receptors. It is referred to multiple times in Table 1.1 at Appendix 9.6 (Effects on visual receptors) [[APP-048](#)]. This notes that it would contribute to 'a sense of separation between the north and south of the road'. FRR2 Castle Street (A63 east of Mytongate and FRR14 Market Place are 2 examples where this comment is made.
- 4.6.26. The Applicant highlights the good performance of the CSB and benefits in terms of low cost and maintenance. These matters are discussed in 'Review of Central Reservation Barrier Options' [[REP6-014](#)].
- 4.6.27. HCC raised concerns about the appearance of the barrier in its LIR [[REP3-016](#)], which suggested that, 'the appearance of the barriers will fight against the objective of enhanced connectivity between the north and south'. In its post hearing submissions [[REP3-215](#)] HCC suggested the inclusion of a Requirement to address the design of the barrier.
- 4.6.28. As I have set out in 'Examination and Issues' above, the barrier was the subject of further consideration and representations throughout the Examination. The SoCG between the Applicant and HCC [[REP7-007](#)] records the matter as 'Not agreed', with HCC preferring a trief kerb and pedestrian guard rail option.
- 4.6.29. The 'Review of Central Reservation Barrier Options' document was submitted by the Applicant at D6 [[REP6-014](#)]. This considered 3 options for the barrier – the concrete central reserve barrier (the Applicant's proposal), a trief kerb and pedestrian guardrail and parapet-style fencing. Paragraph 1.3 of the review advises that the options to be reviewed were decided at the workshop. The review concluded that the proposed concrete barrier should remain unchanged.
- 4.6.30. HCC commented on the report in its D7 submission [[REP7-010](#)]. It raised a series of technical points and concludes that, '*Whilst the Council would*

question the conclusion reached in the report, in many respects the difference between CCRB and Trief/Guardrail (in most categories) is shown to be quite small and indeed the conclusion does not appear to rule out Option 2' (Option 2 is the Trief kerb and pedestrian guardrail).

- 4.6.31. In my view, with its concrete construction and utilitarian design, similar in appearance to the concrete barriers often used on motorways, the barrier would have the effect of reinforcing the major road character of the A63. It would do nothing to help the road to integrate into its surroundings and would emphasise the severance effect of the road. This is recognised by the ES, with the assessment of the effects on landscape character at Appendix 9.4 [[APP-049](#)] making a number of references to the increased prominence of the road and sense of physical separation arising from the barrier. In considering the effect on PLCA 7: Old Town, the ES [[AS-011](#)] states at Paragraph 1.8.11 that, in the year of opening, the barrier *'would form a detracting engineered element in contrast to the historic buildings located on the A63 increasing the physical prominence of the road. The barrier would enhance the visual separation of this area from PLCA 8 with which it previously shared a sense of visual connection'*.
- 4.6.32. I have taken account of the fact that the existing road incorporates barriers to separate the lanes. However, these are of a different design and materials and the proposed barrier would be more substantial and visually intrusive in this city centre location. The barrier would be in clear view from a wide range of public viewpoints along the route.
- 4.6.33. Although the Applicant did not amend the proposed barrier during the Examination, it says that it will continue collaborative discussions with HCC in order to attempt to find a mutually agreeable solution [[SOCG with HCC – REP7-008](#)]. While the *Review of Central Reservation Barrier Options* document [[REP6-014](#)] suggests that the concrete barrier is the best option in terms of safety, it does not clearly establish that the other options are unacceptable in that respect. I also note that HCC does not agree with many aspects of the report [[REP7-010](#)]. From the information before me it has not been shown that the proposed CSB is the only acceptable option in terms of road safety.
- 4.6.34. However, the CSB is the only option that has been fully assessed. The *Review of Central Reservation Barrier Options* [[REP6-014](#)] states that, *'As the CCRB [Concrete central reserve barrier/CSB] was included in all Road Safety Audits throughout the scheme, any changes to the barrier proposal will have to be highlighted in any subsequent RSAs. Secondly, there is no guarantee that the RSA team would approve or accept alternative proposals'*.
- 4.6.35. It is important to note that the Applicant's preferred dDCO [[REPR17-004](#)] includes an amended version of R12, which deals with fencing and barriers. As a result of the revisions R12 now includes specific reference to the central reserve barrier and requires details and specifications for the scale, design and materials of the central reserve vehicle restraint system, including any associated fence, barrier, wall or other means of

enclosure, to be submitted for the Secretary of State's approval following consultation with the planning authority. Thus, there is scope for a revised design to come forward if a safe and suitable design can be developed.

4.6.36. The Review of Central Reservation Barrier Options [\[REP6-014\]](#) identifies a range of other advantages of the CSB, including lower cost and maintenance. While HCC queries these matters [\[REP7-010\]](#), I have insufficient information to reach a fully informed view. Thus, there remains uncertainty regarding the other options.

4.6.37. Drawing these threads together, I conclude that:

- The central reserve barrier as proposed would be harmful aesthetically in this city centre context.
- R12 provides the opportunity for further consideration of other options; but
- There can be no certainty that any improved design that is satisfactory in terms of safety and its appearance can be arrived at.

4.6.38. It follows from this that any decision to make the Order must be made on the basis that the proposed concrete barrier might, in fact, prove to be the only option that can be proceeded with. However, given the Applicant's stated intention of continuing collaborative discussions with HCC in order to attempt to find a mutually agreeable solution, it remains possible that a more satisfactory alternative could be agreed and approved under R12. In my view it is desirable that this takes place and, on that basis, the baDCO leaves R12 unchanged. My assessment, on the basis of the concrete barrier put forward by the Applicant, is that the central reserve barrier would cause significant visual harm.

Bridges

4.6.39. The scheme includes 2 bridges of very different character for pedestrians and cyclists – the Porter Street Bridge and the Princes Quay Bridge. These appear as Work Nos 12 and 31 in Schedule 1 of the dDCO [\[REPR17-004\]](#).

4.6.40. The Porter Street Bridge would be at the western end of the scheme close to Porter Street and St James Street and would be a direct replacement for an existing light-controlled crossing. It would be a fairly traditional structure of painted metal with concrete columns and would provide steps and ramps.

4.6.41.



Figure 13: The Porter Street Bridge (from ES Figures 9.6)

- 4.6.42. The visual effect of the bridge is considered at paragraph 1.3.17 of ES Appendix 9.5 [APP-048] which states that, taking account of new tree planting along this section of the road, *'the presence of the Porter Street Bridge, solid central road barrier, crash barrier and increased signage would continue to elevate the prominence of the highway within the view. The magnitude of visual change in year 15 of operation would be minor'*.
- 4.6.43. In my view, the new bridge would clearly be a substantial and highly prominent addition to the street scene. Its rather utilitarian appearance would be ameliorated to some extent by planting nearby, although the effect of this would be limited due to the height of the bridge. Its context, as part of the infrastructure associated with a major road in an urban area, means that it would not appear incongruous, and would only cause limited visual harm as a result.
- 4.6.44. The bridge would be close to the Grade II listed Vauxhall Tavern. This is a three-storey, late 18th century, yellow-brick building with granite faced ground floor. Appendix 8.2 of the ES (Gazetteer of Assets) [APP-049] identifies that the principal aesthetic value of the building lies in the exterior, in the shallow bow sash windows to the first and second floor. It also has communal value as a public house. Appendix 8.2 of the ES (Gazetteer of Assets) [APP-049] considers that the setting of the asset has a minimal contribution to its value. I agree with that assessment. The setting of the building, located on the corner of the A63 and St James Street, is already dominated by the road. While its significance derives in part from its corner plot setting, that would not change as a result of the scheme. Consequently, while the setting would be affected by the bridge, the building's significance would not be compromised.
- 4.6.45. Overall, I conclude that the bridge would cause only limited visual harm.

- 4.6.46. The Princes Quay Bridge is of a very different, seemingly unique design. It would be located between Princes Quay on the northern side of the A63 and Humber Dock Marina to the south. Its construction necessitates the loss of the original north wall of the Humber Dock (Grade II listed) and it would run close to the Grade II listed Warehouse No 6 and Princes Quay Dock, clearly affecting their setting. It would include steps and ramps.



Figure 14: The proposed Princes Quay bridge

- 4.6.47. This structure has clearly been designed to have an impact and to add meaningfully to the townscape. It is a major project in its own right. Indeed, it already has planning permission and listed building consent and work on it is underway (see section 2.3 of this report). Consequently, the appearance of the structure and its effect on the nearby listed buildings has already been considered.
- 4.6.48. The ES [APP-011] assesses the impact of the bridge as not significant (Paragraph 9.8.58). This is not to say that it has no impact, but rather that people will have different views about it – some positive and some negative. I agree with that assessment.
- 4.6.49. In view of the fact that the bridge already has permission and work is well under way on it, there seems virtually no prospect of it not being completed, irrespective of whether the DCO is made. This reinforces my view that, for this assessment, the bridge should be regarded as a neutral impact in townscape terms.

Trees, green space and landscaping

- 4.6.50. Around a third of the Trinity Burial Ground is to be lost to the development. Because of its historic significance, I have considered the effects of this in the Historic Environment section.
- 4.6.51. The Scheme seeks to offset the loss of trees at the Burial Ground with the addition of approximately 0.44ha of landscaped green space on the site of the Myton Centre (dDCO Work No 13) [REPR17-004]. A further approximately 0.25ha of hard and soft landscape is proposed on Porter Street, Cogan Street and William Street to integrate the surrounding area with the proposed green space (ES Paragraph 9.7.9) [AS-011]. While

these works will not directly compensate for the particular space and mature trees to be lost at the Burial Ground, the introduction of new green space would provide a welcome additional soft-landscaped element to the scheme and would be a positive impact in townscape terms.

- 4.6.52. The ES includes a Tree Survey at Appendix 9.7 [[APP-049](#)]. This gives details of the trees that would be removed to make way for the Scheme. Aside from the proposals for the Burial Ground, the principal impact of the scheme on landscape features would be the removal of existing trees along the A63 road corridor. The widening of much of the highway, the major reconfiguration of the Mytongate Junction and the introduction of two new bridges would all require the removal of existing trees within the junction, central reserves, and along verges and adjacent areas on either side of the road. Approximately 317 trees would need to be removed in total, including those at the Trinity Burial Ground. (ES, 9.8.46) [[AS-011](#)].
- 4.6.53. Approximately 362 replacement trees and shrubs are proposed where there is sufficient space along the new route (ES, 2.6.82) [[AS-011](#)]. This should result in an overall increase in the number of trees along the route compared to the existing situation. The proposal is illustrated in ES Volume 2, Figure 2.10 Environmental masterplan [[APP-025](#)]. The majority of new trees would be planted as standard, semi mature specimens. The ES advises that the species have been selected for their resilience to both a maritime and roadside setting and include a range of broadleaf and evergreen species. In time, the new trees will make an important contribution to mitigating the loss of existing trees. However, they will take time to mature and will have a lesser impact in the initial years.
- 4.6.54. The ES (Paragraph 9.10.2) [[AS-011](#)] summarises the position as, *'significant moderate adverse visual effects due to the removal of many trees from along the highway corridor including many large, specimens, the screening and/or visually softening effect of this tree cover along the corridor would not be fully reinstated within 15 years of completion of construction'*. I agree with that assessment.
- 4.6.55. Landscaping of the scheme is to be controlled by Requirement 5, which requires a scheme to be prepared, approved and implemented. The principles for the scheme are set out in an illustrative plan, which is annexed to the ES (Figure 9.8) [[APP-035](#)].
- 4.6.56. Historic England is critical of the landscaping proposals. In its Final Comments at D7 [[REP7-011](#)] it comments that, *'There is a genuine opportunity for the applicant to deliver enhancement of the public realm at those points where the Scheme intersects with the Old Town Conservation Area, an undertaking that would address our original concern about the impact of a major carriageway on an historic city centre. We have reiterated our point that an integrated landscape design rather than a piecemeal engineering approach is required'*. However, I am mindful that the scheme as a whole will be subject to a more detailed design stage, and landscaping proposals are likely to evolve. Given the nature of the scheme and its restricted, urban context, opportunities for

new landscaping are limited. The Applicant advise that landscaping across the whole scheme is the subject of ongoing discussions with HCC. Details of landscaping design are required through R5. With these matters in mind, the details that have been provided are adequate in my view.

The Mytongate and Market Place/Queen Street junctions

- 4.6.57. The change to the Mytongate junction, complete with the associated slip roads, is the most substantial engineering operation of the scheme. The decision to adopt this solution to the junction – with the A63 passing below the more minor roads – was taken in part in order to limit the visual impact it would have. Other options would have seen the A63 raised considerably to pass over other roads [Planning Statement, sections 3.4-3.5) [[APP-070](#)].
- 4.6.58. The Applicant's assessment places the junction within *PLCA3: Myton Street Commercial*, which it assesses as 'low value' in terms of landscape sensitivity (ES Appendix 9.4) [[APP-049](#)]. ES Table 9.5 (Operation Phase effects on landscape character) [[APP-049](#)] records that the scheme as a whole will have a slight adverse (not significant) landscape effect on PLCA3.
- 4.6.59. The assessment at ES Appendix 9.6 recognises that there would be a noticeable reduction in tree cover, but also notes that traffic would be less visible due to the underpass. ES Appendix 9.4 [[APP-049](#)] at Paragraph 1.4.11 states that,
- 'Following the maturity of the planting the magnitude of change within this PLCA is considered to be minor due to the slight increase in the physical prominence of the road created by the cutting and additional slip roads. However, the maturing new tree canopies would partially reinstate their softening effect upon the highway and surrounding buildings.'*
- 4.6.60. The ES (Table 15.12: Operation – views from the road) [[AS-011](#)] notes that there would be 'a reduction in the visual experienced for vehicle drivers' at the junction', since the view would be lost entirely for a period. However, the existing junction is cluttered and does not provide an attractive environment for drivers, and I attach only limited weight to this change.
- 4.6.61. I accept the assessment in the ES. While there would be some harmful aspects of the new junction, overall it would not result in significant townscape harm.
- 4.6.62. The changes to the Market Place/Queen Street junction would be far less substantial. The scheme would involve widening the eastbound carriageway to three lanes between Princes Dock Street and Market Place, with the nearside lane being marked for local traffic (ES, 2.6.3) [[AS-011](#)]. The works would result in changes to the width and alignment of the road, but its fundamental character as an at-grade junction would remain. There would be a change arising from the proposed central reserve barrier, but I consider the effect of that on the scheme as a

whole elsewhere. As now proposed, the scheme would include light-controlled crossings at the Market Place and Queen Street slip roads, but similar crossings are already in place. Figure 9.8 of the ES [[APP-035](#)] indicates new stone surfacing and planting at the junction.

- 4.6.63. I conclude that, while the works would result in some changes to the Market Place/Queen Street junction, its fundamental character would be retained.

The pumping station

- 4.6.64. The scheme includes the construction of a pumping station as part of the drainage proposals for the Mytongate underpass. This is part of Work No 24 in the dDCO [[REPR17-004](#)]. A visual representation of the building is shown at the Applicant's D1 submission *Appendix A - Arup Technical Note* [[REP1-010](#)]. The building would be a fairly modest structure located on Commercial Street next to the Trinity Burial Ground. The site lies within the OTCA and is opposite the Whittington and Cat public house, a non-designated heritage asset ES Appendix 8.2 [[APP-048](#)]. The detailed design of the building is subject to control via R13 [[REPR17-004](#)]. In my judgement the visual effect of an appropriately-designed building of the scale envisaged in this location would be neutral and neither the OTCA nor the setting of the other nearby heritage assets would be harmed.

Effects during construction

- 4.6.65. There would clearly be a very wide range of visual effects during construction. While harmful, these are unavoidable in a scheme of this scale and nature. They are documented in Chapter 9 of the ES [[AS-011](#)] and associated appendices [[APP-049](#)] and have been appropriately assessed. Appropriate mitigation measures are set out and would be delivered through the CEMP, to be secured through R4. The scheme is satisfactory in this respect.

Other effects

- 4.6.66. There would be visual effects arising from other matters raised in the ES [[AS-011](#)] including signage but, given the context of the existing road, none would have an impact that would alter my overall assessment of the proposals.

Conclusion - Townscape and Visual Impact

- 4.6.67. I conclude that:
- The concrete central reserve barrier the Applicant favours would have a harmful visual effect and would further the impression of the road severing the city. It may be possible to reduce this harm with an amended design, but it is not clear what improvements, if any, can be achieved.
 - The Porter Street Bridge would cause limited visual harm.
 - The Princes Quay Bridge will have a neutral visual effect.
 - The creation of new open space at the Myton Centre site would be visually beneficial.

- There would be visual harm arising from the loss of trees along the route, although this would be reduced over time as new tree planting takes hold.
- The landscaping proposals are adequate and would be the subject of further control via R5.
- The changed Mytongate and Market Place/Queen Street junctions would not result in significant townscape harm.
- The proposed pumping station would not be visually harmful.
- There would be visual harm during the construction phase, but this is unavoidable, would be temporary and appropriate mitigation would be secured.

4.7. SOCIAL, ECONOMIC AND LAND-USE EFFECTS

Introduction

- 4.7.1. The proposed development would have significant local social, economic and land-use effects. These include general effects arising from the changes to the road and specific impacts on particular sites and properties. Many of these impacts have been considered in other sections of this report. Here I focus on remaining matters which have social, economic or land-use implications, including impacts on local residents and businesses.

Policy Background

- 4.7.2. At Paragraph 5.174 the NNNPS advises that the SoS should not grant consent for development on existing open space, sports and recreational buildings and land, including playing fields, unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements, or the SoS determines that the benefits of the project (including need) outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities.

- 4.7.3. The NNNPS includes advice about noise. Paragraph 5.195 says that:

'The Secretary of State should not grant development consent unless satisfied that the proposals 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 life through the effective management and control of noise where possible.'

- 4.7.4. Paragraph 5.196 of the NNNPS states: *'In determining an application, the Secretary of State should consider whether requirements are needed which specify that the mitigation measures put forward by the applicant are put in place to ensure that the noise levels from the project do not*

exceed those described in the assessment or any other estimates on which the decision was based'. Paragraph 5.198 indicates possible mitigation measures and indicates that they should be proportionate and reasonable.

- 4.7.5. Paragraph 5.200 of the NNNPS says that applicants should consider opportunities to address the noise issues associated with the Important Areas as identified through the noise action planning process.
- 4.7.6. The Noise Policy Statement for England (NPSE) identifies the following three main aims:
- Avoid significant adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development
 - Mitigate and minimise adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development, and
 - Where possible, contribute to the improvement of health and quality of life through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development.
- 4.7.7. The NPSE introduces the concept of SOAEL (Significant Observed Adverse Effect Level) as being *'the level above which significant adverse effects on health and quality of life occur'*.
- 4.7.8. The Humber Strategic Economic Plan 2014-2020 [[REP5-038](#)] is supportive of the scheme, and the 2016 Review of the Plan [[REP5-039](#)] notes that, 'At present the road is at maximum capacity, which makes further development in the east of the city (where much of the demand is at present) extremely challenging'.
- 4.7.9. Strategic Priority 1 of the Hull Local Plan supports sustainable economic growth and Strategic Priority 3 and Policy 9 promote the role of the city centre as a world class visitor destination by making it a focus for major shopping, food and drink, and leisure development. Policy 42 requires open space to be lost to be replaced by equivalent or better provision in terms of quantity and quality, in a suitable location. Policy 49 seeks mitigation from noise-generating development.

Examination and Issues

- 4.7.10. The Applicant's case that there is a need for the development relies in part on the economic benefits claimed. This is set out in the Economic Case Overview at Chapter 4 the Planning Statement [[APP-070](#)], which includes a Value for Money assessment. While this was not challenged during the Examination, it is important that it forms part of my assessment and the general impact on the local economy is the first main issue.
- 4.7.11. Irrespective of any general economic effect, it is clear that the scheme will affect specific businesses due to matters including CA and TP

proposals, traffic impacts and construction impacts. The impact on specific businesses were raised in a variety of written submissions, at the OFH [[EV-002](#)], CAH1 [[EV-013](#)] and CAH2 [[EV-011](#)] and in written questions [[PD-006](#)] and this is the second main issue.

- 4.7.12. Impacts arising from noise or vibration were not extensively raised during the Examination. However, the Applicant has carried out a detailed assessment of noise and vibration impacts at Chapter 7 of the ES [[AS-011](#)]. Given the nature of the scheme and its location in an urban area close to housing and other sensitive receptions, it is included as the third issue.
- 4.7.13. The scheme includes the loss of a significant area of public open space at the Trinity Burial Ground and its replacement with new open space at the Myton Centre. These matters have already been discussed elsewhere in this report with regard to their visual impact. However, it is important to consider also the impact in terms of the provision of open space for use by the community, and this forms the final main issue in this section.
- 4.7.14. The ES [[AS-011](#)] addresses the issue of community severance at Chapter 14. However, since I have considered the issue of connections across the A63 in section 4.2 (Transportation, Traffic and Movement), and given that there is no dispute regarding the desirability of improving such connections (it being one of the 4 key objectives of the scheme, as set out in section 2.7 of the Planning Statement [[APP-070](#)]), I have not considered that matter further here.
- 4.7.15. Accordingly, the matters that I consider here are:
- General impacts on the local economy
 - Specific impacts on existing businesses
 - Impacts arising from noise
 - Changes to public open space provision.
- 4.7.16. The Applicant's position on these matters is set out in a range of documents, including:
- The ES – particularly chapters 7 (Noise and vibration), 14 (People and Communities) and 16 (Combined and cumulative effects [[AS-011](#)]).
 - ES Appendix 14.1 People and Communities – Socio-economic Profile [[APP-059](#)]
 - ES Appendix 14.2 Equality Impact Assessment [[APP-059](#)]
 - The planning Statement [[APP-070](#)].
 - Response to Examining Authority's Written Questions [[REP2-003](#)]
 - *Applicant's Comments on the Examining Authority's Further Written Questions* [[REP5-004](#)]
- 4.7.17. Together, these documents set out the Applicant's position that the scheme is beneficial in economic terms and is acceptable in terms of its effect on local businesses, noise and public open space provision.

ExA's Assessment

General impacts on the local economy

- 4.7.18. One of the main objectives of the scheme is to improve access to the Port of Hull, one of the UK's leading and fastest growing foreign-trading ports, dealing with around 11.8 million tonnes of cargo per annum (LIR), [REP2-016]. However, its location to the east of the city centre means that traffic to the port is caught up with congestion along Castle Street. The LIR advises that the competitiveness of the port, and plans for future expansion are limited by the constraints of existing road infrastructure. I have no reason to doubt that this is so.
- 4.7.19. The Applicant's Economic Case Overview is provided at Chapter 4 of the Planning Statement [APP-070] and supports the view that the scheme would bring local economic benefits. It is based on a 60 year appraisal period in accordance with Department for Transport (DfT) guidelines. Overall, journey time savings to businesses are estimated to amount to £81M over the appraisal period (Planning Statement Table 4.1) [APP-070] and there are further benefits arising from reduced vehicle operating costs, improved reliability and wider beneficial economic impacts such as the beneficial effect on the labour supply. The Applicant estimates that the wider economic benefits of the scheme will amount to £90.9M (Planning Statement, 4.3.16) [APP-070].
- 4.7.20. Furthermore, HCC advises that the scheme will help to bring forward some sites for development. The LIR [REP2-016] advises that:
- The Hull Local Plan adopted in November 2017 allocates 175 ha for additional employment development, alongside allocations for 11,700 new dwellings, including 2,500 homes and 25,000 m² net retail floor space within the city centre for the period 2016 to 2032, this scheme supports the delivery of the plan's ambition and is referenced specifically within Policy 29 of the Local Plan.*
- 4.7.21. The ES [AS-011] summarises predicted effects on the local economy at Table 14.14. This suggests that the scheme would have the potential to support the delivery of 583 net additional jobs, producing £24.7M of net additional GVA per annum.
- 4.7.22. Additionally, the scheme is estimated to deliver 100-200 jobs during the construction period (LIR, 5.7.1) [REP2-016] which would be a benefit to the local economy for a temporary but significant period.
- 4.7.23. Having reviewed this information I conclude that the scheme would result in significant economic benefits as a result of improving traffic flow through Hull and easing congestion on this section of the A63. This is reflected in the support for the scheme in strategy documents including The Humber Strategic Economic Plan 2014-2020 [REP5-038], as noted above.

Specific impacts on local businesses

- 4.7.24. The scheme runs through an area with a wide range of businesses and some of these would be affected by it during both the construction and operation phases. The ES (Paragraph 14.7.6) [[AS-011](#)] advises that in total there are more than 2,000 business and/or commercial units within the Local Impact Area (LIA) based on Ordnance Survey Address Base Plus Data. These include commercial businesses in an industrial area south of the scheme, accessed via Commercial Road, Ropery Street and St James Street, and there are retail and leisure businesses in the Princes Quay Shopping Centre and Kingston Retail Park.
- 4.7.25. The LIA also contains a mixture of commercial leisure and recreation uses, such as restaurants, small independent retailers and arts venues in the Fruit Market and areas around the marina. Commercial tourist attractions include The Deep Aquarium located to the east of the mouth of the River Hull (ES, 14.7.8) [[AS-011](#)].
- 4.7.26. During the construction phase, the scheme would have a number of direct and harmful effects on many local businesses. The reasons for this include:
- Impacts on the flow of traffic
 - The temporary re-routing of traffic and non-motorised users
 - Temporary degradation of the environment
 - The effects of noise and dust arising from the development.
 - Temporary acquisition of land.
- 4.7.27. Construction is anticipated to take approximately five years. This would be carried out in phases and, as such, not all sections of the road would be under construction for the full five-year period (ES Paragraph 14.8.18) [[AS-011](#)].
- 4.7.28. I asked about attempts to assess and minimise the effect on businesses during construction (ExQ1.6.2) [[PD-006](#)]. In response [[REP2-003](#)] the Applicant advised that communication was taking place with affected businesses and landowners throughout the process and that mitigation measures proposed included maintaining parking provision so far as possible, paving improvements to public areas, managing access for construction vehicles within the works area, traffic signage and alternative route diversion signs and the early provision of pedestrian routes across the A63 to maintain access to businesses.
- 4.7.29. Some businesses, in particular those at the Kingston Retail Park, would be affected by the changes to access arrangements – for both traffic and pedestrians - during the construction phase. The effect of the scheme on the Kingston Retail Park was considered in some detail during the Examination and was pursued in particular by EPIC (No2) Ltd.
- 4.7.30. During the construction period, restrictions at the Mytongate junction would mean that vehicles travelling east on the A63 would not be able to turn onto Commercial Road (ES 15.2) [[APP-060](#)]. EPIC were concerned that, to reach the businesses on the southern side of this section of

Castle Street, vehicles would need to continue for some distance to the Roger Millward Way (Garrison Road) roundabout in order to return and approach Mytongate from the east – a significant detour. Cars travelling eastwards would be able to leave the A63 from an earlier roundabout at Daltry Street and thereby avoid the detour. However, this route could be the subject of congestion due to the additional traffic diverted onto it. These concerns were set out at ISH1 (Traffic and Movement) [[EV-006](#)] and summarised in EPIC’s subsequent written submission [[REP3-018](#)].

4.7.31. Moreover, EPIC was concerned that HGVs would not be able to reach the western service yard of the Kingston Retail Park via the Daltry Street route due to the manoeuvre it would require at the English Street/Lister Street/Kingston Street roundabout (EPIC’s D3 submission, [[REP3-018](#)]). Furthermore, the arrangements for accessing the Kingston Retail Park’s western service yard would be permanently changed as a result of the scheme, with the scheme providing a new route from Lister Street to replace the existing Spruce Road access.

4.7.32. EPIC and the Applicant completed a signed SoCG [[REP7-006](#)]. Amongst other things, the Applicant has agreed to carry out traffic modelling on the Daltry Street roundabout to determine the impact of the diversion on customers at the Retail Park. Additionally, the Applicant is working with HCC on a study to assess potential improvements to routes that may become congested while the underpass is being constructed. In my view, these are appropriate and practical measures which have the potential to minimise the impact on the businesses at the Kingston Retail Park.

4.7.33. Pedestrian routes to the Retail Park would be affected during the construction period. In the SoCG with EPIC [[REP7-006](#)] the Applicant states that a pedestrian route at Mytongate during the works period is impractical. However, The SoCG confirms that a direct route from Ferensway to the Retail Park will be maintained for as long as possible and restored at the earliest opportunity and records this as an agreed matter.

4.7.34. EPIC and the Applicant have drafted a settlement agreement to further formalise various mitigation measures, but this had not been signed by the close of the Examination. I comment on this further in Chapters 7 and 8.

4.7.35. There would clearly be some degrading of the environment during the construction works. This could affect businesses in the area. Shops, for example, may be sensitive to the impression the local environment creates for customers. However, I am mindful that such effects are for a temporary, albeit lengthy, period. Mitigation measures are also proposed. In the case of the Kingston Retail Park, the Applicant will work with EPIC on the design of the hoardings near to the site (Statement of Common Ground with Epic) [[REP7-006](#)].

4.7.36. Access to the Holiday Inn would be permanently changed as a result of the scheme, with an existing access directly from the A63 to be closed and the sole means of access being via an existing route from

Commercial Road (Work No 26, Schedule 1 of the dDCO) [[REPR17-004](#)]. However, this appears to be a suitable arrangement and Holiday Inn has withdrawn its objection to the scheme following the completion of an option and impact mitigation deed with the Applicant. The ES considers this matter at Table 14.14 [[AS-011](#)] and records a slight (but not significant) adverse effect – a view I accept.

- 4.7.37. There would be potentially harmful effects on some businesses, including the Kingston Retail Park, due to the compulsory acquisition or temporary possession of land. I deal with this in Chapter 7.
- 4.7.38. Having considered the evidence before me and all of the matters raised during the Examination, and setting aside at this point matters relating to compulsory acquisition and temporary possession, I consider that, with appropriate mitigation, the impact of the proposed works on local businesses could be managed and would be acceptable.

Effects arising from noise and vibration

- 4.7.39. Noise and vibration was not a major topic of contention in the Examination but is considered in Chapter 7 of the ES [[AS-011](#)] and also in the LIR [REP2-016](#). There are a large number of residential dwellings located within the study area. Noise also has the potential to affect local businesses by affecting customer perceptions. Table 7.4 of the ES gives an overview of the key sensitive receptors considered in the assessment of temporary noise and vibration impacts during construction.
- 4.7.40. Sections of the A63 within the scheme site were identified as containing First Priority Locations within the first round of Noise Action Plans produced by Defra in 2011 in accordance with the European Noise Directive (ES Paragraph 7.6.4) [[AS-011](#)]. There are four Important Areas (IAs) within the study area, identified in accordance with EU requirements for noise mapping undertaken by the Department for the Environment, Food and Rural Affairs (DEFRA).
- 4.7.41. Noise measurement surveys have been undertaken to inform the existing situation. The surveys found that road traffic noise is currently a significant feature of the baseline noise climate around receptors adjacent to the section of the A63 covered by the Scheme (ES, 7.1.2) [[AS-011](#)].
- 4.7.42. The work carried out by the Applicant establishes that there is potential for significant adverse effects where construction activities are carried out in close proximity to sensitive receptors adjacent to the works. These are mainly in the area of the Mytongate Junction, dwellings adjacent to the eastbound carriageway of A63 Castle Street and those adjacent to the westbound carriageway of Hessle Road (ES, 7.1.3) [[AS-011](#)]. There would be some night time works, although these would be limited in scope (ES, 7.1.4).
- 4.7.43. The assessment of the scheme during operation is based on a comparison of predictions of the likely impacts with baseline conditions and/or the predicted conditions under the scenario of the scheme not

being implemented. It is clear that road traffic noise is a significant feature of the existing noise environment and will continue to be so, with or without the scheme. At all of the key receptors, predicted noise levels in the opening year without the scheme are at or above the Significant Observed Adverse Effect Level (SOAEL) of 68dBLA10,18hr (equivalent to 63dBLAeq,16h) (ES, 7.1.6), [[AS-011](#)].

- 4.7.44. In the majority of instances where receptors would experience increases in Opening Year noise levels, this would be below 1dB, which is assessed as negligible in the ES and not considered to be significant. However, increases of 1dB or greater in the Opening Year daytime traffic noise level would occur at 693 residential dwellings and 209 other noise sensitive properties. The resulting effects for these properties are assessed as significant adverse (ES, 7.8.49) [[AS-011](#)]. Reductions in noise levels of 1dB or more as a result of the scheme in the Opening Year are expected at 332 residential dwellings and 72 other noise sensitive properties, resulting in significant beneficial changes. These receptors are mainly in the area of the Mytongate Junction and to the east, and the benefit would be due to the lowering of the main carriageway into the underpass in this location and optimising screening provided by parapet/retaining walls (ES,7.8.50).
- 4.7.45. In the long term, more properties would experience an increase in daytime traffic noise (4,486 properties) than would experience a decrease (725 properties). This is due to traffic growth over the 15 year period (ES, 7.8.57) [[AS-011](#)]. However, the majority of properties would only experience changes in noise levels (increase or decrease) below 3dB, of which associated impacts are considered in the ES to be negligible. It is also important to note that the number of dwellings experiencing an increase in the long term with the Scheme (4,486) is lower than would experience an increase in the long term in the 'Do Minimum' (without the scheme) scenario (5,483). The Scheme therefore has a net benefit (ES, 7.8.58).
- 4.7.46. Significant adverse changes with the Scheme in the design year (an increase of 3dB or greater) would occur at 39 residential dwellings and significant beneficial changes (a decrease of 3dB or greater) would occur at 111 dwellings. Without the Scheme, 21 dwellings would experience significant adverse changes in the design year but no dwellings would experience significant benefits. Overall the Scheme in the long term provides a net benefit with respect to significant effects due to changes in noise level (ES Paragraph 7.1.10) [[AS-011](#)]
- 4.7.47. Paragraph 7.1.11 the ES [[AS-011](#)] advises that:

'Significant adverse effects are expected where increases of 1dB or greater in road traffic noise levels and where noise levels also exceed SOAEL. This occurs for 141 residential properties in the opening year and 182 residential properties in the design year with the Scheme. No significant adverse effects are expected due to an increase in noise level and exceedance of SOAEL in the design year without the Scheme. This indicates a greater number of individual properties would experience

significant adverse effects with the Scheme than without due to increases in noise level above SOAEL. However, whilst individual properties would experience significant adverse effects with the Scheme, overall fewer properties would experience noise levels greater than SOAEL due to the Scheme compared to without. The Scheme therefore provides an overall net benefit.'

- 4.7.48. The ES [[AS-011](#)] advises at Paragraph 7.9.12 that long term night time changes in road traffic noise levels with the Scheme would result in significant beneficial effects at 45 dwellings and significant adverse effects at 1 dwelling. Without the Scheme long term changes in night time noise levels would result in negligible increases but no beneficial decreases.
- 4.7.49. There are four Important Areas (IAs) within the study area, identified in accordance with EU requirements for noise mapping undertaken by DEFRA (ES Paragraph 7.1.13) [[AS-011](#)]. These extend along significant lengths of the scheme. The ES (Paragraph 7.9.13) indicates that these areas would experience a mix of generally negligible increases and decreases in noise levels, in both the short and long term.
- 4.7.50. Any dwellings at which the predicted level of road traffic noise is found to satisfy the criteria for sound insulation measures in accordance with the Noise Insulation Regulations 1975 would be offered either sound insulation measures or a grant instead (ES Paragraph 7.7.14) [[AS-011](#)].
- 4.7.51. Paragraph 7.9.14 of the ES [[AS-011](#)] advises that, during construction, there is potential for perceptible levels of vibration at receptors within 5m during vibratory roller activities and 25m during sheet piling activities. Mitigation has been proposed to minimise the impacts of vibration. It is expected that these works would be relatively short lived with respect to nearby sensitive receptors.
- 4.7.52. No adverse changes in ground-borne vibration due to operational road traffic are expected because the carriageway surface would have no significant discontinuities and the scheme is expected to improve upon the condition of the existing carriageway (ES, Paragraph 7.9.15) [[AS-011](#)].
- 4.7.53. The ES [[AS-011](#)] concludes at paragraph 7.9.16 that the scheme meets the aims of the NNNPS because:
- The implementation of the scheme avoids significant adverse impacts on health and quality of life by reducing the total number of sensitive receptors exposed to levels of road traffic noise above SOAEL in the long term below than in the case where the scheme is not implemented.
 - Adverse impacts on health and quality of life from noise during construction will be minimised by controls of working hours and management of activities to limit the duration that receptors adjacent to the scheme are exposed to noise from activities over the phases of work.

- The implementation of the scheme contributes to improvements to health and quality of life from noise by reducing the elevation of the road thereby providing screening and reducing the exposure of receptors to road traffic noise in the long-term.

4.7.54. In terms of significance of residual environmental effects, the ES advises that, '*a greater number of individual receptors are assessed as resulting in significant beneficial effects than those resulting in a significant adverse effect with the Scheme when compared to the scenario without the Scheme*' (ES, 7.9.17) [[AS-011](#)].

4.7.55. The technical evidence provided by the Applicant, as outlined above, appears comprehensive and has not been challenged. I conclude that, overall, there would be a mix of positive and negative effects arising from the scheme in respect of noise. However, on balance the effect is a positive one when the position with the scheme is compared to that without it. Impacts in terms of vibration would be limited and would be confined to the construction phase. The scheme is therefore acceptable in terms of its impact in terms of noise and vibration.

Open Space

4.7.56. The scheme includes 2 key open space interventions - the loss of part of the Trinity Burial Ground (Part of Work No 5 in Schedule 1 of the dCO) [[REPR17-004](#)] and the creation of new open space at the Myton Centre (Work No 13). Here I consider the effect of this in terms of the quantity and quality of space provision in the area. Other (visual and biodiversity) effects arising from the loss of part of the Burial Ground are considered elsewhere in this chapter.

4.7.57. I asked at ExQ1.6.6 [[PD-006](#)] whether the proposed new open space at the Myton Centre would fully compensate for the space to be lost at the Trinity Burial Ground. The Applicant responded with a detailed comparison of the 2 sites (*Response to Examining Authority's Written Questions*) [[REP2-003](#)].

4.7.58. The Applicant advises that the existing Trinity Burial Ground is approximately 0.8Ha in area and an area of approximately 0.26Ha would be lost as a result of the Scheme. Additionally, land to the west of Trinity Burial Ground (1649m²) and very small sections of William Oak Park (29m²) and Jubilee Arboretum (4m²) would also be lost to the scheme. This would result in an overall loss of approximately 0.4313Ha of public open space. Replacement land at the Myton Centre site and adjacent land would amount to approximately 0.4555Ha. The Applicant therefore considers that there would be a modest net gain in public open space. The proposed new open space would amalgamate the existing Jubilee Arboretum and William Oak Park to create an overall open space which, at about 0.8Ha, would be similar in size to the existing Trinity Burial Ground (*Response to Examining Authority's Written Questions*) [[REP2-003](#)].

4.7.59. However, these figures of the Applicant's appear to only consider the land it identifies as 'special category land' in the Book of Reference (BoR)

[[REPR17-030](#)]. As I set out in Chapter 7, 2 plots - numbered 3/1bv and 3/1by in the BoR – are not included in the list of special category open space land in Part 5 of the BoR. They are both described as 'amenity grass and landscaping' and are 684 square metres and 278 square metres respectively. If they are regarded as public open space and added to the Applicant's figures for public open space to be lost, then the proposals would result in a small net deficit in open space rather than a gain. My recommendations at Chapter 7 include a recommendation that the SoS seek the further views of the Applicant regarding these 2 plots of land.

- 4.7.60. If the 2 plots highlighted are correctly regarded as open space, the deficit would only be modest (about 0.07Ha) but is a significant consideration nonetheless. The NNNPS advises at Paragraph 5.166 that:

Existing open space, sports and recreational buildings and land should not be developed unless the land is surplus to requirements or the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. Applicants considering proposals which would involve developing such land should have regard to any local authority's assessment of need for such types of land and buildings.

- 4.7.61. As to the quality of the open space, the Applicant acknowledges that the character of the proposed Myton Centre open space would be different from the Trinity Burial Ground (Response to Examining Authority's Written Questions) [[REP2-003](#)]. I agree with that view. The Burial Ground has a particular character arising from its age, location, origins and the mature trees, shrubs and structures it contains. Combined, these things give it a particular tranquil character and charm which cannot be replaced in a like-for-like manner.
- 4.7.62. However, as a space to be used by members of the public, its location is not ideal, being in largely commercial surroundings close to the very busy Mytongate junction. Its secluded nature and lack of passive surveillance may leave it open to anti-social behaviour, and the Applicant points to the presence of graffiti and litter there (Response to Examining Authority's Written Questions) [[REP2-003](#)].
- 4.7.63. The land at the Myton Centre is only about 320m from the Burial Ground (Response to Examining Authority's Written Questions) [[REP2-003](#)] and is also close to the A63, but is within a primarily residential area. The majority of the site is currently occupied by the single storey Myton Centre buildings, together with areas of car parking and lawns. Some large mature trees are located to the frontage with the A63 highway corridor.
- 4.7.64. Clearly, the new open space would lack the mature character of the Burial Ground. However, the proposal provides the opportunity to create a new open space to meet the needs of local people. The Applicant advises (Response to Examining Authority's Written Questions) [[REP2-003](#)] that the new open space would be a contemporary, residential pocket park, with young trees set within amenity grass, wildflower meadow, species rich hedgerow, bulb and shrub planting. The proposals

include the introduction of approximately 81 extra heavy to semi mature trees. Approximately 31 of these trees would replace those removed from the open space's immediate surroundings to allow for the Scheme.

- 4.7.65. The existing playground would be relocated from the William Oak Park further from the A63 highway to a more central location at the heart of the open space. The new location would benefit from informal surveillance of the playground as it would be located along the main axis through the open space and overlooked by residential flats. High quality hard materials would be used and there would be street lighting along the main path through the green space to improve site safety. The reconfigured space would enable pedestrians to avoid walking next to the busy A63 carriageway. Tree planting, hedgerow and mounding along the southern edge of the space would create a buffer between the space and the A63 highway (Response to Examining Authority's Written Questions) [[REP2-003](#)].
- 4.7.66. While the Burial Ground would clearly be diminished by the scheme, the Applicant has set out proposals to make appropriate use of the remaining area (Response to Examining Authority's Written Questions) [[REP2-003](#)]. Headstones would be relocated to designated areas within the open space and the historic north boundary wall would be removed from its original location and rebuilt further to the south using the original bricks. New railings would be introduced on the top of the wall along with the historic gates from the Church of the Holy Trinity at the two new entrances along the north boundary. A new network of paths would be introduced along with new street furniture and interpretation signage. The existing historic gas lights would be retained and relocated within the site. Thus, it appears to me that the remaining land at the Trinity Burial Ground would continue to make a contribution as public open space.
- 4.7.67. Considering this matter as a whole, I find that the benefits and harms arising from the scheme in terms of open space provision are of a similar magnitude, resulting in a neutral overall effect on terms of public open space provision. In reaching that view I am mindful of the small deficit in the amount of new open space I have identified (subject to further clarification regarding plot nos 3/1bv and 3/1by). However, the deficit is small and should be seen in the context of the advantages of the new open space proposed, including its location. Consequently, Paragraph 5.166 of the NNNPS need not preclude the granting of development consent. While the requirements of Paragraph 5.174 the NNNPS cannot be concluded on here (since it is dependent on the overall benefits of the project) the benefits of the new public open space to be provided are an important consideration in applying it.

Mitigation

- 4.7.68. Many of the construction impacts of the scheme on the local community would be addressed by the provisions of the construction and handover environmental management plan (CEMP). Among other things, this would control working hours and would require a range of management plans, including plans for noise and vibration, traffic and transport and a

community relations strategy. The CEMP would be secured by R4 and would be based on the OEMP [[APP-072](#)].

4.7.69. I enquired about noise mitigation at ExQ1.6.7 [[PD-006](#)], with reference to Paragraph 5.196 of the NNNPS. In its response (Response to Examining Authority's Written Questions) [[REP2-003](#)], the Applicant referred me to the following measures, as set out in the ES [[AS-011](#)]:

- Section 7.7.7 "Temporary acoustic barrier fencing to be provided along the northern carriageway edge between the Myton Centre and William Booth House when construction activities are programmed to occur along in this section of the Scheme."
- Section 7.7.13 "Operational noise impacts would be mitigated by the treatment of the new carriageway and slip roads with a thin layer of stone mastic asphalt (thin surface course)."

4.7.70. These requirements are also specified within the Register of Environmental Actions and Commitments (REAC) [[APP-068](#)] at references NV1 and NV2, and would be secured via the CEMP and R4. Mitigation relating to noise impacts can include sound insulation or a grant.

Conclusion - Social, economic and land-use effects

4.7.71. I conclude that:

- Overall, the scheme would have a positive economic impact, including assisting in the delivery of some development sites. This accords with a range of policies and strategies, including the NNNPS and the EIMP.
- The scheme would have some harmful effects on local businesses, primarily during construction, but appropriate mitigation measures would be put in place to minimise such effects.
- Some sensitive receptors would be affected by noise and vibration during construction. Appropriate mitigation measures would be put in place.
- There would be some harmful noise impacts during operation of the scheme. Overall, however the benefits arising from changes in the noise environment as a result of the scheme would outweigh the harmful impacts.
- The scheme would have a neutral effect in terms of open space provision, taking account of the compensatory land to be provided and this is a relevant consideration in applying Paragraph 5.174 of the NNNPS.
- Appropriate mitigation measures would be secured via R4 and the CEMP.

4.8. WATER ENVIRONMENT

Introduction

4.8.1. Hull lies at the confluence of the River Hull and the Humber Estuary. Extensive flooding occurred in 2013 due to a tidal surge, and the City is

also highly vulnerable to pluvial and other forms of flooding. Consequently, matters relating to the water environment, and in particular flood risk, were a major issue at the Examination, and I consider those matters here.

Policy Background

- 4.8.2. The Government's policy on Flood Risk is contained in section 5 of the NNNPS. Paragraph 5.92 indicates that applications for projects in Flood Zones 2 and 3 should be accompanied by a flood risk assessment (FRA), which should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account.
- 4.8.3. NNNPS Paragraph 5.98 advises that, where flood risk is a factor in determining an application for development consent, the SoS should be satisfied that, where relevant, the application is supported by an appropriate FRA and that the Sequential and Exception Tests have been applied as necessary. The broad principles of the Sequential and Exception Tests are set out in Paragraphs 5.105-5.108 and there is reference also to the NPPF and related guidance.
- 4.8.4. Paragraph 5.99 establishes that when determining an application, the SoS should be satisfied that flood risk will not be increased elsewhere and should only consider development appropriate in areas at risk of flooding where it can be demonstrated that:
- within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
 - development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and priority is given to the use of sustainable drainage systems.
- 4.8.5. Paragraph 5.100 indicates that the SoS will need to be satisfied that the proposed drainage system complies with any National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010.
- 4.8.6. Paragraph 5.101 states that, if the Environment Agency continues to have concerns and objects to the grant of development consent on the grounds of flood risk, the SoS can grant consent, but would need to be satisfied before deciding whether or not to do so that all reasonable steps have been taken by the applicant and the Environment Agency to try and resolve the concerns.
- 4.8.7. Paragraph 5.104 advises that, where linear infrastructure has been proposed in a flood risk area, the SoS should expect reasonable mitigation measures to have been made, to ensure that the infrastructure remains functional in the event of predicted flooding.

- 4.8.8. Paragraph 5.109 requires 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.
- 4.8.9. Paragraph 5.113 says that the surface water drainage arrangements for any project should be such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect.

Examination and Issues

- 4.8.10. This topic was considered extensively during the Examination. I asked questions relating to this topic in both rounds of written questions ([[PD-006](#)] and [[PD-011](#)]) and held a day-long hearing to consider it further [[EV-007](#)]. Additionally, Statements of Common Ground were prepared with both the EA [[REP5-034](#)] and HCC [[REP7-008](#)], which is the Lead Local Flood Authority.
- 4.8.11. The Applicant has provided a range of documents to support its case that the development is appropriately designed and safe, would not have unacceptable flooding impacts and complies with relevant policies. The key documents are:
- Planning Statement [[APP-070](#)]
 - ES [[AS-011](#)] Chapter 11
 - Flood Risk Assessment (FRA) (ES Appendix 11.2) [[REP5-030](#)]
 - Flood Emergency Evacuation Plan (FEED) Report [[REP5-030](#)]
 - Flood Risk Modelling Technical Report, (EA Appendix 11.3) [[REP5-032](#)].
 - ES Appendices 11.1 [[APP-051](#)], 11.4 (Part1) [[APP-054](#)], 11.4 (Part 2) [[APP-055](#)], 11.5-11.9 [[APP-056](#)]
 - Figures to ES Chapter 11 [[APP-037](#)]
 - Applicant's comments on Relevant Representations [[REP1-016](#)].
- 4.8.12. The documentation was updated during the Examination. The original version of the FRA [[APP-063](#)], which incorporates the FEED report, was replaced with [[REP5-030](#)] at D5. The original Flood Risk Modelling Technical Report, (EA Appendix 11.3) [[APP-053](#)] was replaced with [[REP5-032](#)] at D5. The Applicant provided a written submission of the case put at ISH2 [[REP3-008](#)].
- 4.8.13. As set out at section 2.2 of this report, the submitted scheme included the option of draining the proposed underpass directly to the Humber Estuary. The construction of a rising main, together with 3 different options for the outfall, were shown on the initial Works Plans [[APP-007](#)] (identified as Work Nos 21A-21D). During the Examination, Yorkshire Water gave consent for its sewer to be used [[REP3-017](#)]. Consequently, the Applicant confirmed its intention of relying solely on that option for draining the underpass, and the other options were deleted from the scheme. I accepted this revision to the scheme [[PD-016](#)] and it is examined on that basis.

- 4.8.14. As submitted, the application did not include consideration of the Sequential Test. I raised this during ISH2 [EV-007] and again at ISH5 [EV-010] and issued a request for clarification in the Hearing Action Points document that was subsequently issued [EV-012]. In response, the Applicant provided comments on the Sequential Test [REP5-007].
- 4.8.15. As required by paragraph 5.92 of the NNNPS, the scheme is supported by a FRA [REP5-030]. The FRA explains that the site falls within Flood Zone 3a. There are existing flood defences and a tidal surge barrier at the mouth of the River Hull. Additionally, the Environment Agency (EA) is currently upgrading the flood defences on the north bank of the Humber (The Humber Hull Frontages Scheme), which is due for completion in 2021.
- 4.8.16. The FRA [REP5-030] indicates that the development is at risk of potential flooding from tidal, fluvial, pluvial, sewerage and groundwater sources, with the greatest risk arising from a Humber wave overtopping event. The Applicant's assessment is that there is negligible risk of groundwater flooding under baseline conditions and that the construction of the underpass is unlikely to change this (FRA, 10.7.2-10.7.3) [REP5-030].
- 4.8.17. The FRA [REP5-030] considers flooding in a range of scenarios, informed by a Flood Risk Modelling Technical Report, which is EA Appendix 11.3 [REP5-032]. In its Relevant Representation [RR-018], the EA noted that the original modelling report [APP-053] did not clarify whether the assessment included a breach of the flood defences. The EA sought clarifications on how the impact of a breach might be altered with the proposed development in place.
- 4.8.18. The Applicant confirmed in its response to the EA's RR [REP1-016] that additional modelling was carried out using breach information based on the Hull City Council Strategic Flood Risk Assessment (SFRA). The Applicant's amended FRA [REP5-030] includes data and assessments relevant to a flood defence breach (Paragraph 5.5.1).
- 4.8.19. The results presented in section 10 of the FRA [REP5-030] for a four breach locations scenario (shown at FRA Figure 9.2) indicate significant flooding *'of the Scheme and wider Hull city of a similar extent to the 1 in 1,000 year defended wave overtopping'* scenario (FRA paragraph 10.3.39).
- 4.8.20. The Applicant's preferred dDCO [REPR17-004] includes 3 requirements that are relevant to this issue - R4 (Construction and handover environmental management plan), R8 (Surface and foul water drainage) and R13 (pumping station).
- 4.8.21. The EA objected to elements of the scheme on flood risk and safety grounds. Its views are set out in its RR [RR-018], written representation [REP1-002] and its response to my written questions at D2 [REP2-001]. It attended ISH2 to further explain its position and completed a signed SoCG with the Applicant [REP5-034]. Although some matters were resolved during the Examination, the SoCG records that a number of

matters were not agreed, including compliance with the NNNPS, the application of the Exception Test and matters relating to the proposed Mytongate underpass.

- 4.8.22. HCC is the Lead Local Flood Authority. It addressed flood risk, drainage and the water environment in the LIR [[REP2-016](#)] and gave evidence at ISH2 [[EV-007](#)]. It does not object to the scheme on flood risk grounds.
- 4.8.23. National policy in the NNNPS and the NPPF (supplemented by Planning Practice Guidance) establish a clear policy on flood risk. The key aspects of this are:
- Flood Risk Assessment
 - Sequential test
 - Exception test
 - Sustainable drainage (SuDS)
 - Any objection by the EA
 - Mitigation measures
- 4.8.24. In view of this, I have structured my consideration of this topic around these matters. All of the issues raised by IPs during the Examination can be considered under these general headings. The proposed underpass and pumping station and safety and emergencies were discussed extensively during the Examination and I have considered them as part of my consideration of the flood risk assessment. Together, these matters form the basis of my assessment below.

ExA's Assessment

Flood Risk and the FRA

The underpass and pumping station

- 4.8.25. The underpass is the most vulnerable element of the scheme. During normal operational conditions it will be drained by a surface water pumping station and is designed for a 1 in 100-year rainfall event (including a 30% allowance for climate change) (ES,11.10.4) [[AS-011](#)]. However, in more extreme scenarios, such as a 1 in 200-year Humber overtopping or a breach of flood defences, it would flood. Predicted maximum velocities and depth of water flowing into the underpass would result in a Defra *Hazard to People Classification* of 'danger for all' (ES, 11.7.78) [[AS-011](#)]. Thus, safety and emergency matters relating to the underpass were the subject of a great deal of discussion during the Examination.
- 4.8.26. The EA has been concerned about the creation of the underpass from the early stages of the project's development [[RR-018](#)]. It is a legitimate concern; the Applicant's evidence makes clear that lowering the road to the extent proposed means that the underpass would fill with water during more severe floods (FRA, Table 10.1) [[REP5-030](#)]. Thus, the EA is quite correct to say that safety is reliant on emergency planning procedures [[REP1-002](#)].

- 4.8.27. However, I do not consider that reliance on emergency procedures during severe flood events means that the scheme is fundamentally unsafe. The drainage system proposed has been designed to keep the underpass operating during regular operation of the road, up to and including a 1:100 years rainfall flood event (allowing for climate change) (ES, 11.10.4) [[AS-011](#)]. There was no technical evidence to the Examination to show that this could not be achieved. The fact that emergency procedures are necessary for severe events, well beyond 'normal' operating conditions, does not mean that this is a fundamentally flawed or unsafe scheme. It does, however, mean that those emergency procedures need to be robust.
- 4.8.28. Moreover, it is clear that this scheme was only selected after an extensive process looking at a range of options (Planning Statement, Chapter 3) [[APP-070](#)]. Flooding was an important consideration in that process but not the only one. Factors including consultation responses, visual impact and north-south links across the road were also important. Provided the scheme can be made safe, it was legitimate for these other considerations to lead to a scheme which was not the one preferred by the EA.
- 4.8.29. The drainage system for the underpass is reliant on a proposed new pumping station (DCO Schedule 1, Work No 24) [[REPR17-004](#)]. Water from the underpass would drain to a sump and then be pumped along a rising main into the Yorkshire Water sewer network. The station would be capable of pumping water at a rate of 200 litres per second (FRA, 3.2.18) and, in principle, would keep the underpass drained in a 1 in 100 years (plus climate change) rainfall flood (ES, 11.10.4) [[AS-011](#)].
- 4.8.30. Concerns raised during the Examination focused on the resilience of the pumping station during a flood. These stem from a lack of detail regarding matters such as the location of automated equipment and provisions for maintenance. However, a Requirement (R13) is now proposed to ensure that details, including flood resistance and flood reliance measures, are provided in due course, and the Requirement is to be discharged only following consultation with HCC and the EA. The Requirement is based on wording suggested by HCC [[REP3-215](#)] and the EA is satisfied that it is an appropriate way to address the matter (SoCG with the EA) [[REP5-034](#)], a view I share.

Safety and emergencies relating to the underpass

- 4.8.31. The Examination considered how an inundation of the Mytongate underpass would be dealt with. The Applicant has provided a Flooding Emergency and Evacuation Plan (FEEP) report, which is appended to the FRA [[REP5-030](#)]. This has been revised during the Examination. The FEEP would be brought into effect via the DCO as an element of the Construction and Handover Environmental Management Plan (CEMP), which must be brought forward under R4.
- 4.8.32. There is already a detailed plan in place setting out the procedures to follow during a flooding incident - the *Humber LRF Multi Agency Flood Plan*, prepared by the Humber Local Resilience Forum. This is appended

to the FEEP report [[REP5-030](#)]. The FEEP report explains the need to link in with this. It also considers:

- The use of a range of warning services, including the Environment Agency Flood Warning Service
- Flood detection technology options for use at the underpass
- Options for signage and messaging
- Measures to ensure that the pumping station remains flood resilient
- Flood events with no warning
- A worst-case scenario
- Procedure for closing the underpass in an emergency
- Recovery after flooding

4.8.33. The FEEP report [[REP5-030](#)] establishes that all the technology and CCTV along the scheme will be directly linked to the North East Regional Control Centre (NERCC). This will provide a backup in the event that communication between the Environment Agency Flood Warning system and the NERCC fails. The report also considers matters relating to ownership, review and testing of the FEEP. It recognises the shortened underpass inundation times (about 1-1.5 hours) established during the Examination (Table 10.1 of the FRA) [[REP5-030](#)].

4.8.34. At ISH2 [[EV-007](#)] the EA explained its concerns regarding proposals for closing the underpass in an emergency. The FEEP report [[REP5-030](#)] indicates that Highways England's Area Maintenance Team (AMT) for Area 12 would physically close the underpass with appropriate traffic management, in accordance with the AMT's Incident Response Plan and Severe Weather Plan. The actual method of physical closure is not specified, but during the Examination it has been suggested that vehicles might be positioned at the underpass entrances (ISH2) [[EV-007](#)]. Additionally, signage and signals would show the underpass as closed and direct traffic away from it.

4.8.35. The EA considers that purpose-built physical barriers are needed. This was discussed at ISH2 [[EV-007](#)]. A particular concern is that cars parked at the underpass entrances could be swept away in a severe flood.

4.8.36. However, I was advised by the Applicant during ISH2 [[EV-007](#)] that creating automated barriers is not compatible with the design of the underpass. While it would be possible to incorporate manually-operated barriers, this would put staff at risk when operating or maintaining them. In any event, reliance on the Area Maintenance Teams to close the underpass is consistent with their involvement in existing emergency planning procedures and is a standard practice.

4.8.37. On the evidence before me I am not persuaded that the lack of barriers to the underpass is a flaw in the scheme. I am satisfied that a robust FEEP document setting out appropriate measures can be finalised. A Construction Flood Emergency Plan (FEP) will also be prepared, and is a requirement of R4 of the dDCO [[REPR17-004](#)]. This will detail emergency procedures during construction to ensure safety of personnel.

- 4.8.38. At ISH2 [EV-007] HCC requested that provision be made for early warning signage along the eastbound carriageway of the A63 in a location which would allow motorists to exit the trunk road prior to entering the city in the event of the Mytongate underpass being flooded [REP3-215]. The Applicant responded [REP5-003] that it has no intention of including such a sign in the Scheme. I issued a request for further information (Rule 17) [PD-017] asking the Applicant to explain whether there were any impediments to providing such signage.
- 4.8.39. The Applicant explained [REPR17-002] that the North East Regional Control Centre (NERCC) recommended that the sign would not provide any significant value. The Applicant points out that it would increase the scheme cost and says there would be difficulty in linking to the sign due to its remote proposed location. The Applicant also states that, to ensure that road users traveling towards Hull could be made aware of a potential flood event, the existing gantry signs on the M62 and A63 could be utilised to display messages. This would allow those road users to make a decision as to a preferred route in such an event prior to the M18 and Humber Bridge junctions. I accept these points, and conclude that early warning signage specific to the scheme is not necessary.
- 4.8.40. For these reasons I conclude that the design of the underpass and its drainage system are satisfactory and that, with appropriate measures, it would be safe. The dDCO [REPR17-004] includes appropriate requirements at R4 (Construction and handover environmental management plan), R8 (Surface and foul water drainage) and R13 (pumping station) to secure such measures.

Flood risk in the wider scheme and beyond

- 4.8.41. The modelled effects of the scheme on flooding in the locality are discussed at section 10 of the FRA [REP5-030]. They show a mixed picture of generally limited impacts. The surrounding area would be inundated in a 1 in 200 years plus climate change Humber wave overtopping event, irrespective of whether the scheme goes ahead. If the proposed development were built, the main difference is in the depth of the flood water, but even this is quite limited. There would be a reduction in flood depths of between 0.05 and 0.30m along the A1079 Ferensway, the A63 to both the west and the east of the proposed underpass, Princes Quay and an area around Queen's Gardens. There would be smaller areas of increased flood depth of 0.05 to 0.10m at Kingston Retail Park, around the demolished Myton Centre and in Humber Dock and the surrounding streets (FRA, 10.3.14).
- 4.8.42. Other scenarios generally show less extreme impacts. Any effects of the scheme on the extent of flooding in the surrounding area would be very limited. While there are again some increases in the depth of the flood waters on certain sites as a result of the scheme, depths would be reduced on others.
- 4.8.43. While the approach to the modelling work carried out by the Applicant continued to be discussed during the Examination (Statement of Common Ground with the EA) [REP5-034] I have no substantive

technical evidence to cast doubt upon it. It has been amended in response to comments received from the EA [[REP5-030](#)] and [[REP5-032](#)] and I have no reason to doubt that it is robust.

4.8.44. The Applicant's assessment includes consideration of sites allocated for development in the Development Plan (FRA, 10.3.54-10.3.58 and Figures 13.107-13.116) [[REP5-030](#)], but impacts are very limited. No sites would become at risk of flooding as a result of the scheme (because they are already in areas of flood risk), and any potential increase in the depth of flood water would be limited. Moreover, HCC has considered this matter and advises that it, *'does not consider that the impact of the scheme in flood risk terms would be such that the development allocated sites affected would not be able to come forward, or could not be delivered for the uses specified. Nor is it considered that the consequences of the changes predicted would fundamentally alter the approach to construction within those sites nor the nature and implications of resistance and resilience measures that would be deemed appropriate and necessary'* (Deadline 3 Submission – Post Issue Specific Hearings submissions) [[REP3-215](#)].

4.8.45. Analysis of model predictions indicate that the magnitude of flow velocities across the study area (but outside the Scheme boundary) would not change significantly because of the scheme (FRA, 10.5.1) [[REP5-030](#)].

4.8.46. The FRA [[REP5-030](#)] considers the affect of the scheme on Flood Hazard Ratings and shows them in a series of maps. The key impact would be on the underpass, with more limited impacts in the surrounding area. During more extreme flooding events, a large proportion of Hull is classified as 'danger for most' or 'danger for all' under both the existing and Scheme scenarios (FRA, 10.3.9-10.3.13).

Flood risk and the FRA - conclusion

4.8.47. Within the scheme boundary, the one very clear impact would be the underpass, which would introduce an entirely new feature which would be highly vulnerable to flooding in certain scenarios. However, the design of the underpass and its drainage system are satisfactory and, with appropriate measures, it would be safe.

4.8.48. Overall, I consider the effects on flooding in surrounding area (outside the scheme) to be broadly neutral, with negative effects counterbalanced by positive effects. Furthermore, no single instance of any increased flooding in any of the scenarios would be unduly harmful in its own right.

The Sequential Test

4.8.49. The Sequential Test is set out in the NNNPS, the NPPF and Planning Practice Guidance (PPG) and seeks to steer new development to areas with the lowest risk of flooding. Table 2 in the PPG *Flood Risk and Coastal Change* chapter indicates that this proposed development is categorised as 'essential infrastructure'. In this instance, the Scheme is located within Flood Zone 3a, meaning it has a relatively high probability of

flooding (a 1 in 100 or greater annual probability of river flooding, or 1 in 200 or greater annual probability of flooding from the sea in any year), (FRA, 5.9.1) [[REP5-030](#)]. Consequently, the Sequential Test applies.

4.8.50. The Applicant's assessment against the Sequential Test [[REP5-007](#)] states that,

'given the nature of the Scheme and the spatial, environmental and practical constraints of the site within the centre of Hull, it would neither be possible nor desirable to relocate the Scheme to an area of lower flood risk in either Flood Zones 1 or 2. The Environment Agency's flood map for planning confirms that the entirety of Kingston upon Hull is within Flood Zone 3. As such, there are no "reasonably available alternative sites" that are not within Flood Zone 3'.

4.8.51. I agree with that assessment. The proposal is for the improvement of an existing road rather than an entirely new development, and its location is therefore fixed. Consequently, although a variety of scheme options have been considered, all fall within the same site. Moreover, the physical constraints of the area and extensive areas susceptible to flooding means there is no possibility of the development taking place in a lower risk area [[REP5-007](#)]. Consequently, the scheme is not ruled out on the basis of the Sequential Test.

4.8.52. Nevertheless, Table 3 of the PPG *Flood Risk and Coastal Change* chapter establishes that permitting essential infrastructure in Flood Zones 3a or 3b is subject to the application of the Exception Test. The NNNPS confirms at paragraph 5.106 that if, following application of the Sequential Test, it is not possible for the project to be located in zones of lower probability of flooding than Flood Zone 3a, the Exception Test can be applied.

The Exception Test

4.8.53. Paragraph 5.108 of the NNNPS states that for the Exception Test to be passed:

- it must be demonstrated that the project provides wider sustainability benefits to the community that outweigh flood risk; and
- a FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.

4.8.54. Additionally, 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 (NNNPS, 5.109).

Wider sustainability benefits

4.8.55. The Applicant provides brief comments on the Exception Test at section 5.9 of the FRA ([REP5-030](#)). It notes that the scheme would generate significant social and economic benefits, thereby providing a basis for demonstrating compliance with the first criterion of the Exception Test. I

agree with that assessment. The NNNPS establishes that wider sustainability benefits to the community include the benefits (including need) for the infrastructure (Paragraph 5.108, Footnote 95). As I have explained elsewhere, there is a clear need for this project and it has a range of benefits. Moreover, that need is aligned with the critical need to improve national networks identified in Chapter 2 of the NNNPS.

- 4.8.56. The question of whether the sustainability benefits of the scheme outweigh flood risk is a planning judgement. I conclude at Chapter 6 that the planning harms arising from the scheme as a whole mean that development consent should not be granted. However, if the SoS reaches a different view on the planning balance, it is open to the SoS to conclude that the sustainability benefits of the scheme outweigh flood risk. Accordingly, while I have concluded, for other reasons, that development consent should be withheld, there is no reason to withhold it on the basis of this element of the Exception Test if the SoS takes a different view on the overall planning merits of the scheme.

Be safe for its lifetime, without increasing flood risk elsewhere

- 4.8.57. As I explain in my consideration of the FRA, I am satisfied that the project will be safe. However, this must be achieved 'without increasing flood risk elsewhere'. The interpretation of this was the subject of discussion during the Examination.
- 4.8.58. The EA takes the view (as set out at ISH2) [[EV-007](#)] that any increase in flood risk elsewhere, irrespective of any other flood risk improvements, means that this requirement (and therefore the Exception Test as a whole) is failed. It is an agreed point that this NSIP would result in increased flood effects on some land nearby, as described in the FRA [[REP5-030](#)].
- 4.8.59. The Applicant argues that, in circumstances where there would be a mix of effects, both positive and negative, flooding impacts beyond the site should be looked at in the round (the Applicant's written submission of the case put at ISH2, Paragraph 7.1.2)) [[REP3-008](#)]. I agree that this is the approach that should be followed here. Adopting the EA's approach could lead to illogical outcomes if the Exception Test were to be failed due to very limited harms, with no account being taken of any (perhaps greater) benefits. Moreover, HCC advised during ISH2 [[EV-007](#)] that the particular characteristics of Hull, including the extensive areas of Zone 3, means that virtually all construction works affect flooding on land nearby.
- 4.8.60. In the specifics of this case, the area surrounding the scheme is already at risk of flooding; the entire study area and wider Hull city centre would be inundated in extreme flood events, regardless of the presence or absence of the scheme (FRA, 10.3.50) [[REP5-030](#)]. As such, the flood extents would be unchanged and the harm arising from the scheme would be limited to increases in the depth of flooding on some sites which are already at risk of flooding during particular flood events. As I indicated earlier, it is also clear that the actual impact (in terms of flood depth) would be limited, as would be the effect on sites allocated for development in the Local Plan.

4.8.61. Set against the negative impacts of the scheme in terms of impact on the surrounding area are the positive impacts. These largely arise from the underpass acting as a water attenuation feature in extreme flood scenarios. Again, these are mapped in detail in the FRA [[REP5-030](#)]. Overall, the net effect of the scheme on flood risk elsewhere is broadly neutral.

4.8.62. Given the limited negative effects and the neutral net effect of the scheme on flood risk elsewhere, I conclude that this element of the Exception Test is met. I am also satisfied that every effort has been made within the scheme to reduce/minimise flood risk so far as possible. Thus, all the requirements of the second bullet point are met.

Operational and safe for users in times of flood

4.8.63. Quite clearly, the scheme would not remain operational in some of the extreme flood scenarios considered in the FRA, but it is not reasonable to expect it to do so. That said, the drainage scheme proposed would keep the underpass – the most vulnerable element of the scheme - free from flooding in a 1 in 100 years pluvial event (allowing for climate change) (FRA 1.1.2) [[REP5-030](#)]. Where more extreme flooding occurs, the FEEP would establish procedures to prevent users entering the underpass and ensure safety. I have already discussed these matters in more detail and my findings lead me to conclude that this element of the Exception Test is met.

Exception Test – conclusion

4.8.64. Compliance with the Exception Test is subject to the SoS's view on the sustainability benefits of the scheme, as outlined in Paragraph 5.108 of the NNNPS and as discussed above. In all other respects, the requirements of the Exception Test are met.

SuDS

4.8.65. The scheme does not utilise sustainable drainage principles. It is clear from Paragraphs 5.100 and 5.230 of the NNNPS that NSIPs should comply with national standards for the design, operation and maintenance of SuDs. I raised this in a written question (ExQ1.10.14) [[PD-006](#)] and at ISH2 [[EV-007](#)].

4.8.66. The Applicant advised in its response to the written questions [[REP2-003](#)] and its written submission following ISH2 [[REP3-008](#)] that SuDS have not been accommodated in the design because there is insufficient room within the constrained urban environment to make provision for soakaways and other SuDs features. Instead, the scheme utilises and accommodates the existing network in Hull, and this reduces costs for the proposed road. Based on the information before me, I accept that view. I am also aware that temporary SuDs features are likely to be used to address increased surface water runoff from temporary site compounds during the construction phase of the scheme (ES 11.1.3) [[AS-011](#)].

4.8.67. Overall, I consider that the national policy towards SuDs has been properly taken into account but that other solutions are more appropriate in this instance.

The Views of the EA

4.8.68. Paragraph 5.101 of the NNNPS advises that, if the EA continues to have concerns and objects to the grant of development consent on the grounds of flood risk, the Secretary of State can grant consent, but would need to be satisfied before deciding whether or not to do so that all reasonable steps have been taken by the applicant and the EA to try and resolve the concerns.

4.8.69. There has been considerable dialogue with the EA prior to and during the Examination. By the close of the Examination, the key concerns of the EA, as documented in the SoCG [[REP5-034](#)] were its views that:

- the Exception Test was not complied with because the Applicant has not been able to demonstrate that flood risk will not be increased to others.
- The scheme is not safe for its lifetime for tidal flooding as it cannot be designed to keep water out and is reliant on emergency planning procedures, as set out in the FEEP. On this basis the scheme is considered to be non-compliant with paragraph 5.99 of the NNNPS.
- Physical barriers should be used to stop vehicles entering the underpass in a flood.

4.8.70. I have considered all of these matters above and found the scheme to be satisfactory. Moreover, the EA accepts that the Applicant has engaged with the Agency and done all it can to assess and mitigate flood risk (Statement of Common Ground with the EA) [[REP5-034](#)]. Accordingly, while the views of the EA are an important consideration, its outstanding concerns do not lead me to the view that consent should be withheld on flood risk grounds.

Mitigation

4.8.71. The scheme would result in an increase of 0.81ha in impermeable area (FRA, 3.2.13) [[REP5-030](#)] and the creation of an underpass within a Flood Zone 3a. The drainage system, including the pumping station for the underpass, has been designed to address this. Additionally, a range of measures will be put in place to address emergency situations, including a Flood Emergency and Evacuation Plan and traffic diversion routes. The EA considers that the Applicant has done all it can to mitigate flood risk (Statement of Common Ground with the EA) [[REP5-034](#)], and I am satisfied that the requirements of the NNNPS are properly addressed in this regard.

Other matter - Deemed Marine Licence

4.8.72. As submitted, the draft DCO included a Deemed Marine Licence. This related solely to the Princes Quay Bridge. However, since this has now been licensed as a separate project, the Applicant has removed the Licence from its preferred draft DCO [[REPR17-004](#)]. This change resolved

a concern raised by the Marine Management Organisation, as confirmed at D6 [[REP6-018](#)].

Conclusion - The Water Environment

4.8.73. I conclude that:

- The Applicant's Flood Risk Assessment is satisfactory
- The development would be safe in terms of flood risk
- The Sequential test is passed
- Meeting the Exception Test is dependent on the sustainability benefits of the scheme but the Test is met in all other respects
- National policy towards SuDs has been properly taken into account
- Objections by the EA have been properly considered
- The proposed mitigation measures are satisfactory

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION

- 5.1.1. The Secretary of State (SoS) is the competent authority for the purposes of the Habitats Directive and the Habitats Regulations. Regulation 63 of the Habitats Regulations states that if an application proposal is likely to have a significant effect on a European Site designated under the Habitats Regulations (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives.
- 5.1.2. Consent for the proposed development can only be granted if the competent authority's appropriate assessment concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).
- 5.1.3. With an aim to ensure that the SoS has such information as may reasonably be required to carry out their duties as the competent authority, throughout the Examination evidence has been sought from the Applicant and the relevant IPs. I issued a Report on the Implications for European Sites (RIES) [[PD-010](#)] on 11 July 2019. The RIES compiles, documents and signposts information provided within the DCO application, and the information submitted throughout the Examination by both the Applicant and IPs, up to Deadline 4 of the Examination in relation to potential effects to European Sites. The RIES and responses to my questions have been used to inform the findings and conclusions in relation to the Habitats Regulations Assessment.

5.2. PROJECT LOCATION

- 5.2.1. The proposed development is located in Hull along approximately 1.5km of the existing A63 Castle Street between Ropery Street and the Market Place and Queen Street Junctions.
- 5.2.2. There are three European Designated Sites within 2km of the proposed development. The Humber Estuary Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar sites are located approximately 90m to the south of the nearest point of the wider scheme and 295m south of the Princes Quay Bridge piling footprint. The three designations relate to the same area and the designation boundaries are the same.
- 5.2.3. The Humber Estuary SAC primary reasons for selection are habitats connected with estuaries and mudflats and sandflats not covered by seawater at low tide and for the presence of sea and river lampreys and grey seals.

- 5.2.4. The Humber Estuary SPA has been designated for its support to breeding and non-breeding bird populations.
- 5.2.5. The Humber Estuary Ramsar has been designated as an example of near natural beauty and its support for populations of animal species important for maintaining the biological diversity of the region. This includes grey seals (Criterion 3) and populations of water birds at levels of international importance (Criterion 6). The Humber Estuary is also an important migration route for river and sea lampreys (Criterion 8).

5.3. HRA IMPLICATIONS OF THE PROJECT

- 5.3.1. The Applicant provided an *Assessment of the Implications for European Sites* (AIES) titled A63 Castle Street Improvement, Hull AIES (HRA) Screening Report [[APP-069](#)] with the DCO application. The SoS considered that the information provided in the AIES [[APP-069](#)] was sufficient to accept the application for Examination on 18 October 2018.
- 5.3.2. The proposed development is not connected with or necessary to the management for nature conservation of any of the European site(s) considered within the Applicant's assessment (Chapter 10 of the ES [[AS-011](#)]).
- 5.3.3. The Applicant scoped their assessment by identifying European sites within 2km of the proposed highways schemes, including temporary construction sites. European sites considered in the AIES [[APP-069](#)] are listed in Appendix A of the AIES. No additional European sites or features were identified by any IPs during examination.
- 5.3.4. The AIES approach has been agreed with NE and the agreement is documented within a Statement of Common Ground (SoCG) [[REP5-035](#)]. The SoCG also confirms an agreed position that the AIES includes appropriate evidence to determine the effects of the proposed development on European sites alone and in combination with other plans and projects.
- 5.3.5. The AIES identifies and addresses the potential impact pathways from the proposed development to the European sites. The impact pathways identified include: increases in silt and sediment entering the watercourse during construction, increased risk of pollution spill incidents during construction, increased sedimentation dispersal associated with re-siting of the Spurn Lightship, disturbance generated by noise and vibration during construction (including from piling works in the marina for Princes Quay Bridge), impacts from changes in air emissions and ground water contamination. These impacts are assessed alone and in combination with the other known plans and projects.
- 5.3.6. The AIES considers the construction of the Princes Quay Bridge in combination with the wider A63 Castle Street Improvement.
- 5.3.7. No concerns were raised by IPs during the Examination about the approach and scope of the Applicant's in-combination assessment.

5.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

5.4.1. The Applicant's screening assessment in the AIES [[APP-069](#)] concluded that the proposed development would have no likely significant effect, either alone or in-combination with other plans or projects, on the qualifying features of the European site(s) listed at Appendix A of the AIES. This was on the grounds that:

- **Silt and sediments and pollution spills during construction;** The AIES concluded that the sediment disturbance and contamination due to accidental spillage are unlikely to have a significant impact on the Humber Estuary protected sites due to the high degree of dilution within the marina. The AIES contains a hydrological technical note demonstrating the dilution rate and concluded no Likely Significant Effects (LSE).
- **Sedimentation during the re-siting of the Spurn Lightship;** The Lightship will be moved manually by ropes and no other vessel will be involved in moving the Lightship. The Lightship is currently floating, so disturbance to sediments will be minimal as the bed of the marina will not be disturbed and therefore no LSE are anticipated.
- **Noise and vibration during construction;** The assessment concluded that the nearest habitats that could support qualifying bird species are at a distance where airborne construction noise and vibration would have no LSE.
- **Vibration from piling works in the marina for Princes Quay Bridge;** Vibration from piling works could affect lamprey or grey seals in the unlikely event that they entered the marina. If these species were to enter the marina through the lock gates then it is likely to be in very small numbers perhaps only an individual, but no LSE are anticipated. It should be noted that, as set out in section 2.3 and discussed elsewhere in this report, planning permission is in place for the bridge. Works have commenced and the bridge therefore appears virtually certain to be completed, irrespective of this NSIP.
- **Air emissions;** The Applicant's assessment modelled the annual mean NO_x concentrations at three receptor transects within the Humber Estuary SAC/SPA/Ramsar with and without the proposed development. The results are presented at Table 6.19 of the ES [[AS-011](#)]. Where NO_x concentrations exceeded the annual objective, and scheme-associated changes in NO_x were greater than 0.4µg/m³, then nutrient nitrogen deposition was also calculated and used to determine the overall significance of the impact. The Scheme is predicted to lead to changes greater than 0.4mg/m³ and total concentrations above 30µg/m³ only at one point of Transect 1 due to a predicted increase in traffic on the adjacent section of the A63. The habitat present at this location is coastal saltmarshes.

Total average nitrogen deposition rates and critical loads for this classification have been derived from APIS and are presented in Table 6.20. Critical load for coastal saltmarsh is 20–30 kg(N)/ha/yr and has been applied in the assessment as a worst case.

Total nitrogen deposition has been estimated below the critical load range in all scenarios and the change in deposition associated with the Scheme is less than 1% of the critical load. It is therefore concluded that the Scheme impacts are not significant based on the magnitude of increase and because the flushing action from tides is likely to reduce the input of atmospheric nitrogen (N) to the saltmarsh ecosystem.

- Groundwater contamination;
The assessment concluded that there is limited connectivity between the docks (where construction works will take place) and the relevant designated sites.

- 5.4.2. The Examination focussed on establishing the Applicant's position in relation to the scope and outcomes reached in their AIES [[APP-069](#)]. The reason for this line of inquiry was in order to understand in more detail the Applicant's approach with regard to mitigation including when and how this has been taken into account in relation to the HRA process.
- 5.4.3. During the First Written Questions [[PD-006](#)], I asked the Applicant to explain whether the conclusions reached in the AIES Report were predicated on the implementation of proposed mitigation and if regard had been given to the judgment in *People over Wind and Sweetman v Coillte Teoranta* (C-323/17).
- 5.4.4. The Applicant responded [[REP2-003](#)] to confirm that the AIES Report [[APP-069](#)] concludes that without mitigation, the proposed development would cause "No Significant Effects" to the European Sites located within 2km of the proposed development either alone or in-combination with other projects and plans. Therefore an Appropriate Assessment was not required. The conclusion was reached with due regard to the judgement made by the Court of Justice of the European Union (CJEU) in the case of *People Over Wind and Sweetman v Coillte Teoranta* (C-323/17).
- 5.4.5. However, despite the Applicant's confirmation in this regard, mitigation measures necessary to avoid or reduce effects on the Humber Estuary designated sites are referred to in other submitted documents. The REAC [[AS-013](#)] lists a series of measures intended to prevent airborne dust, noise, vibration and contaminant pollution and sedimentation from entering the Humber Estuary and other measures to prevent causing harm to marine fauna (including grey seal and lampreys which are qualifying features of the Humber Estuary SAC and Ramsar). Piling activities at the Humber Dock Marina are a particular concern in this regard. Additionally, paragraph 10.7.12 of the submitted Environmental Statement (ES) [[AS-011](#)] lists a series of measures that it proposed should be followed to mitigate impacts to fauna in the Estuary prior to piling commencing. These measures are the same ones listed at Commitment E1 of the REAC [[AS-013](#)].
- 5.4.6. The Examination also established there had been reduced survey effort at the construction compounds for birds, despite there being potential to support qualifying bird species connected to the Humber Estuary SPA and Ramsar. I raised questions [[ExQ1.2.3](#)] in response to this limited data

and in order to confirm whether construction works are likely to result in significant effects on birds present within the Humber Estuary all year round. The Applicant was asked to respond to questions regarding the functional link between Neptune Street compound and the Humber Estuary SPA and Ramsar in terms of both wintering and breeding birds.

- 5.4.7. The Applicant's response to ExQ1.2.3 [[REP2-003](#)] explained why only a reduced level of survey effort, which excluded surveys for breeding birds, had been applied. The Applicant noted that Neptune Street site compound was first identified as a potential site compound in July 2016 but access was not granted until August 2016, after the other breeding bird surveys at the other construction compounds had been undertaken and beyond the optimal survey season.
- 5.4.8. The Applicant also explained that the Neptune Street site compound was subsequently removed as a construction compound from the proposed development in January 2018 but then reinstated in 22 May 2018 due to a change in availability of alternative sites. The Applicant argued that the culmination of these events prevented breeding bird surveys being undertaken at this compound site. However, the Applicant maintained its position that significant effects have been correctly identified with regard to breeding birds at the Neptune Street site compound using data from the other compounds surveyed.
- 5.4.9. Neptune Street was surveyed for wintering birds [[REP2-001](#)] and the survey conducted did not show the presence of feeding wintering birds for which the Humber Estuary SPA and Ramsar is designated. The Applicant pointed out that the Humber Estuary habitat, adjacent to the proposed development, is not a mudflat or saltmarsh and the substrate is not exposed during low tides. Therefore, the Applicant maintained there was no functional link between the Neptune Street site compound and the Humber Estuary SPA and Ramsar in relation to wintering birds.
- 5.4.10. In response to my question [ExQ1.2.3], the Applicant stated [[REP2-003](#)] that they cannot be definitive as to whether there is a functional link for breeding birds between Neptune Street from the Humber Estuary SPA and Ramsar for the reasons explained above. However, it is concluded that, due to the industrial nature of Neptune Street, its location and levels of existing disturbance, the site is most likely to be used by common urban species and unlikely to be functional land for wider bird assemblages designated by the Humber Estuary SPA and Ramsar.
- 5.4.11. The Applicant stated that despite the ecology assessment concluding there would be no significant effects to breeding birds at Neptune Street compound, measures have been implemented to avoid or reduce impacts to birds during clearance (see OEMP [[AS-015](#)] and REAC [[AS-013](#)] E5).
- 5.4.12. NE were invited to respond to my question ExQ1.0.11 but did not do so.
- 5.4.13. I understand that the measures included in the REAC ([[AS-013](#)] Ref E5) and OEMP [[AS-015](#)] are intended to reduce or avoid impacts on species which are qualifying features of the European sites not just at site compounds but during the construction of the Princes Quay Bridge, as

discussed above. Therefore, I considered that, in light of such measures, it was necessary to examine whether there would be any adverse effects on the integrity of the European sites. I produced Stage 2 integrity matrices for all European designated sites to consider Adverse Effects on Integrity (AEoI), which were included in Annex 3 of the RIES [PD-010]. The RIES was published in July 2019 and received no comments. I report my findings in respect of AEoI in the following sections of this Chapter.

5.5. CONSERVATION OBJECTIVES

- 5.5.1. The conservation objectives and vulnerabilities are provided within Appendix A: Characteristics of European Sites of the AIES Report [APP-069]. The Applicant has concluded that the proposed development would not result in a LSE on any of the European sites considered in the AIES [APP-069].

5.6. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)

Introduction

- 5.6.1. Despite the Applicant producing evidence to the contrary I consider that the findings in relation to the HRA are reliant upon application of measures intended to avoid or reduce effects on qualifying features of the relevant designated sites.

Humber Estuary SAC and Ramsar (Criterion 3)

- 5.6.2. The Applicant acknowledges that during construction of the Princes Quay Bridge there is a requirement to undertake piling and this will result in underwater noise, which is potentially harmful to relevant fish and marine mammal features of the Humber Estuary SAC if present within the Docks. In order to address these impacts, the Applicant has proposed the inclusion of Commitment E1 in the REAC [AS-013] and OEMP [AS-015]. I consider that the implementation of such a measure is likely to be successful because it will reduce the risk of animals being present within the docks before commencement of piling. The reliance on the measure was highlighted in the RIES and views were sought from NE. NE did not respond to the RIES but had already concluded they were content with the outcome reached in respect of the Applicant's AIES.

Humber Estuary SPA and Ramsar (Criterion 6)

- 5.6.3. The Applicant acknowledges that limitations to survey information presents some degree of uncertainty with regards to value of land that will be affected by the proposed development. It was argued by the Applicant, in my view legitimately so, that the value of the land in question is unlikely to be such that the success of breeding birds relevant to the designated sites is reliant upon it. Having regards to these arguments and acknowledging the characteristics and relatively small scale of the impact, taken in context with the wider availability of functionally linked land for relevant breeding bird species, I am content

that indirect impacts from displacement are unlikely to result in adverse effects on integrity. I also had some concerns regarding the potential for direct effects to relevant species in the event that activities to prepare the construction compound occurred during the breeding bird season, however, the implementation of Commitment E5 in the REAC [[AS-013](#)] and OEMP [[AS-015](#)] demonstrates that these activities are restricted to times outside of these core periods and therefore will be successful in avoiding direct effects to relevant breeding bird species.

Conclusions on AEOI

- 5.6.4. NE and the Applicant did not comment on the RIES but the Applicant submitted at D5 a SoCG [[REP5-035](#)] which confirms that NE accepts the adequacy of the OEMP and REAC and is satisfied that LSE on European sites can be excluded.
- 5.6.5. On the basis of the information before me, having regard to the measures secured through the DCO and the views of NE presented in the SoCG [[REP5-035](#)], it is my view that the proposed development would not impact in a significant way the features for which the identified European sites are classified. I am satisfied that the proposed development (alone and in-combination with other plans or projects) is not likely to have an AEOI of the Humber Estuary SPA/ SAC and Ramsar sites.
- 5.6.6. I have not received any submissions from IPs which lead me to any different conclusion.

5.7. HRA CONCLUSIONS

- 5.7.1. Drawing on the information provided in the application, with specific reference to the ES [[AS-011](#)] and the AIES [[APP-069](#)], and taking full account of the responses to relevant written questions, I have summarised my understanding of HRA-relevant matters in the RIES [[PD-010](#)]. I advise the SoS that, on the basis of the information before me, the proposed development would have no AEOI, either alone or in-combination with other plans or projects, on any European site.
- 5.7.2. I am satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an AA, should it be considered necessary. My assessment within this Chapter and the information contained within the RIES would assist the SoS in this task.

6. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

6.1.1. The designated National Networks National Policy Statement (NNNPS) 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). Conclusions on the case for development consent set out in the application are therefore reached within the context of the policies contained in the NNNPS. However, in reaching the conclusions set out in this Chapter, I have taken all other relevant law and policy into account.

6.2. SCHEME OBJECTIVES AND BENEFITS

6.2.1. It is clear that this proposal provides significant benefits. The Applicant's assessment of the need for and benefits of the scheme is outlined in chapters 2, 4 and 6 of the Planning Statement [[APP-070](#)]. The Statement establishes that the scheme has 4 key objectives:

- Improve access to the Port of Hull
- Relieve congestion
- Improve safety
- Improve connections between the city centre to the north and developments and tourist and recreational facilities to the south

6.2.2. It is important to note that the first 3 of these objectives would clearly be achieved, for the reasons given by the Applicant and as discussed in my assessment of Transportation, Traffic and Movement at section 4.2. As also discussed at section 4.2, the achievement of the 4th objective is a mixed picture, due to the negative effects arising from the loss of at-grade pedestrian crossings. Nevertheless, there would also be significant improvements arising from improved road connections, NMU bridges and improvements to other pedestrian facilities such as the High Street underpass.

6.2.3. As discussed at section 4.7 of this report (Social, economic and land-use effects) the scheme would produce economic benefits arising from matters such as improved access to the Port, reducing delays and improving journey time reliability. The Applicant estimates that benefits to business users would amount to £88.6M and the scheme would also produce benefits to non-business users amounting to £148.7M (Response to Examining Authority's Written Questions) [[REP2-003](#)]. I am mindful also of the potential of the scheme to assist in the delivery of new development sites, again as discussed in section 4.7 of this report. The principle of the scheme is aligned with the Development Plan and other local strategies.

6.2.4. The scheme has been appraised using an Economic Assessment which was undertaken in line with the most up to date Transport Appraisal Guidance. This is summarised at Table 4.3 of the Planning Statement

[[APP-070](#)]. The output from this is a Benefits to Cost Ratio (BCR) figure for the scheme of 1.59. In response to ExQ1.0.1 [[PD-006](#)], the Applicant advised [[REP2-003](#)] that this translates to a medium value for money rating.

6.3. THE PLANNING BALANCE

6.3.1. My conclusions on the effects of the proposed development and its performance against relevant policy and legislation are summarised below, drawing on the analysis of planning considerations in Chapter 4 and Habitats Regulation Assessment (HRA) in Chapter 5 above.

6.3.2. HRA considerations

- On the basis of the information before me, that the proposed development would have no AEOI, either alone or in- combination with other plans or projects, on any European site.
- I am satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an AA, should it be considered necessary.

6.3.3. Transportation, traffic and movement

- The scheme would improve the flow of traffic along this section of the A63. Consequently, it would succeed in the objectives of improving access to the Port of Hull and relieving congestion. These are key benefits of the scheme and weigh in its favour.
- Connections between the city centre to the north and developments and tourist and recreational facilities to the south would be improved for cars, and this also weighs in favour of the scheme.
- The effect of the scheme on NMUs is mixed. There are some safety benefits in separating NMUs from traffic and there are some new means of crossing the A63. However, the loss of at-grade crossings reduces options for pedestrians and is a negative aspect of the scheme, particularly given the aim of improving connections across the road.
- The adverse impacts on NMUs crossing the A63 will particularly affect some people with restricted mobility. Due regard must be had to the disproportionate effect of the scheme on those who have protected characteristics under the Equality Act 2010.
- Provisions for NMUs alongside the A63 are satisfactory, and there are benefits associated with the removal of vehicles from some routes.
- The information provided by the Applicant meets the requirements of Paragraph 4.60-4.65 of the NNNPS in respect of road safety.
- I am satisfied that all reasonable steps have been taken and will be taken to minimise the risk of road casualties arising from the scheme and contribute to an overall improvement in the safety of the Strategic Road Network. Accordingly, Paragraph 4.66 of the NNNPS has been addressed.
- There would be a modest reduction in accidents and casualties. I am satisfied that all relevant safety considerations and potential safety improvements have been taken into account.

- The scheme will have some adverse impacts during construction, commensurate with a scheme of this scale in an urban location, but appropriate mitigation measures are proposed.

6.3.4. Air quality and related emissions

- During operation, the development will not compromise the prospects of the exceedance of NO₂ levels within the Hull AQMA No.1(A) being addressed and will secure some improvements.
- Outside the AQMA there would be some increases in NO₂ concentrations, but these would not result in any new exceedances of Limit Values.
- The construction phase will give rise to dust impacts that will be negative, but these are capable of being mitigated. The construction impact on NO₂ emissions would also be mitigated and would be acceptable.
- The scheme would have some effect on particulate matter, but concentrations would remain within Limit Values.
- The air quality effects of the scheme would not be significant for ecological receptors.
- The scheme would not cause any breach of domestic or European air quality thresholds.
- In view of the above, the scheme complies with the NNNPS and the broader UK strategy.
- Appropriate construction stage mitigation measures have been put forward and would be secured through the CEMP and the DCO.
- Carbon emissions from the scheme would not have a material impact on the ability of Government to meet its carbon reduction targets.
- Overall, therefore, the scheme is satisfactory in terms of its impact on air quality.

6.3.5. Biodiversity

- There will be a direct and harmful impact on the Trinity Burial Ground SCNI due to loss of footprint, extensive loss of mature trees, and lighting during construction and operation. The effect of this can be partially, but not wholly, mitigated. The harm during the construction phase is significant.
- There will be moderate harm from the loss of trees along the remainder of the route.
- There will be a loss of foraging ground for bats as a result of the above effects on the Trinity Burial Ground SCNI, but this is not regarded as significant. Additionally, there is a potential loss of bat roosts arising from demolition of the Earl de Grey, but this can be mitigated with appropriate measures
- There is a major adverse effect to the Humber Dock Marina due to the permanent loss of habitat beneath pile footprint and the impacts from piling. However, the work has commenced and no additional impacts would arise from this scheme.
- There would be no significant adverse impact on the bird population recorded within and adjacent the Humber Estuary. The mitigation proposed is adequate and would be secured.

6.3.6. Historic environment

- Work No 30 of the Applicant's preferred DCO [[REPR17-004](#)] would result in substantial harm to the Grade II listed Earl de Grey public house and there is conflict with the NNNPS and the Hull Local Plan as a result. If the alternative 'permitted scheme' were implemented instead of Work No 30 in respect of the Earl de Grey, the harm to the building would be less than substantial.
- There would be harm to the setting of the Grade II listed Castle Buildings arising primarily from the demolition of the Earl de Grey.
- There would be a limited negative effect on the setting of the Grade I listed Statue of King William III and Flanking Lamps.
- There would be permanent visual harm to the Trinity Burial Ground, a non-designated heritage asset.
- The proposals relating to archaeology throughout the scheme and buried remains within the Trinity Burial Ground are satisfactory.
- A range of impacts to the buildings and open space within the Old Town Conservation Area (including those cited above) means that there would be less than substantial harm to the Conservation Area.
- There would be less than substantial harm to the setting of a range of designated heritage assets, as set out in the ES. This would result in less than substantial harm to the significance of those assets.
- There should be no harm to the Beverley Gate Scheduled Monument or to its setting. Unforeseen circumstances could be addressed with R16.
- There would be a range of negative impacts on heritage assets during the construction stage, but these are within acceptable bounds
- Aside from specific issues set out above, the Applicant has generally taken the opportunity to enhance heritage assets where appropriate, in accordance with paragraphs 5.130 and 5.137 of the NNNPS.

6.3.7. Townscape and visual impact

- The concrete central reserve barrier the Applicant favours would have a harmful visual effect and would further the impression of the road severing the city. It may be possible to reduce this harm with an amended design, but it is not clear what improvements, if any, can be achieved.
- The Porter Street Bridge would cause limited visual harm.
- The Princes Quay Bridge will have a neutral visual effect.
- The creation of new open space at the Myton Centre site would be visually beneficial.
- There would be visual harm arising from the loss of trees along the route, although this would be reduced over time as new tree planting takes hold.
- The landscaping proposals are adequate and would be the subject of further control via R5.
- The changed Mytongate and Market Place/Queen Street junctions would not result in significant townscape harm.
- The proposed pumping station would not be visually harmful.

- There would be visual harm during the construction phase, but this is unavoidable, would be temporary and appropriate mitigation would be secured.

6.3.8. Social, economic and land-use effects

- Overall, the scheme would have a positive economic impact, including assisting in the delivery of some development sites. This accords with a range of policies and strategies, including the NNNPS and the EIMP.
- The scheme would have some harmful effects on local businesses, primarily during construction, but appropriate mitigation measures would be put in place to minimise such effects.
- Some sensitive receptors would be affected by noise and vibration during construction. Appropriate mitigation measures would be put in place.
- There would be some harmful noise impacts during operation of the scheme. Overall, however the benefits arising from changes in the noise environment as a result of the scheme would outweigh the harmful impacts.
- The scheme would have a neutral effect in terms of open space provision, taking account of the compensatory land to be provided and this is a relevant consideration in applying Paragraph 5.174 of the NNNPS.
- Appropriate mitigation measures would be secured via R4 and the CEMP.

6.3.9. Water environment

- The Applicant's Flood Risk Assessment is satisfactory.
- The development would be safe in terms of flood risk.
- The Sequential test is passed.
- Meeting the Exception Test is dependent on the sustainability benefits of the scheme but the Test is met in all other respects.
- National policy towards SuDs has been properly taken into account
- Objections by the EA have been properly considered.
- The proposed mitigation measures are satisfactory.

6.3.10. There are no other policy matters or important and relevant considerations that affect the planning balance.

6.4. OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.4.1. The statutory framework for deciding NSIP applications where, as in this case, there is a relevant designated NPS is set out in s104 of the Planning Act 2008 (PA2008). This establishes that, in deciding the application, the SoS must have regard to:

- any relevant national policy statement,
- the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009
- any local impact report

- any matters prescribed in relation to development of the description to which the application relates, and
- any other matters which the Secretary of State thinks are both important and relevant to the decision.

- 6.4.2. Section 104(3) states that the SoS must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of the subsequent subsections applies.
- 6.4.3. The NNNPS advises at Paragraph 4.2 that, subject to the provisions of s104 of the PA2008, the starting point for the determination of an application for a national networks NSIP is a presumption in favour of development. I have considered this scheme on that basis.
- 6.4.4. As I have concluded in section 6.2 above, the proposal would provide significant benefits. These benefits are relevant to the 4 key objectives of the project, as set out in Chapter 2 of the Planning Statement [[APP-070](#)]. Moreover, they are aligned with high level objectives, as set out in the NNNPS. There is also considerable support in principle for the scheme in local policy documents, including the Development Plan. HCC is also supportive of the scheme in principle. Thus, the scheme started with the benefit of the presumption in Paragraph 4.2 of the NNNPS and these matters weigh matters further in its favour.
- 6.4.5. However, this is a major scheme being routed through a highly sensitive urban location, rich in built heritage. The scheme will have a major impact on the local townscape and will affect local people, businesses and pedestrians. In these circumstances, the details of the scheme cannot be set aside lightly, even in the face of clear strategic objectives. Indeed, both the NNNPS and the Development Plan make clear the importance of more detailed matters.
- 6.4.6. In this case, harm to elements of Hull's built heritage is unavoidable if the road is to be upgraded. Given that, it was essential that the Applicant did everything in its power to minimise harm and mitigate impacts. However, in my judgement this has not been done in respect of the Earl de Grey public house, for the reasons set out in Chapter 4. The Applicant's proposals fail to demonstrate that the substantial harm to this designated heritage asset is necessary. Paragraph 5.133 of the NNNPS indicates that development consent should be refused in such cases. I attach substantial weight to that.
- 6.4.7. There are also other harms identified above. Of particular importance is the loss of a substantial part of the Trinity Burial Ground, the loss of at-grade crossings, leading to longer NMU routes across the A63 and the concrete central reserve barrier proposed. While I accept that the first two of these harms are necessary if the scheme is to be delivered in a way that will deliver all the anticipated benefits, they nevertheless form part of my overall assessment of the planning balance. It is possible that the design of the central reserve barrier might be revised to improve its appearance but, for the reasons given in Chapter 4, my assessment is based on the details submitted.

- 6.4.8. I have had regard to the East Inshore Marine Plan. However, its policies are aligned with those of the terrestrial planning regime, including the NNNPS, the NPPF and the Development plan, and do not, therefore, lead me to any different conclusion on the planning merits of the scheme.
- 6.4.9. **Weighing all these matters in the balance, despite the benefits of the scheme, the harm I have found and consequent conflict with the NNNPS lead me to recommend that development consent should not be granted in the form applied for (as amended during the Examination).**
- 6.4.10. It may be that the SoS does not agree with my assessment regarding the Earl de Grey in terms of the degree of harm or that circumstances relating to the building change before the decision on the application is made, resulting in a significant reduction in the degree of harm. With that in mind, I consider below my assessment in the circumstances that the degree of harm on the Earl de Grey were to be assessed as less than substantial.
- 6.4.11. The scheme has a wide range of impacts, positive and negative. However, aside from the Earl de Grey, I have identified 3 key harms:
- Loss of part of the Trinity Burial Ground
 - Visual impact arising from the design of the central reserve barrier
 - Reduced options for NMUs seeking to cross the A63 due to the removal of at-grade crossings.
- 6.4.12. No other considerations are capable of altering the overall planning balance.
- 6.4.13. Loss of part of the Trinity Burial Ground would cause significant harm to the Old Town Conservation Area and visual and biodiversity harm due to loss of trees. It also raises significant issues relating to archaeology and buried remains at the site. However, given the constraints of the route of the A63, a substantial impact on the Burial Ground cannot be avoided if the scheme is to be delivered. It appears to me that the Applicant has done all it can to address that harm. Given the substantial benefits of the scheme and the presumption in favour of development at NNNPS Paragraph 4.2, the harm to the Burial Ground is justified in my view.
- 6.4.14. The visual impact that would arise from the design of the central reserve barrier is a significant concern, given its concrete 'motorway style' appearance, the extent of its impact (the entire length of the upgraded road) and the sensitive, urban character of its setting, much of it historic in nature. The precise way this affects the planning balance depends upon any progress the Applicant is able to make /has made in considering its design. The Applicant has agreed wording for R12, which includes specific reference to the design of the barrier. If an improved design can be agreed, perhaps in consultation with HCC, then this issue could be regarded as resolved.
- 6.4.15. If, on the other hand, the Applicant is unable to commit to any revised design, the visual harm arising from the barrier proposed would be

significant in my view. I am mindful also that it is a concern that was raised consistently by HCC in the LIR [[REP2-016](#)] and throughout the Examination. On balance, however, it would not, on its own, justify refusal of the scheme, given the benefits I have identified and the presumption in favour of development at NNNPS Paragraph 4.2.

- 6.4.16. The reduced options for NMUs seeking to cross the A63 is a further significant concern. I am particularly mindful of the findings in the ES [[AS-011](#)] that indicate a disproportionate impact in some instances on users with restricted mobility. The SoS must have regard to this and to the provisions of the Equality Act 2010 (the 'Public Sector Equality Duty') in considering this matter.
- 6.4.17. In evaluating this issue, I am mindful of the concerns raised by the Hull Access Improvement Group (HAIG) regarding increased travel distances [[REP2-012](#)]. However, I am also aware that the Applicant has consulted carefully on this issue, as noted by HAIG [[REP2-012](#)] and HCC [[REP2-013](#)]. HCC has considered this matter in the LIR [[REP2-016](#)] and in its response to my written questions [[REP2-013](#)] and considers that, on balance, the increased journey times for some NMUs are justifiable.
- 6.4.18. Paragraph 5.216 of the NNNPS establishes that there is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated. In this case, mitigation measures are proposed in the form of new means of crossing the road. Even though those measures do not fully address my concerns, it appears to me that the Applicant has sought to address the matter so far as reasonably possible, in accordance with Paragraph 5.215 of the NNNPS.
- 6.4.19. Considering these matters as a whole, I conclude that this consideration would not, on its own, justify refusal of the scheme, given the benefits I have identified and the presumption in favour of development at NNNPS Paragraph 4.2.
- 6.4.20. Overall, my view is that, if a satisfactory solution were found to address the issue of the Earl de Grey, the balance of the planning merits of the scheme would point towards consent being granted. This does not alter my primary conclusion on the scheme as examined, which is that consent should not be granted, as set out in bold typeface above.
- 6.4.21. In light of my findings above, the SoS may consider it beneficial to seek further details regarding the proposals for the central reserve barrier and the Earl de Grey public house (along the lines referred to in R12 and R14) before the decision is made. I make recommendations to this effect at Chapter 9. It should also be noted that, as discussed in section 4.8, if the SoS reaches a different view to mine regarding the planning merits of the scheme (and in particular if it is considered that development consent should be granted) consideration should be given as to whether the sustainability benefits of the scheme are such that the Exception Test is met (NNNPS Paragraph 5.108).

7. COMPULSORY ACQUISITION AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The application includes proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land. This Chapter records the Examination of those proposals and related issues.

7.2. LEGISLATIVE REQUIREMENTS

7.2.1. CA powers can only be granted if the conditions set out in sections 122 and 123 of the Planning Act 2008 (PA2008), together with relevant guidance in *Guidance Related to Procedures for the Compulsory Acquisition of Land* (DCLG 2013) (the DCLG CA Guidance), are met. Also relevant is *Guidance on Compulsory purchase process and The Crichel Down Rules* (MHCLG 2019) (the MHCLG CP Guidance).

7.2.2. Section 122(2) of PA2008 requires that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate¹.

7.2.3. Section 122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. This means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected (DCLG CA Guidance, Paragraph 13).

7.2.4. Section 123 of PA2008 requires that one of three procedural conditions in subsections (2) to (4) must be met by the application proposal, namely:

- that the application for the order included a request for compulsory acquisition of the land to be authorised;
- that all persons with an interest in the land consent to the inclusion of the provision; or
- that the prescribed procedure has been followed in relation to the land.

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

- All reasonable alternatives to CA must have been explored (Paragraph 8 of the DCLG CA Guidance)
- the Applicant must have a clear idea of how it intends to use the land it intends to acquire (Paragraph 9 of the DCLG CA Guidance)

¹ DCLG CA Guidance

- The Applicant should be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. (Paragraph 9 of the DCLG CA Guidance); and
- The Secretary of State must be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected (Paragraph 9 of the DCLG CA Guidance).

7.2.6. These matters were tested in the Examination and are reported on below.

7.2.7. Further to Part 1 of Schedule 5 to PA2008 at paragraph 2, a DCO can include TP powers. PA2008 and the associated DCLG CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land.

7.2.8. The Neighbourhood Planning Act 2017 (NPA2017) has been enacted and contains provisions which amount to a codification of new TP practice. These provide for enhancements to the rights of APs subject to TP, with a view to ensuring that they have equivalent or proportionate rights to notice and to relevant compensation to those already available to APs subject to CA. However, at the time of writing this report, the relevant provisions had not yet commenced.

7.3. THE REQUEST FOR CA AND TP POWERS

7.3.1. The Applicant's latest preferred dDCO [[REPR17-004](#)] (and all previous versions) includes provisions intended to authorise CA of both land and rights. Powers for the temporary possession (TP) of land are also sought.

7.3.2. The powers for CA and TP are set out in Part 5 of the dDCO [[REPR17-004](#)] (Articles 20-33). The powers sought would:

- Allow the undertaker to Compulsorily acquire identified 'Order land';
- Allow the undertaker to Compulsorily acquire rights over Order land and impose restrictive covenants over some Order Land (specified in Schedule 5 to the DCO);
- Extinguish private rights over land;
- Allow the undertaker to take temporary possession of land;
- Remove buildings and vegetation from land the subject of TP;
- Carry out temporary construction works;

7.3.3. The powers would allow the undertaker to acquire subsoil or airspace only where acquisition of the whole of the land is not necessary. The identified Order land includes some Crown Land and some open space which constitutes 'special category land'.

7.3.4. The application was accompanied by a Book of Reference (BoR), Land Plans, a Statement of Reasons (SoR) and a Funding Statement (FS). Taken together, these documents set out the land and rights sought by the Applicant, together with the reasons for their requirement and the

basis under which compensation would be funded. As is normal, the Examination and due diligence processes led to changes to some of this documentation. By the close of the Examination, the most up-to date versions were as follows:

- BoR [[REPR17-030](#)];
- SoR [[REPR17-028](#)];
- Funding Statement [[APP-019](#)];
- Land Plans [[REPR17-012](#)];
- Crown Land Plans [[REPR17-026](#)]; and
- Special Category Land Plans [[REPR17-022](#)].

7.3.5. References to the BoR and the Land Plans in this Chapter from this point should be read as references to the latest revisions cited above unless otherwise stated. Land over which CA and/or TP powers are sought is referred to in this Chapter as 'Order land'.

7.3.6. As discussed in section 2.2 of this report, I accepted non-material changes to the project during the Examination, and this has resulted in changes to the works listed at Schedule 1 of the Applicant's preferred DCO [[REPR17-004](#)] and the removal of some options originally included in the scheme for a site compound and drainage of the underpass. However, these changes have been accounted for in the documents listed above, and CA or TP powers are not now sought for land which has been removed from the scheme as a result of these changes.

7.4. THE PURPOSES FOR WHICH LAND AND RIGHTS ARE REQUIRED

7.4.1. The purposes for which the CA and TP powers are required are set out in the SoR [[REPR17-028](#)], which gives a specific purpose for each plot of land.

7.4.2. In general terms, CA is sought for land or rights that would be required permanently for construction and operation of the development or to facilitate it. TP is sought for time-limited processes associated with construction and maintenance of the scheme. TP is also sought for replacement public open space, a matter I will return to.

7.5. EXAMINATION OF THE CA AND TP CASE

7.5.1. Compulsory Acquisition and Temporary Possession matters were considered at a number of stages of the Examination:

- I asked questions at both rounds of written questions ([[PD-006](#)] and [[PD-011](#)]). The Applicant responded to these at [[REP2-003](#)] and [[REP5-004](#)].
- Two Compulsory Acquisition Hearings (CAHs) were held ([[EV-013](#)] and [[EV-011](#)]). The Applicant provided written summaries of the case put at these events ([[REP3-011](#)] and [[REP5-002](#)]).
- I asked for further information in my Rule 17 request of 13 September [[PD-017](#)]. The Applicant responded to this with updated documents, listed in its covering letter [[REPR17-001](#)]

- 7.5.2. I considered both the general case submitted by the Applicant and the objections to the scheme on CA/TP grounds.
- 7.5.3. There were 7 objections which appeared to object on the basis of the CA or TP sought in the application. By the close of the Examination there were 3 outstanding objections.
- 7.5.4. I sought clarification regarding a number of aspects of the Applicant's CA/TP proposals throughout the Examination. Since matters were still being clarified very near to the end of the Examination, I was not able to seek clarification from the Applicant regarding all of the documents submitted, particularly those submitted in response to the Rule 17 request of 13 September [[PD-017](#)]. This should be borne in mind in considering the concerns I raise below regarding some of the documents submitted.

7.6. EXA's ASSESSMENT

Planning Act 2008 section 122(2) and the need for CA and TP

- 7.6.1. The Applicant's overall case is that there is a compelling case to acquire the land because of the need for the scheme. This is set out in Chapter 5 of the SoR [[REPR17-028](#)] and Chapter 2 of the Planning Statement [[APP-070](#)] and was explained at CAH1 [[EV-013](#)], after which the Applicant provided a summary of its case put at the hearing [[REP3-011](#)]. The key points are as follows:
- The National Networks National Policy Statement (NNNPS) 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 to provide a transport network that is capable of stimulating and supporting economic growth.
 - The A63 Castle Street provides a vital link between the M62 motorway, the Humber Bridge and the A15 to the west and the Port of Hull to the east. It is part of a key route of both local and strategic importance and is part of the E20 Trans- European Network Route. The Castle Street section of the A63 is exceptionally busy, carrying daily flows in excess of those recorded on the M62 within the region and forecast to increase. Lorries form a high proportion of traffic on Castle Street.
 - The current signalised Mytongate junction restricts the through flow of traffic along the A63 and on Ferensway/Commercial Road, which crosses it at Mytongate.
 - The A63 also acts as a substantial barrier and creates severance between the city centre, main shopping areas and transport links to the north of the A63 and developments, tourist and recreational facilities and retail parks to the south.
 - The volume of traffic on the A63 produces conflict between pedestrians and vehicles and leads to poor quality of the public realm on the footpaths in the vicinity of the road.

- The A63 Castle Street has been operating at capacity for several years. The current configuration of the junction at Mytongate and the traffic signals on this section of the A63 are unable to cope with any future traffic growth. Key stakeholders, including HCC, are keen that the Scheme should be constructed at the earliest opportunity.
- The Scheme is seen as a catalyst for future development in Hull city centre which is currently restricted due to the present levels of congestion. The Scheme will also aid the future expansion of the Port of Hull.
- The average accident rate for the A63 Castle Street is relatively low. Nevertheless, restricting access to the A63 by closing some junctions and restricting movements on some side roads will help to improve safety.
- The four key objectives of the proposed Scheme are to:
 - Improve access to the Port of Hull
 - Relieve congestion
 - Improve safety
 - Improve connections between the city centre to the north and developments and tourist and recreational facilities to the south
- These align with the following strategic objectives set out in the NNNPS:
 - 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
 - Networks which join up our communities and link effectively to each other

7.6.2. Although I am critical of aspects of the Applicant's proposals in Chapter 4 of this report, I accept that the proposal accords with the need case for NSIPs set out in the NNNPS. No APs attacked the scheme on the basis that improvements to the road were not necessary.

7.6.3. In terms of specific plots, the Applicant refers to Annex A of the SoR [[REPR17-028](#)] which, it says, sets out why compulsory acquisition powers are necessary in relation to each individual parcel of the land. The Applicant considers that the land included in the DCO is the minimum land-take required to construct, operate, maintain and mitigate the Scheme necessary to achieve the objectives of the Scheme (SoR, 5.3.4).

7.6.4. Annex A of the SoR [[REPR17-028](#)] consists of a table identifying individual plots of land, explaining why they are required and linking them to the various works identified in the dDCO. The details are brief and give an outline only. However, when they are considered alongside the other submitted material, and in particular the work plans, the explanations adequately demonstrate that the plots are needed.

7.6.5. Plot 5/10a, which is land at the Magistrates' Court for which TP powers are sought, does not appear in Annex A. I raised this with the Applicant in the Rule 17 request of 13 September [PD-017]. The Applicant advised that the area is to be used as a working area for accommodation works and then landscaping and mitigation works for the Court. I agree that these works are necessary for the scheme.

7.6.6. I conclude that all of the land for which CA or TP powers are sought is required for the development or to facilitate it, is no more than is reasonably required and is proportionate. It is clear that the Applicant has a clear idea of how it intends to use the land subject to CA/TP powers.

Section 122(3)

7.6.7. Section 122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. I have considered the need for the scheme above and am satisfied that the land is needed to deliver it. However, I have concluded at section 6 of this report that development consent should be withheld. If the SoS agrees with me on that, it follows that there cannot be a compelling case in the public interest for the land needed to implement the scheme to be acquired compulsorily. Consequently, if the SoS accepts my recommendation, s122(3) is not met.

7.6.8. If the SoS disagrees with me regarding the planning merit of the scheme, it is nevertheless important to consider whether the land needs to be acquired compulsorily rather than by agreement. This is reinforced by the DCLG CA Guidance, which advises at paragraph 25 that:

Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.

7.6.9. The guidance recognises that, where proposals would entail the compulsory acquisition of many separate plots of land it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset. Nevertheless, it is clear that all reasonable efforts should be made to acquire land by negotiation. This is reinforced by the MHCLG CP Guidance, which advises that at paragraph 2 that:

The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement.

and at Paragraph 17 that:

Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.

7.6.10. The position regarding current negotiations to acquire land needed for the scheme is set out in the SoR [[REPR17-028](#)]. The text of the SoR has a number of references to negotiations. At paragraph 4.9.3 it says:

The Applicant has engaged with all landowners and occupiers with a view to acquiring their land interest by agreement by writing to them to inform them of the Applicant's willingness to negotiate to acquire the land by agreement, and to invite dialogue on this point. As a result, the Applicant is in the process of engaging with a significant proportion of landowners with regard to the acquisition of land by agreement; and negotiations with this objective will be ongoing throughout the DCO process. The status of such negotiations is set out in Annex B to this Statement.

7.6.11. There is no suggestion in the text of any reason not to seek to acquire land by negotiation, even if CA and TP powers are sought concurrently with such negotiations. Unfortunately, however, the details of the negotiations in Annex B do not support the general approach set out in the text.

7.6.12. Annex B of the SoR [[REPR17-028](#)] is presented in the form of a table and includes a column headed, 'Status of objection and negotiations with land interest'. In many instances it is completed using the words 'not applicable'. It is not possible to tell from this whether there is an objection, whether negotiations have taken place or how they were progressing. I raised this at ExQ1.3.1 [[PD-006](#)] and again at ExQ2.3.1 [[PD-011](#)] and in the Rule 17 letter of 13 September [[PD-017](#)]. Although the SoR has been revised and the instances with that response are now fewer than in the first version of the SoR [[APP-018](#)], a significant number remain, including in instances where CA of land or rights is sought. Consequently, it is not clear whether a proper attempt to secure land or rights by agreement has been made in those cases.

7.6.13. In response to my second written request to give a more informative answer than 'not applicable', the Applicant changed the response in many instances to 'agreement not sought'. The Applicant explained this in its response to ExQ2.3.1 [[REP5-004](#)], saying:

The Applicant is only intending to enter into agreement where they are seeking permanent acquisition of land. Therefore, in the final column - Status of objection and negotiations with land interest - now states 'Agreement not sought' where the Applicant is not planning on entering an agreement

7.6.14. This raised further concerns. First, it appears inconsistent with the statements elsewhere in the SoR [[REPR17-028](#)], such as paragraph 4.9.3 referred to above. Thus, the SoR is internally inconsistent and therefore difficult to rely on.

7.6.15. Second, the statement that the Applicant is only intending to enter into agreement 'where they are seeking permanent acquisition of land' leaves open the question of whether or not any attempt has been made to reach a negotiated agreement with owners and occupiers of land where it is

proposed to compulsorily acquire rights over land, rather than the land itself. This specific point was raised in the Rule 17 letter [PD-017] and the Applicant was also referred to relevant guidance, including the DCLG CA Guidance I have already highlighted. It is clear that this applies to acquiring rights as well as land; Footnote 2 of the DCLG CA Guidance says,

Unless otherwise stated, in the remainder of this guidance document any reference to the compulsory acquisition of land also includes any compulsory acquisition of rights over such land.

- 7.6.16. The Applicant did not respond directly to this query, referring me instead to the revised SoR [REPR17-028]. From my reading of the document, agreement has not been sought in many instances where the Applicant intends to permanently acquire rights over land. Table 2 below sets out those instances where Annex B of the SoR indicates that the Applicant seeks to permanently acquire rights over land but also records that no attempt has been made to reach an agreement or is unclear on the matter. The table is formed of extracts from Annex B.
- 7.6.17. Third, despite its apparent intention to do so, it does not appear that the Applicant has actually sought agreement in all cases where it proposed to CA land (as opposed to rights). I raised objection number 15(c) as a specific example of this in the Rule 17 letter [PD-017], but the Applicant provided no comment on this or revision to it in the final version of the SoR [REPR17-028]. Consequently, I can only conclude that the Applicant has not sought to acquire the land by agreement. Even if it has done so, it has not made that clear. Table 3 below provides a list of such instances.

Table 2: Instances where CA of Rights is proposed and the Statement of Reasons indicates that an agreement has not or may not have been sought.

Obj No:	Land Interest Name/Organisation and Land Agents Name (if applicable):	Type of Interest:	Permanent/Temporary:	Plots	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
1(c)	99P Stores Limited	in respect of right to use the land at Kingston Retail Park	Permanent Rights	3/5zb	N	Agreement not sought
16(c)	Aviva Commercial Finance Limited	Legal Charge	Permanent Rights	3/5zb	N	Not Applicable
18(c)	B & M Retail Limited	in respect of right to use the land at Kingston Retail Park	Permanent Rights	3/5zb	N	Agreement not sought
26(b)	Boots UK Limited	in respect of right to use the land at Kingston Retail Park	Permanent Rights	3/5zb	N	Agreement not sought
37(c)	Costa Limited	in respect of right to use the land at	Permanent Rights	3/5zb	N	Agreement not sought

Obj No:	Land Interest Name/Organisation and Land Agents Name (if applicable):	Type of Interest:	Permanent/Temporary:	Plots	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
		Kingston Retail Park				
54(c)	Grammar School Yard Management Limited	Part 1 (Category 1 - Owner)	Permanent Rights	5/2bk, 5/2bl	N	Not Applicable
65(c)	Hobbycraft Trading Limited	in respect of right to use the land at Kingston Retail Park	Permanent Rights	3/5zb	N	Agreement not sought
71(d)	Hull Realty Limited	Legal Charge	Permanent Rights	5/2k, 5/2ad, 5/2ac	N	Not Applicable
71(g)	Hull Realty Limited	Part 1 (Category 1 - Owner)	Permanent Rights	5/2ac, 5/2ad, 5/2ag, 5/2ai, 5/2aj, 5/2k	N	Not Applicable
72(b)	Hull Retail Limited	Legal Charge	Permanent Rights	5/2k, 5/2ad, 5/2ac	N	As Hull Realty Limited

Obj No:	Land Interest Name/Organisation and Land Agents Name (if applicable):	Type of Interest:	Permanent/Temporary:	Plots	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
93(c)	Mamas & Papas (Retail) Limited	in respect of right to use the land at Kingston Retail Park	Permanent Rights	3/5zb	N	Agreement not sought
100(b)	Modern Courts (HumberSide) Limited	as beneficiary	Permanent Rights	5/1z	N	Not Applicable
104(c)	Mothercare UK Limited	in respect of right to use the land at Kingston Retail Park	Permanent Rights	3/5zb	N	Agreement not sought
117(c)	Outfit Retail Properties Limited	in respect of right to use the land at Kingston Retail Park	Permanent Rights	3/5zb	N	Agreement not sought
126(b)	Princes Quay Estates Limited	Part 1 (Category 1 - Owner)	Permanent Rights	5/2ac, 5/2ad, 5/2k	N	As Hull Realty Limited
130(c)	Redcastle Limited	in respect of right to use the	Permanent Rights	3/5zb	N	Agreement not sought

Obj No:	Land Interest Name/Organisation and Land Agents Name (if applicable):	Type of Interest:	Permanent/Temporary:	Plots	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
		land at Kingston Retail Park				
144(b)	Societe Generale, London Branch	Legal Charge	Permanent Rights	3/1bg, 3/1bf, 3/1ca, 3/1cf, 5/2g, 5/2j, 3/1cc	N	Not Applicable
151(c)	T J Morris Limited	in respect of right to use the land at Kingston Retail Park	Permanent Rights	3/5zb	N	Agreement not sought
153(c)	The Carphone Warehouse Limited	in respect of right to use the land at Kingston Retail Park	Permanent Rights	3/5zb	N	Agreement not sought

Table 3: Instances where CA of Land is proposed and the Statement of Reasons indicates that an agreement has not or may not have been sought.

Obj No:	Land Interest Name/Organisation and Land Agents Name (if applicable):	Type of Interest:	Permanent/Temporary:	Plots	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
15(c)	ATS Euromaster Limited	Part 1 (Category 1 - Owner)	Permanent	3/4a, 3/4c, 3/4d	Y	Not Applicable
23(b)	Bestun Wosu Khder	as beneficiary	Permanent	3/1ap	N	Agreement not sought
33(b)	Charity Commission	Legal Charge	Permanent	3/6e	N	Agreement not sought
39(b)	Dara Hasan	as beneficiary	Permanent	3/1ap	Y	Agreement not sought
41(b)	David Bell	as beneficiary	Permanent	3/1ap	Y	Agreement not sought
52(b)	George William Brown	as beneficiary	Permanent	3/1ap	Y	Agreement not sought
54(b)	Grammar School Yard Management Limited	Part 1 (Category 1 - Owner)	Permanent	5/2bh	Y	Not Applicable

Obj No:	Land Interest Name/Organisation and Land Agents Name (if applicable):	Type of Interest:	Permanent/Temporary:	Plots	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
55	Habib Bostani	in respect of rights for services, drainage and access for maintenance	Permanent	2/1m	Y	Agreement not sought as The Applicant is taking temporary possession of the public highway
71(c)	Hull Realty Limited	Legal Charge	Permanent	3/8d, 3/7h, 3/1ci, 5/2b, 5/2x, 5/2v, 5/2y	Y	Not Applicable
71(f)	Hull Realty Limited	Part 1 (Category 1 - Owner)	Permanent	3/1ci, 3/7h, 5/2b, 5/2v, 5/2x, 5/2y	Y	Not Applicable
72(a)	Hull Retail Limited	Legal Charge	Permanent	3/8d, 3/7h, 3/1ci, 5/2b, 5/2x, 5/2y, 5/2v	Y	As Hull Realty Limited

Obj No:	Land Interest Name/Organisation and Land Agents Name (if applicable):	Type of Interest:	Permanent/Temporary:	Plots	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
72(d)	Hull Retail Limited	Part 1 (Category 1 - Owner)	Permanent	3/8d	Y	As Hull Realty Limited
83(b)	Katarzyna Stefania Ruthkowska	as beneficiary	Permanent	3/1ap	Y	Agreement not sought
85(b)	Khalida Kalegi	as beneficiary	Permanent	3/1ap	Y	Agreement not sought
86	Khiraj Bakir	in respect of rights for services, drainage and access for maintenance	Permanent	2/1m	Y	Agreement not sought as The Applicant is taking temporary possession of the public highway
91	Louise Blurton	in respect of rights for services, drainage and access for maintenance	Permanent	2/1l	Y	Agreement not sought as The Applicant is taking temporary possession of the public highway
95(b)	Marek Janusz Golec	as beneficiary	Permanent	3/1ap	Y	Agreement not sought
122	Philip James Collingwood	in respect of rights for services,	Permanent	2/1o	Y	Agreement not sought

Obj No:	Land Interest Name/Organisation and Land Agents Name (if applicable):	Type of Interest:	Permanent/Temporary:	Plots	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
		drainage and access for maintenance				
126(a)	Princes Quay Estates Limited	Part 1 (Category 1 - Owner)	Permanent	3/1ci, 3/7h, 5/2b, 5/2v, 5/2x, 5/2y	Y	As Hull Realty Limited
127(a)	Princes Quay Retail Limited	Part 1 (Category 1 - Owner)	Permanent	3/8d	Y	As Hull Realty Limited
143(b)	SKN Developments Limited	Part 1 (Category 1 - Owner)	Permanent	5/2bw	Y	Not Applicable
154	The Fruit Market Limited Liability Partnership	in respect of right of way	Permanent	5/1s	Y	Agreement not required

- 7.6.18. It is clear that discussions have taken place in many instances, and the Applicant indicated at CAH2 that negotiations were continuing with the affected land owners [REP5-002]. However, that does not alter the fact that the details recorded in the SoR [REPR17-028] suggest that there are many instances where an agreement has not been sought.
- 7.6.19. Additionally, while not fundamental to the concerns raised above, it is also relevant to note that Annex A of the SoR [REPR17-028] incorrectly refers to Works No 18A as 'Alterations to Kingston Retail Park car park', whereas Schedule 1 of the Applicant's preferred DCO [REPR17-004] identifies the 18A works as 'Working room for construction'.
- 7.6.20. Given the range of concerns I have identified regarding the SoR, including its lack of clarity and apparent internal inconsistencies, I am unable to have confidence in it. The lack of a source of information to clearly establish the steps that have been taken in all cases to acquire land and rights by agreement where CA powers are sought is a serious shortcoming of the application.
- 7.6.21. As the Applicant points out (SoR, 5.7.1) [REPR17-028] the CA Guidance recognises that, in some cases, it may not always be practicable to acquire each plot of land by agreement. Paragraph 25 of the DCLG CA Guidance says:
- 'Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset'.*
- 7.6.22. This is a linear scheme of some length and necessitates the acquisition of multiple parcels of land and rights. However, that does not mean that the Applicant should be able to avoid seeking to attempt to reach agreement with those with an interest in the land, even if CA powers are sought in parallel to that process.
- 7.6.23. For the reasons set out above I conclude that the application has failed to establish that the land and rights identified in tables 2 and 3 need to be acquired compulsorily rather than by agreement. It follows from this that the requirements of s122(3), the DCLG CA Guidance and the MHCLG Guidance have not been met.
- 7.6.24. It should be noted that my findings in respect of s122(3) apply only to the CA proposals. Although the Applicant's response to my enquiries suggest that it has not generally attempted to seek an agreement in respect of land subject to TP proposals, s122 does not apply to TP.

Section 123

- 7.6.25. Section 123 requires that one of three procedural conditions in subsections (2) to (4) must be met by the application proposal, namely:
- that the application for the order included a request for compulsory acquisition of the land to be authorised;
 - that all persons with an interest in the land consent to the inclusion of the provision; or
 - that the prescribed procedure has been followed in relation to the land.
- 7.6.26. Since the application includes a request for compulsory acquisition to be authorised, the first of these conditions, and thus s123, is met.

Reasonable Alternatives

- 7.6.27. Paragraph 8 of the DCLG CA Guidance advises that the application should be able to demonstrate that all reasonable alternatives to CA (including modifications to the scheme) have been explored.
- 7.6.28. It is clear that the scheme has evolved only after the consideration of alternatives. Six alternatives were identified and consulted on before this preferred scheme was settled on, as outlined in Chapter 3 of the Planning Statement [[APP-070](#)]. Given that the location of the scheme is fixed (due to the fact that it concerns upgrading an existing road) any of those proposals would have had similar land acquisition requirements. However, for the reasons I have already explained in relation to s122(3) of PA2008, it is not clear that the alternative of acquiring land and rights by agreement has been properly pursued in all cases. Accordingly, this requirement is not met.

Funds

- 7.6.29. The Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers. The Applicant has provided a Funding Statement (FS) [[APP-019](#)]. This confirms that the estimated cost of the scheme includes an allowance for compensation payments relating to the compulsory acquisition of land interests in, and rights over, land and the temporary possession 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 Section 152(3) of the 2008 Act.
- 7.6.30. Highways England is a government-owned company and is responsible for operating, maintaining and improving the strategic road network in England. These responsibilities include the acquisition, management and disposal of land and property in relation to strategic road network improvement projects, together with the payment of compensation related to these activities (FS, 3.1.1) [[APP-019](#)].
- 7.6.31. The FS [[APP-019](#)] explains that the funding commitment for construction of the Scheme was initially made in June 2013 in the policy document

'Investing in Britain's Future'. In December 2014, the Government published the Roads Improvement Strategy (RIS), which is underpinned by legislation following the Infrastructure Bill receiving Royal Assent on 12 February 2015 and the creation of Highways England on 1 April 2015. The RIS provides certainty of Government funding with over £15 billion to be invested in major roads between 2015/16 and 2020/21. The Scheme was announced in the RIS as a committed and therefore funded Scheme.

- 7.6.32. The funding commitment was reiterated in the Highways England Delivery Plan 2015-2020 which was published in March 2015 and subsequent delivery plans.
- 7.6.33. It is clear from these commitments that the Scheme would be fully funded by the Department for Transport and is not dependent on funding contributions from other parties. Accordingly, funds are available to meet the compensation liabilities associated with the exercise of CA powers.

Special Land and Rights Provisions

National Trust Land

- 7.6.34. The Applicant's response to ExQ1.3.2 [[REP2-003](#)] at D2 confirmed that there are no CA proposals affecting National Trust Land within the remit of s130 of PA2008.

Statutory Undertakers' Land

- 7.6.35. Paragraph 7.4.1 of the Statement of Reasons [[REPR17-028](#)] states that none of the land to be acquired for the Scheme is Statutory Undertakers land for the purposes of s127 of the 2008 Act.

Open Space – s131

- 7.6.36. The proposal includes the CA of open space. This brings the proposals within the remit of PA2008 s131. The provisions of s131 mean that an order granting development consent is subject to special parliamentary procedure (SPP), to the extent that the order authorises the compulsory acquisition of, amongst other things, open space. Under s131(4), the need for SPP may be avoided if replacement open space is provided. I raised this matter at CAH1 [[EV-013](#)] and CAH2 [[EV-011](#)], since it appeared to me that, notwithstanding the Applicant's proposals to ensure that new open space is provided at the Myton Centre as part of the scheme, this would not amount to 'replacement land' for the purposes of s131.
- 7.6.37. In response to this the Applicant has now reached agreement to buy land at the Trinity Burial Ground (Plot 3/9a) from the Diocese of York without the use of CA powers. This is explained in the Applicant's D7 submissions [[REP7-001](#)]. The BoR [[REPR17-030](#)] and SoR [[REPR17-028](#)] and relevant land plans [[REPR17-012](#)] have been amended accordingly [[REPR17-023](#)]. It is therefore clear that s131 does not apply to this land.

- 7.6.38. However, the final versions of the Special Category Land Plans [[REPR17-022](#)] and BoR [[REPR17-030](#)] still show plots of special category open space land to be subject to CA. Plot Nos 3/1bd and 3/1be form a grassed area fronting Commercial Road (next to the Trinity Burial Ground) owned by HCC. Plot 3/1bd is described in the BoR as, 'approximately 253 square metres of soft landscaping situated east of Commercial Road, Hull' and Plot 3/1be is described as, 'approximately 1396 square metres of grass situated east of Commercial Road, Hull'. Having regard to the current appearance of this land as a landscaped area, I consider that the Applicant is correct to categorise it as special category land.
- 7.6.39. The land at the Myton Centre cannot be regarded as 'replacement land' for these 2 plots for the purposes of s131(4)(a) of PA2008, which applies if 'replacement land has been or will be given in exchange for the order land'. In this instance, the land at the Myton Centre is already owned by HCC and therefore cannot be 'given in exchange'. Rather, the Applicant's proposal is to acquire the land temporarily and carry out the open space works, before returning it to HCC. It has not been argued that any of the other sub-sections in s131 apply, and it does not appear to me that they do. This means that, in accordance with s131, if the Order is made it would be subject to special parliamentary procedure, to the extent that it were to authorise the compulsory acquisition of Plots 3/1bd and 3/1be.
- 7.6.40. The Applicant also identifies further small pieces of land as special category land to be compulsorily acquired (BoR, Part 5 and Special Category Land Plans) [[REPR17-030](#)] and [[REPR17-022](#)]. These are plot numbers 3/1ag, 3/1zd, 3/1zg, 3/1zi and 3/1k. The Applicant has not explained how s131 applies to this land. However, the plots are small, amounting to just 33m² in total. In these circumstances, s131(5) of the Act is relevant. This applies if:
- a. the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and
 - b. the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.
- 7.6.41. In view of the small size of these plots, s131(5)(a) is met. As to s131(5)(b), alternative open space is to be provided due to the Applicant's proposals for the Myton Centre. This does not amount to 'replacement land' for the purposes of s131, since the land at the Myton Centre is already owned by HCC and will be returned to HCC following temporary possession by the Applicant. Nevertheless, it is open to the Applicant to make a case to the SoS that the proposal would ensure that alternative provision of open space is made, in the interests of the public, and that the giving of other land in exchange, as per s131(5)(b), is unnecessary on that basis.
- 7.6.42. My findings in respect of s131 also has implications for the DCO in respect of A34 – which dealt with special category land in the early iterations of the document but is shown as 'not used' in the Applicant's

preferred version of the document [[REPR17-004](#)]. I address this more fully in Chapter 8.

Open space – s132

- 7.6.43. In addition to the above, according to the BoR [[REPR17-030](#)], the scheme includes the permanent acquisition of rights in relation to 2 areas of open space land as follows:

Table 4: Open space rights land

Plot Ref	Description of land	Proposal (BoR Part 5)
3/1l	440 square metres of landscaping forming The Jubilee Arboretum, Porter Street, Hull	Land to be Used Temporarily and Rights to be Acquired Permanently
3/1af, 3/1zc, 3/1zf	84 square metres of landscaping forming Pocket Park, William Street, Hull	Land to be Used Temporarily and Rights to be Acquired Permanently

- 7.6.44. These are identified in Part 5 of the BoR [[REPR17-030](#)] as Special Parliamentary Procedure, Special Category or Replacement Land. The Special Category Land Plans [[REPR17-022](#)], however, shows these plots as 'special category land – open space not to be acquired'. The position regarding these plots must therefore be clarified if the SoS is minded to make the Order with the requested CA powers.

- 7.6.45. PA2008 s132 is the equivalent of s131 where rights are to be compulsorily acquired in respect of commons, open space etc. I have nothing in the information before me to show that s132 would not apply in this case in the event that it is proposed to acquire rights in relation to these plots, as per the BoR [[REPR17-030](#)]. This means that if the Order is made it would be subject to special parliamentary procedure, to the extent that it were to authorise any compulsory acquisition relating to the plots listed in the table above.

Open space – additional plots

- 7.6.46. Part 1 of the BoR [[REPR17-030](#)] includes the following entries.

Table 5: Amenity and landscaping plots

Plot Ref	Description of land
3/1bv	All interests and rights in approximately 684 square metres of amenity grass and landscaping to south of the A63 Castle Street and east of Mytongate junction, Hull

3/1by	All interests and rights in approximately 278 square metres of amenity grass and landscaping to south of the A63 Castle Street and east of Mytongate junction, Hull

- 7.6.47. It is clear from the plans for the scheme [[REPR17-010](#)] that the permanent acquisition of these plots is essential to enable the road to be constructed and the land plans [[REPR17-012](#)] confirm that CA is proposed. However, despite their description as amenity grass and landscaping, these plots are not recorded as special category land in BoR [[REPR17-030](#)] Part 5 or shown as such on the Special Category Land Plans [[REPR17-022](#)]. There may be reasons for this, but that is not evident to me from the appearance of the land or the information before me. This apparent anomaly was not resolved during the Examination. Accordingly, my recommendations at the end of this Chapter include a recommendation to consult with the Applicant on the matter and consider whether any amendments to the proposal are required.

Crown Land

- 7.6.48. Section 227 of the PA2008 defines 'Crown Land' as any land in which there is a Crown interest. A Crown interest includes, amongst others, the Crown Estate and an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department. As submitted, the application identified a Crown interest in 2 blocks of land.
- 7.6.49. First, the Order Land included 11 plots at Kingston Retail Park where the Government Legal Department, on behalf of the Crown had an interest relating to 99p Stores Limited (a dissolved company) relating to rights to use the land. The Applicant sought compulsory acquisition powers in respect of four of these plots, namely plots 3/5a, 3/5d, 3/5h and 3/5i and temporary possession powers in respect of the remaining seven plots (3/5b, 3/5c, 3/5e, 3/5f, 3/5g, 3/5j and 3/5k). These details are set out in the first submitted versions of the SoR [[APP-018](#)] the BoR [[APP-020](#)] and the Crown Land Plans [[APP-014](#)].
- 7.6.50. Second, the Secretary of State for Communities and Local Government was identified as an affected government department in respect of a leasehold interest in a single plot at the Magistrates' Court - plot 5/10a. The Applicant is seeking temporary possession powers in respect of this land. These details are also set out in the first submitted versions of the SoR [[APP-018](#)] the BoR [[APP-020](#)] and the Crown Land Plans [[APP-014](#)]

The Retail Park Crown Land

- 7.6.51. It appears that the Applicant is now of the view that this area is no longer Crown Land.
- 7.6.52. A Notice of Disclaimer under s1013 of the Companies Act 2006 was provided at D7 [[REP7-002](#)] but was not accompanied by a plan to show

the plots it relates to. I queried this in the R17 letter of 13 September [[PD-017](#)]. The Applicant responded, stating that,

The notice of disclaimer applied to plots 3/5a, 3/5b, 3/5c, 3/5d, 3/5e, 3/5f, 3/5g, 3/5h, 3/5i and 3/5j. The interests in those plots do not lie with another party.

- 7.6.53. In response to a further R17 question, the Applicant advised that plot 5/10a (which is entirely separate from the block of plots at the Kingston Retail Park,) is now the only Crown interest.
- 7.6.54. However, the final version of the Crown Land Plans [[REPR17-026](#)] still identifies most of the plots that the Notice of Disclaimer related to (with the exception of 3/5i and 3/5j, which were on the 'Option B' set of proposals – see section 2.2 of this report) as Crown Land. An additional 2 plots in the same block of land are also shown (3/5za and 3/5zb), although these are the result of previous plots being split rather than the inclusion of any additional land. The BoR [[REPR17-030](#)] lists the same plots (and 3/5j) at Part 4 (Crown Land Interests)
- 7.6.55. The most recent version of the SoR [[REPR17-028](#)], submitted on 20 September, says at paragraph 7.14:
- Checks undertaken have also revealed that the Order land includes 12 plots where the Government Legal Department, on behalf of the Crown have an interest, relating to 99p Stores Limited, a dissolved company, relating to rights to use the land at Kingston Retail Park. The Applicant is seeking compulsory acquisition powers in respect of two of these plots, namely plots 3/5a, and 3/5h, permanent rights in respect to plot 3/5zb and temporary possession powers in respect of the remaining seven plots, comprising 3/5b, 3/5c, 3/5d, 3/5e, 3/5f, 3/5g and 3/5za.*
- 7.6.56. It appears probable to me that the BoR [[REPR17-030](#)], SoR [[REPR17-028](#)] and Crown Land Plans [[REPR17-026](#)] have not been updated as they should have been to reflect the Notice of disclaimer. However, as matters stand, the information before me in respect of this land is contradictory and the position is not clear as a result. Accordingly, my recommendations at the end of this chapter include clarifying this matter with the Applicant.

The Magistrates' Court Crown land

- 7.6.57. At ExQ 1.3.3 [[PD-006](#)] and ExQ2.3.2 [[PD-011](#)] I asked the Applicant to provide updates regarding any Crown land with respect to progress towards obtaining any consent required under PA2008 s135(1)(b) and/or s135(2).
- 7.6.58. The Applicant experienced difficulty in finding the correct party to engage with in respect of this plot. By the close of the Examination, the position was that the Applicant had been able to make contact with the correct party at the Ministry of Justice, but consent had not been obtained (Rule 17 Deadline Submission - Applicant's Comments on additional requests for information from rule 8(3) and Rule 17) [[REPR17-002](#)].

- 7.6.59. This is unfortunate. Section 135(2) of PA2008 establishes that an order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision. Such 'other' provisions would include the TP proposed here.
- 7.6.60. Nevertheless, I do not regard this as an insurmountable problem, as consent could be sought prior to the decision on the DCO being made. There are a number of precedents for this approach. This is a matter which will need to be pursued by the SoS if minded to make the Order.

Article 44 – Crown Rights

- 7.6.61. This Article (formerly Article 45 in the original version of the dDCO) is included to protect Crown interests. In the first round of written Questions I asked if the wording of the Article had been agreed with the Crown Estate [ExQ 1.4.17] and the matter was discussed at CAH1 [[EV-013](#)] and CAH2 [[EV-011](#)]. I sought clarification on progress in the Rule 17 request of 13 September [[PD-017](#)] and the Applicant's response [[REPR17-002](#)] indicates that consent has not yet been obtained. However, it also argues that, in practice, this situation is not uncommon and points to a number of recent DCO decision letters relating to schemes that contained Crown Land where the necessary consent was obtained after the close of the Examination. I agree that this matter could still be addressed if Crown Estate consent is obtained before the decision on the application is issued. My recommendations at the end of this chapter and at Chapter 8 address this.

Site-specific matters

- 7.6.62. In addition to examination of the Applicant's overarching case, I have considered the specific cases made by some APs through written submissions and/or appearance at a CAH. In view of my conclusion in the earlier sections of this chapter that there is not a compelling case in the public interest for the Applicant's CA proposals, it follows that I do not consider that the CA is justified in any of the individual cases referred to below. However, in the event that the SoS does not agree with my view regarding the Applicant's overall case, it is important to consider site-specific matters, and I do this below.

Name:	Princes Quay Development Ltd (PQDL)	[RR-013]
Location:	Castle Buildings and the Earl de Grey public house	
Interests sought	Plots	
Freeholder	CA of Plots 3/11e TP of Plots 3/11b, 3/11c, 3/11d (inferred)	

Status summary:

This objection relates to an interest in Castle Buildings and the Earl de Grey public house – both Grade II listed buildings. I was able to view these buildings from the footway during the USI of 25 March [[EV-013a](#)] and the ASI. The objection is based on:

- Insufficient justification for the extent of the land take
- lack of clarity regarding how long the TP of part of the Site would be for;
- The proposal would frustrate any development of the Site
- Insufficient consideration to wider development opportunities affecting the land.

Although this objection was not withdrawn, the arguments were not developed further in written submissions or any appearance at either of the CAHs. I have based my observations on the limited information available to me. Highways England commented on the representation at D1 [[REP1-016](#)], and commented that it was working closely with Castle Building LLP, the building owners, to incorporate the Earl de Grey into a future development on an adjacent site and to ensure the scheme limits any negative impact on development proposals for this and the adjacent site.

I consider the detailed planning merits of the proposals relating to these buildings in chapter 4 and conclude that the Earl de Grey needs to be moved or demolished if the scheme is to go ahead. The building was the subject of significant discussion at both ISH3 [[EV-008](#)] and ISH5 [[EV-012](#)]. On the basis of the Applicant's evidence at ISH3 [[REP3-009](#)] I am satisfied that plot 3/11e must be acquired in order for the scheme to be built. If the building is to be rebuilt in accordance with the Applicant's proposals (DCO Schedule 1, Work No 30) [[REPR17-004](#)] it is necessary for plots 3/11b, 3/11c and 3/11d to be acquired temporarily. I have no representations to cast serious doubt on this.

As discussed in Chapter 4, planning permission and listed building consent is now in place for a scheme involving the demolition and rebuilding of the Earl de Grey in conjunction with the erection of a hotel (Application Nos 19/00333/FULL and 19/00334/LBC) [[REP3-105](#)]. It is possible that the Applicant's proposals could frustrate that development. However, that scheme was widely discussed during the Examination, including in response to my written questions ([[REP2-003](#)] and [[REP5-004](#)]), at ISH3 [[EV-008](#)] and ISH5 [[EV-012](#)]. The Applicant has made some effort to engage with the promoters of that scheme with a view to allowing it to proceed in lieu of the Applicant's proposals for the Earl de Grey if the opportunity arises, including providing a heads of terms document [[REPR17-008](#)]. I am thus satisfied that consideration has been given to the wider development opportunities affecting the land. While a firm timetable for the works affecting the Earl de Grey is not currently available, I am not

persuaded on the evidence before that that this, on its own, is sufficient reason for TP powers to be withheld.

From the above, it follows that, if the SoS considers that there is a compelling case in the public interest for the Applicant's proposals, then the proposals relating to this land are justified as well, since they are integral to the scheme.

Name:	EPIC (No 2) Ltd	[RR-017]
Location:	Kingston Retail Park	
Interests sought	Plots	
Freeholder	CA of Plots 3/5a, 3/5d, 3/5h, 3/1ak, 3/1bb	
	TP in respect of Plots 3/5b, 3/5c, 3/5e, 3/5f, 3/5g, 3/5za, 3/5zb, 3/1c, 3/1aj, 3/1bc,	
Rights	CA of rights in respect of Plots 3/5zb	

Status summary:

The position of the parties

EPIC set out its objections to the scheme in detail in its RR [\[RR-017\]](#). It also made representations at D2 [\[REP2-015\]](#), D3 [\[REP3-018\]](#), [\[REP5-051\]](#), D7 [\[REP7-012\]](#) and on the final day of the Examination [\[AS-071\]](#). EPIC was also represented at ISH4 [\[EV-009\]](#) and at both CAHs [\[EV-011\]](#) and [\[EV-013\]](#).

EPIC owns and controls the freehold interest of Kingston Retail Park and is the landlord to numerous tenants there [\[RR-013\]](#). The Retail Park is located at the south-western quadrant of the Mytongate junction and I visited it during the USI of 25 March [\[EV-013a\]](#) and during the ASI.

In its RR, EPIC advised that it had no objection to the principle of the scheme but objected to the compulsory acquisition and temporary possession of its land [\[RR-017\]](#). Its submissions also raise a range of potential impacts of the scheme relating to matters including the impact on servicing the retail park, loss of car parking spaces, vehicular access routes during construction, signage and hoardings, pedestrian routes and access. EPIC argued that Highways England had not provided sufficient justification or evidence to demonstrate why all of the land is required and that Highways England are seeking powers that are excessive and disproportionate.

Constructive discussions took place between the Applicant and EPIC during the Examination. At CAH1 [\[EV-012\]](#) EPIC confirmed that it did not object, as a matter of principle, to the CA proposals and confirmed this view in its D3 submission [\[REP3-018\]](#). It did, however, continue to object to the TP proposals insofar as they relate to its car park. Its key concerns related to the largest area of car parking – plot no 3/5e.

However, the plots listed in connection with Work No 18B (Alterations to Kingston Retail Park Car Park) also include 2 smaller areas – plot numbers 3/5c and 3/5g – and I have considered these 3 plots as a whole.

The purpose of these plots was discussed during CAH1 [EV-013]. Following that discussion, the Applicant amended the original Work No 18 into 2 sets of works (18A and 18B), with 18B being the areas that affected by the proposed alterations to Kingston Retail Park car park. The Applicant explained during the hearing that the purpose of temporarily possessing that land was to reconfigure the car park for the benefit of EPIC, in view of the spaces to be lost to the scheme. The Applicant would carry out those works in accordance with a scheme and at a time to be agreed with EPIC. The land would be in the Applicant's possession for about 10 weeks [REP3-007].

The response of EPIC's representative at CAH1 [EV-013] was that this did not justify the TP of the land. EPIC could make the land available for such works by agreement. Moreover, there were concerns regarding the extent of land over which TP was sought and the time it could be in the Applicant's possession. In its D3 submission [REP3-018], EPIC stated, *'the rearrangement of the car park should be in EPIC's hands. Whilst the car park works may be authorised by the DCO, Highways England do not need, and should not have, the power to take possession of part of the car park to carry them out. Foisting a benefit on EPIC might be done at an inconvenient time, slowly or badly and so any such works should be agreed with EPIC'*.

A signed SoCG was submitted at D7 [REP7-006] agreeing a range of matters. Additionally, a settlement agreement between EPIC and the Applicant has been drafted. The settlement agreement would provide for the voluntary acquisition of EPIC's land interests and other interests required by Highways England in lieu of the exercise of powers of compulsory acquisition. It would also secure mitigation for adverse impacts of the proposals and provide protection for the ongoing operation of Kingston Retail Park. Both parties appeared confident that the agreement will be signed and EPIC advised that it would withdraw its objection at that point [AS-071].

However, the agreement had not been completed at the close of the Examination and EPIC did not withdraw its objection. In anticipation of this situation, EPIC sought changes to the DCO in the event that the agreement was not completed. These were set out in its D7 submissions [REP7-012] and had been provided earlier at D3 as well [REP3-018]. Nevertheless, it is evident that EPIC still seeks an agreement [AS-071] and it is quite possible that this will be completed before any decision on the DCO is issued.

ExA's consideration

Having considered the cases put by both parties, and taking full account of the clear progress that was made in discussions, I have reached the following conclusions.

First, I am not persuaded that there is a need for the car park land (Plot nos 3/5e, 3/5c and 3/5g) to be subject to TP. There appears to be every prospect of it being secured by agreement with EPIC and there appear to be no inherent disadvantages in proceeding in that way. There is no evidence before me to show that the overall programme for the NSIP would be jeopardised by such an approach. As the Applicant has made clear, the purpose of Work No 18B is to reconfigure the car park for the benefit of EPIC rather than comprising an essential element of the road scheme.

Because TP rather than CA is proposed for this land, s122(3) does not apply and it is not necessary for the Applicant to demonstrate that there is a compelling case in the public interest for the TP of this land. Nevertheless, proposals must be adequately justified and, in this instance, I am not persuaded that this is the case. Accordingly, I will recommend that this element of the Applicant's TP proposals is not confirmed and that if the SoS is minded to make the Order, that TP over Plot nos 3/5e, 3/5c and 3/5g is not confirmed for the reasons set out above.

As to the wider matters raised by EPIC, it is important to note that the SoCG agrees a range of specific matters, many of them replicating the matters EPIC wishes to see addressed. This suggest to me that these matters are, in principle, capable of resolution. In these circumstances, it is open to the Secretary of state to consult with the Applicant and EPIC prior to the decision on the DCO being issued to establish progress on completing an agreement. In the event that the settlement agreement has been completed, then no changes to the dDCO would be necessary.

In the event that an agreement is not completed, amendments to the DCO may be considered necessary in order to address EPIC's concerns. I consider this in more detail in Chapter 8 and at Appendix E, which includes recommended responses to EPIC's suggested changes to the DCO. This could form the basis of a consultation with the Applicant and EPIC. I make a recommendation to this effect at the end of this chapter.

Name: **Aivilo Properties Ltd** [[RR-003](#)]

Location: Unit 4, Myton Street

Interests sought: **Plots**

Freeholder None in scheme as amended and examined

Rights None in scheme as amended and examined

Status summary:

Aivilo did not set out details of its objection in its relevant representation [[RR-003](#)] and did not provide any written representation at D1 to clarify its concerns. Nor did it attend any of the hearings. However, the Applicant in its comments on the relevant representations at D1 [[REP1-016](#)], advised that it had had discussions with Aivilo and its legal representatives and set out details of Aivilo's concerns. I base my observations below on the limited information available to me.

Aivilo Properties Limited owns Unit 4, Myton Street, a shop near to the former Staples store and accessed via that site [[REP1-016](#)]. I viewed the property and was able to see its access and car park and its relationship to Staples during the ASI.

Had the 'Option B' scheme been pursued, the property would have been severely affected due to the temporary possession of its car park. Aivilo is included in Part 2 of the BoR [[REPR17-030](#)] as a person within Category 3 that would or might make a relevant claim as defined by Section 10 of the Compulsory Purchase Act 1965, Section 152(3) of the Planning Act 2008, or Part 1 of the Land Compensation Act 1973.

However, as set out in section 2.2 of this report, the Applicant amended the scheme to remove Option B on 17 June 2019 [[REP3-006](#)]. As a result, the car park is no longer affected and falls outside the Order Limits.

Aivilo has not withdrawn its objection and on 26 September its representative wrote to the Applicant indicating that it, 'reserves the right to seek the payment of compensation, on the grounds that the construction of the overpass on the site, which, we are informed, was not mentioned in the original material relating to the Scheme, is causing our Client to suffer financial loss in the approximate sum of £2,000.00 per calendar month'. A copy of this was provided to the Examination [[AS-070](#)].

However, these concerns have not been set out in any further detail in submissions to the Examination, either in written submissions or at either of the 2 CAHs. In the absence of any further information, and given the removal of 'Option B' from the scheme, it appears to me that the amended scheme addresses all relevant CA matters relating to Aivilo's site.

- 7.6.72. Other representations relating to CA and TP matters were resolved to the satisfaction of the objector during the Examination. These are listed in the table below and it is not necessary to consider them further.

Table 6: Resolved CA objections

Objector	Site	Document confirming withdrawal of the objection or resolution of the issue
Holiday Inn (Hin Hull Limited and HICP Limited)	Holiday Inn, Castle Street	[REP5-054]
Princes Quay Retail Ltd	Former Staples store	[REP5-059]
Princes Quay Estates Ltd	Princes Quay Shopping Centre multi-storey car park	[REP5-060]
Mytongate Development Company Ltd.	Trinity Court	[REP6-019]

7.7. HUMAN RIGHTS

- 7.7.1. The CA and TP proposals affect a range of commercial property. No residential properties are to be acquired for the Scheme (SoR, 6.1.1) [\[REPR17-028\]](#), although residential properties would be affected by the proposals.
- 7.7.2. The European Convention on Human Rights (ECHR), as incorporated into domestic law by the Human Rights Act 1998, includes Articles which aim to protect the rights of the individual. It appears to me that the following Articles are engaged in this case:
- Article 1 of The First Protocol – protects the rights to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest.
 - Article 6 – entitles those affected by compulsory powers to a fair and public hearing.
- 7.7.3. In this case, the provision of two CAHs has enabled any AP who wished to be heard to be heard fully, fairly and in public. While I have raised criticisms regarding the Applicant’s record of engagement with APs, that has not affected the opportunity for APs to engage in the Examination. Accordingly, I am satisfied that there is no breach of Article 6.
- 7.7.4. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the ECHR. There is no doubt that the CA/TP of land and rights is an interference with the rights of individuals. However, such interference may be in

accordance with the law provided that the interference is justified and proportionate.

7.7.5. Paragraph 10 of the CA Guidance advises:

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

7.7.6. The Applicant's case for CA and TP is set out in the Planning Statement and the SoR [[REPR17-028](#)]. It says that the land over which compulsory acquisition powers are sought as set out in the DCO is the minimum necessary to ensure the delivery of the Scheme. The Scheme has been designed to minimise harm whilst achieving its publicly stated objectives. In this respect the interference with human rights is said to be both proportionate and justified. The Applicant also says it has endeavoured to engage with landowners and has had regard to landowner feedback in both the initial design of the Scheme and in iterative design changes throughout the life of the Scheme.

7.7.7. However, while the extent of the land needed to build out the scheme may be the minimum needed, I have already concluded that the Applicant has not demonstrated that the land needs to be acquired compulsorily in all cases where CA is proposed, because of the lack of clarity regarding attempts to acquire the land or rights by agreement. It follows from this that I cannot conclude that the CA powers sought are the minimum necessary and therefore proportionate. In these circumstances, there would be a violation of the rights (Article 1 of The First Protocol) of the individuals concerned. My finding on this matter relates to those individuals where I have found the Applicant's record of engagement and negotiations, as set out in the Statement of Reasons, to be inadequate or unclear. These are recorded in Tables 2 and 3.

7.8. CONCLUSION

7.8.1. My conclusions in respect of the general requirements applying to CA proposals are summarised in the table below.

Table 7: CA Conclusions

Requirement	Met?
Section 122(2) of PA2008	Yes
Section 122(3) of PA2008	No
Section 123 of PA2008	Yes
Section 131/132	SPP required

All reasonable alternatives to CA must have been explored (Paragraph 8 of the DCLG CA Guidance)	No
The Applicant must have a clear idea of how it intends to use the land it intends to acquire (Paragraph 9 of the DCLG CA Guidance)	Yes
The Applicant should be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. (Paragraph 9 of the DCLG CA Guidance)	Yes
The decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.	My findings above indicate that the effect on the rights of some of those affected may not be proportionate.

- 7.8.2. In terms of the site-specific objections, the Applicant has engaged with the objectors in the case of each of the 3 outstanding objections. However, I am not persuaded that the TP proposals relating to the plot numbers 3/5e, 3/5c and 3/5g (the Kingston Retail Park car park) are justified.
- 7.8.3. In view of my findings above, if the SoS agrees with me regarding the planning merits of the scheme, then the CA and TP proposals as a whole are not justified.
- 7.8.4. If, on the other hand, the SoS is minded to make the Order and include the CA and TP provisions within it then, in view of the concerns raised above, my recommendation is that the following matters must be addressed:
- The Applicant must engage in negotiations with all APs where CA is proposed, including CA relating to rights, in accordance with PA2008 and relevant guidance.
 - The Applicant must clarify the position regarding whether there are any Crown Land interests in any land other than plot 5/10a and amend all documentation accordingly and seek any necessary consents.
 - Crown consent must be obtained for the TP powers sought in respect of plot 5/10a.
 - If special parliamentary procedure is to be avoided, the Applicant should amend the proposal so as to no longer seek CA in respect of any existing open space or, alternatively, explain how it is proposed to comply with PA2008 s131 and s132.

- The SoS should seek the views of the Applicant regarding whether Plot Numbers 3/1bv and 3/1by (see Table 5) should, in fact, be regarded as special category land and should be recorded as such in Part 5 of the Book of Reference and on the special category land plans. If the Applicant considers that the land should be so categorised, the Applicant should be invited to put forward amended proposals to ensure that the requirements of s131 are met.
- The Applicant must address the discrepancies between the Special Category Land Plans and the BoR, as highlighted in this chapter.
- The Applicant must submit a revised BoR, SoR and all land plans, corrected and thoroughly checked and explaining clearly the up to date position regarding discussions in relation to each plot of land which is subject to CA and giving clear justification if agreement has not been sought in any instance. Revised documents listed at Schedule 9 to the dDCO must be certified as necessary.
- Crown Estate Consent must be obtained for Article 44.
- The SoS should consult with EPIC (No 2) Ltd and the Applicant regarding the provisions sought by EPIC (No2) Ltd before any DCO is made, as set out in Chapter 8 and my recommendations for potential changes to the DCO arising from this, as set out in Appendix E to this report.

7.8.5. If the SoS is minded to make the Order, it is nevertheless recommended that TP of Plot Nos 3/5e, 3/5c and 3/5g is not confirmed, for the reasons given above.

8. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

8.1. INTRODUCTION

8.1.1. This section of the report addresses all significant issues concerning changes or potential changes to the draft DCO. My recommendations set out in this section are reflected in the best achievable DCO (baDCO) at Appendix D.

8.1.2. A draft DCO - The A63 (Castle Street Improvement, Hull) Development Consent Order – [[APP-015](#)] referred to here as the original draft) with accompanying Explanatory Memorandum [[APP-016](#)] was submitted as part of the application.

8.1.3. I asked questions relating to the DCO in both rounds of written questions ([[PD-006](#)] and [[PD-011](#)]), and also in the Rule 17 request of 13 September [[PD-017](#)]. There were 2 Issue Specific Hearings concerning the DCO – ISH4 [[EV-009](#)], held on 6 June and ISH5 [[EV-010](#)], held on 18 July. Additionally, I published a schedule of proposed changes to the draft DCO, setting out my provisional ideas about changes to the document [[PD-012](#)]. The Applicant responded to this at D5 [[REP5-029](#)] and other IPs commented as well.

8.1.4. In response to this dialogue, the Applicant published various versions of the dDCO during the Examination, culminating in its preferred version on 20 September [[REPR17-004](#)]. This was not accompanied by an Explanatory Memorandum. Changes were made to the draft DCO during the course of the Examination due to:

- Amendments to the application, notably the narrowing down of options relating to the site compounds and drainage, as discussed in section 2.2 of this report.
- Matters raised in written submissions or during hearings
- Proposals set out in the Examining Authority’s Schedule of Proposed Changes to the draft Development Consent Order, which was published on 11 July 2019 [[PD-012](#)].

8.1.5. Many of the changes now proposed by the Applicant address uncontroversial, minor textual changes or matters of formatting, which do not require further comment. Others are of greater substance, but were not controversial, sometimes having been made at the suggestion of other IPs. It is not necessary to consider these changes further here and they are addressed in Chapter 4 where necessary. All other matters relating to the DCO are addressed in the 3 tables below.

- **Table 8** sets out the provisions in respect of which I have accepted the Applicant’s submissions and have decided that no changes to the Applicant’s preferred dDCO document [[REPR17-004](#)] are required.
- **Table 9** sets out the provisions in respect of which I have recommended changes to the Applicant’s preferred dDCO.

- **Table 10** sets out minor corrections to the Applicant's preferred dDCO

In Table 8 the final column explains why I have decided to leave the Applicant's dDCO unchanged. In Tables 9 and 10 the final column sets out the change I recommend.

- 8.1.6. In addition to the above, in this chapter I also consider potential amendments to the DCO arising from representations by EPIC (No2) Ltd and matters relating to Crown Consent (Article 44), legal agreements/other consents and nuisance.
- 8.1.7. As discussed in section 2.2, non-material changes to the scheme during the Examination have resulted in several numbered works in Schedule 1 of the Applicant's preferred dDCO [[REPR17-004](#)] being recorded as 'Not used'. This breaches drafting conventions for Statutory Instruments. While I can understand that the Applicant may have wished to minimise the changes to the work numbers and any resulting redrafting of the DCO and related documents, on consideration of the SoS's decision in the Burbo Bank Extension case, it is clear that all such provisions must be removed and the schedule re-numbered before the Order can be made. This could prove to be a significant task. Consequently, if the SoS is minded to make the Order, it would be beneficial to raise this matter at an early stage with the Applicant.

Table 8: DCO Provisions Not Recommended to be Changed

Provision	Examination Issue	ExA Reasoning
<p>Article 2: Definition of 'Maintain'</p>	<p>Whether 'maintain' is defined too broadly in the ES and whether it could result in impacts beyond those anticipated by the ES.</p>	<p>Article 2 of the dDCO [REPR17-004] defines 'maintain' as follows:</p> <p><i>"maintain" in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct to the extent that is unlikely to give rise to any materially new or materially worse environmental effects from those identified in the environmental statement and any derivative of "maintain" is to be construed accordingly;</i></p> <p>I raised the question of whether this as too broad a definition in ExQ1.4.4 [PD-006].</p> <p>In response [REP2-013], HCC considered that the inclusion of the words 'alter, remove, or reconstruct' in the definition could open up the prospect of potentially significant deviation in terms of breadth, extent, or sensitivity without appropriate control over possible environmental impacts.</p>

Provision	Examination Issue	ExA Reasoning
		<p>The Applicant responded at D2 [REP2-003] to the effect that:</p> <ul style="list-style-type: none"> ▪ The definition is the same as that in The M20 Junction 10a Development Consent Order 2017 and is less extensive than that found in The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 and in Schedule 2 of The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (no longer in effect). ▪ The Environmental Statement takes account of the implications of this definition of maintain and the assessment was undertaken on this basis. ▪ The definition does not go beyond the normal English meaning of the word "maintain." ▪ It is vital for the proper operation of the proposed Scheme into the future that the Applicant is unambiguously able to repair the highway and maintain it to the standards required by prevailing best practice. ▪ The wording of the definition means that the power to maintain could not be used in such a way as to give rise to materially different environmental effects to those assessed by the ES.

Provision	Examination Issue	ExA Reasoning
		<p>I do not regard the fact that similar or even broader definitions have been previously employed in DCOs as, in itself, decisive; circumstances vary from case to case and I do not know the extent to which the matter was raised or discussed in those previous cases. However, I accept the need for the Applicant to have a broad definition of 'maintain' so that future maintenance tasks are not unduly restricted. Moreover, the definition used links the effects of maintenance to those identified in the ES [AS-011], so that harmful effects should not occur as a result of the definition. Accordingly, I accept that the definition of 'maintain' should not be changed.</p>
<p>Article 6: Limits of deviation</p>	<p>HCC raised concerns that the 0.5m allowance for deviation upwards or downwards from the submitted engineering drawings mean that the visual effect of the scheme and its effect on matters including flooding is not clear.</p>	<p>The Applicant provided evidence to show that the limits were within normal parameters when compared to other schemes. This is set out in a note appended to the <i>Written Submission of the Applicant's case put orally at ISH 4</i> [REP3-010]. Moreover, I accept that it is necessary to allow some scope for variation to allow for circumstances on the ground and the nature of the scheme. In any event, the Applicant's assessment of the scheme is sufficiently robust to allow for the limits of deviation proposed. The ES [AS-011] addresses</p>

Provision	Examination Issue	ExA Reasoning
		this point, discussing the limits of deviation at Paragraph 2.8.1 and commenting that the EIA is 'based on the maximum design parameters and assesses the worst case scenario'.
<p>Article 29: Temporary use of land for carrying out the authorised development</p>	<p>The issue is whether Article 29, which creates Temporary Possession powers, should be changed to reflect incoming changes arising from the Neighbourhood Planning Act (NPA) 2017.</p>	<p>I raised this matter at ExQ1.4.11 [AS-011].</p> <p>The Applicant's view [REP2-003] is that, given that the provisions in the Neighbourhood Planning Act 2017 are not yet in force, the powers for temporary possession set out in Article 29 are appropriate. Moreover, placing more onerous requirements on the Applicant could affect the efficiency and timescale of the scheme.</p> <p>I accept those reasons and recommend that Article 29 remains unchanged.</p>
<p>Schedule 2, R4: Construction and handover environmental management plan</p>	<p>The issue is whether the CEMP should include a requirement for a Flood Water Management Plan in order to ensure the management of flood water flows from all sources during construction.</p>	<p>An amendment to R4 to require a Flood Water Management Plan in the CEMP was included in the Examining Authority's Schedule of Proposed Changes to the draft Development Consent Order [PD-012]. However, the Applicant advises [REP5-029] that the management of flood water flows during construction is set out in the Flood</p>

Provision	Examination Issue	ExA Reasoning
		Emergency Plan (FEP) which is already secured under R4. Accordingly, a separate management plan would be superfluous and no amendment is required.

Table 9: DCO Provisions Recommended to be Changed

Provision	Examination Issue	Recommendations
Article 2: Interpretation - Definition of 'Commence'	<p>The first draft of the DCO [APP-015] had exclusions from the definition of 'commence' as follows:</p> <p><i>'other than operations consisting of archaeological investigations, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements or installation of a</i></p>	<p>Amend the definition of 'Commence' at Article 2 to read:</p> <p>"commence" means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than operations consisting of archaeological investigations, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure, or the temporary display of site notices or advertisements or installation of a site compound and "commences", "commenced"</p>

Provision	Examination Issue	Recommendations
	<p><i>site compound or any other temporary building or structure'</i></p> <p>I asked for justification of these exclusions and views about the practical implications of them (ExQ1.4.3) [APP-006].</p> <p>The Applicant's preferred DCO addresses some of my concerns. However, the Applicant does not consider that "erection of any temporary means of enclosure" or "installation of a site compound" should be removed – arguing that they are normal preparatory works and having been included in other consented schemes, including the M20 Junction 10a DCO 2017 and the Silvertown Tunnel DCO 2018 [REP5-029].</p> <p>Notwithstanding the examples cited above, I am concerned about the exclusion of "site compound preparation", since it could potentially allow the Applicant to start such works without a CEMP in place (as required under R4).</p> <p>I am mindful that mitigation at some compound sites is to be secured through the CEMP. The Applicant has advised [REP2-003] that proposed mitigation at Wellington Street Island Wharf, Neptune Street and Livingstone Road compounds</p>	<p>and "commencement" is to be construed accordingly;</p>

Provision	Examination Issue	Recommendations
	<p>involves retaining an area of ephemeral/short perennial habitat in a corner of each site throughout the works to retain a seed source. This is to be secured by inclusion in the CEMP.</p> <p>Accordingly, I am not satisfied that appropriate environmental controls would be in place during installation of a site compound if such works were excluded from the definition of 'commence'.</p> <p>I accept that the erection of any temporary means of enclosure is not likely to result in environmental harm that needs to be subject to control through the CEMP, and no amendment is needed in this regard.</p>	
<p>Article 18 - Protective work to buildings</p>	<p>The issue is whether listed buildings should be excluded from Article 18, which gives powers to carry out protective works to buildings. This matter was raised by HCC [REP3-215] and I set out a proposed amendment in my Schedule of Proposed Changes [PD-012].</p> <p>The Applicant says that the type of work that may fall under article 18 is likely to be temporary in nature and required to be put in place quickly as construction is taking place. The</p>	<p>Between 18(6) and 18(7) insert a new paragraph as follows and renumber the remainder of the Article accordingly:</p> <p>(7) Where the proposed protective works would, but for the provisions of this Order, require consent under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (other than in respect of the buildings identified in Work No 30 of Schedule 1), the undertaker may not serve a notice under</p>

Provision	Examination Issue	Recommendations
	<p>Applicant therefore does not agree to the inclusion of the proposed wording as it would be time consuming and unnecessary, particularly in situations where the 'protective works' are likely to be a barrier or similar in front of the building, rather than any works to the building itself (Applicant's Comments on ExA Schedule of Proposed DCO Revisions) [REP5-029].</p> <p>However, the amendment I proposed [PD-012] would only require the Applicant to seek approval for works which would ordinarily have required listed building consent. It seems to me that, by their very nature, such works have the potential to affect the special interest of the listed building. I have no evidence to suggest that works incapable of harming a listed building, such as works in front of the building rather than works to the building itself, would require listed building consent. Accordingly, I regard the suggested change as a proportionate response to the issue, only requiring additional approval in cases where there is an actual possibility of harm to the fabric of a listed building.</p>	<p>paragraph 5(a) until the proposed protective works have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and, if required by the Arrangements for Handling Heritage Applications – Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015, Historic England.</p>

Provision	Examination Issue	Recommendations
<p>Article 34: Special Category Land</p>	<p>The Applicant’s preferred dDCO does not, in fact, include an article numbered 34. However, all previous versions did.</p> <p>The purpose of it was to ensure that the provisions of s131 and s132 of PA2008 are met by ensuring that replacement open space is provided to replace open space to be lost to the development (Explanatory Memorandum) [APP-016].</p> <p>As I have explained in Chapter 7, the Applicant has sought to avoid the requirements of s131 by acquiring open space at the Trinity Burial Ground from the Diocese of York by agreement rather than using CA powers. However, The Book of Reference (BoR) [REPR17-030] and Special Category Land Plans [REPR17-022] still identify other open space plots for which CA powers are sought. Accordingly, while these plots remain, Article 34 is necessary.</p> <p>As discussed in Chapter 7, there is inconsistency between the special category land recorded in the BoR [REPR17-030] and the Special Category Land Plans [REPR17-022]. <u>Article 34 in this table and in the DCO proposed at Appendix D to this</u></p>	<p>Add Article 34 as follows:</p> <p>34.—(1) On the exercise by the undertaker of the relevant Order powers, the special category land and any rights imposed over that land are 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.</p> <p>(2) On the requirements of 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.</p> <p>(3) On the date on which the replacement land is laid out and provided in accordance with the scheme requirements at paragraph (1) 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</p>

Provision	Examination Issue	Recommendations
	<p><u>report has been drafted on the basis that the plans rather than the BoR are correct.</u> However, this must be clarified with the Applicant before any Order is made.</p>	<p>rights, trusts and incidents as attached to the special category land. (4) In this article— “the relevant Order powers” means the powers exercisable over the special category land by the undertaker under articles 20 (compulsory acquisition of land) and 23 (compulsory acquisition of rights and restrictive covenants); “the special category land” means the land numbered 3/1bd, 3/1be, 3/1ag, 3/1zd, 3/1zg, 3/1zi and 3/1k in the book of reference and on the land plans and forming part of the open space which may be acquired compulsorily under this Order; “the replacement land” means the land identified as such and numbered 3/1s, 3/1y, 3/1aa and 3/1za in the book of reference and on the land plans.</p>
<p>Article 35: Felling or lopping of trees and removal of hedgerows</p>	<p>The issue is whether the powers in Article 35 to fell or lop trees and remove hedgerows is too broad and whether it is compatible with the landscaping requirements set out in R5.</p> <p>I raised this matter at ExQ1.4.13 [PD-006] and at ISH4 [EV-004]. Proposed amendments to Article 35 were set out in the Examining Authority’s Schedule of Proposed Changes to the</p>	<p>35.—(1) The undertaker may lop any tree within or overhanging land within the Order limits (other than a tree which is the subject of a Tree Preservation Order), or fell, lop or cut back the roots of any may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be</p>

Provision	Examination Issue	Recommendations
	<p>draft Development Consent Order [PD-012]. The effect of these changes would be to limit the powers relating to trees to lopping only. The powers relating to shrubs would remain unchanged. Additionally, at ExQ2.7.3 [PD-011] I raise the question of whether additional protection should be provided for trees which are the subject of a preservation order.</p> <p>HCC is supportive of changes along the lines I have outlined [REP3-215] [REP5-061].</p> <p>Article 35, as set out in the Applicant’s preferred dDCO [REPR17-004], allows the undertaker to fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary. This is subject to certain limitations specified in the Article, including that the undertaker must do no unnecessary damage.</p> <p>I am concerned about this for 2 reasons. First, it creates the potential for further tree loss within the scheme. The proposals already include substantial tree loss, and it will be many years before any replacement trees genuinely compensate for the mature specimens to be lost (ES, Chapter 9) [AS-011]. However, those trees</p>	<p>necessary to do so to prevent the tree or shrub—</p> <p>(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</p> <p>(b) from constituting a danger to persons using the authorised development.</p> <p>(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.</p> <p>(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.</p> <p>(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any</p>

Provision	Examination Issue	Recommendations
	<p>to be lost have been identified and reasons given for their removal, and people have had the opportunity to comment as the scheme has evolved. As drafted, Article 35 would give the Applicant the power to add to the number of trees to be lost without overview from any other party. While the Article only allows trees to be removed if the Applicant reasonably believes it to be necessary to do so, that judgement lies wholly with the Applicant. The power would exist irrespective of the quality of the tree to be lost and there is no exclusion for TPO'd trees.</p> <p>My second concern is the relationship between Article 35 and R5, which deals with landscaping. This includes specific provision to identify existing trees to be retained and set out measures for their protection during the construction period 5(3)(c). This is an important provision in my view, particularly in view of the heavy tree loss the scheme would entail. However, that provision is weakened if retained trees can be removed under Article 35.</p> <p>In response to ExQ1.4.13 [PD-006] the Applicant amended R5(3)(c) to provide an exception where Article 35 is to be applied. However, while that would clarify the relationship between Article 35</p>	<p>hedgerow within the Order limits that is required to be removed.</p> <p>(5) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(b) and includes important hedgerows.</p>

Provision	Examination Issue	Recommendations
	<p>and R5, it is the wrong approach in my view, weakening the important protection for retained trees within R5.</p> <p>I appreciate that the wording in Article 35 has been used in existing DCOs. It reflects Article 39 of the Model Provisions (Felling or Lopping of Trees) and is the same as the corresponding article in the Testos Junction Alteration Development Consent Order 2018. However, I have no evidence to show that the matter was raised and debated in that case as it has been here. In any event, the circumstances in this case – including the extensive loss of mature trees that would occur – point to a more restrictive approach.</p> <p>The Applicant says that it requires the ability to be able to fell a tree should it need to if such tree will prevent the construction of the authorised development or poses a safety risk [REP5-029]. However, it seems to me that trees to be felled should already have been identified. Indeed, in response to ExQ1.4.13 [PD-006] the Applicant confirmed [REP2-003] that all significant existing trees to be removed and existing hedgerows to be retained have been identified and are shown on TR010016/APP/6.2</p>	

Provision	Examination Issue	Recommendations
	<p>Environmental Statement (ES) Volume 2 Figure 9.9 Trees removed.</p> <p>Paragraph 2.6.81 of the ES [AS-011] advises that none of the trees to be removed or which require arboricultural works on the scheme are subject to a Tree Preservation Order. However, my concerns regarding Article 35 relate to those trees which have not yet been identified for removal. Although trees within the conservation area may ordinarily be protected by the provisions of section 211 of the Town and Country Planning Act 1990, there is no specific exception for such trees set out in Article 35.</p> <p>For these reasons, I recommend that Article 35 be amended to the form I have set out.</p>	
<p>Schedule 2, R5: Landscaping</p>	<p>The Applicant amended the original version of R5 to allow for the possibility of works to retained trees being carried out under the provisions of Article 35. This was done in response to ExQ1.4.13 [PD-006] - see [REP2-003]. However, as I have explained above, I consider that the powers in the Applicant's preferred version of Article 35 are too broad, and Article 35 needs to be amended to fit in with R5, rather than the</p>	<p>Amend R5(2)(c) as follows:</p> <p>5.—(1) No part of the authorised development is to commence until a landscaping scheme which sets out details of all proposed hard and soft landscaping works has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant</p>

Provision	Examination Issue	Recommendations
	<p>other way around. It follows from this that, if the SoS accepts my recommendation in relation to Article 35, the reference to Article 35 in R5(3)(c) should be removed. This change was set out in The Examining Authority’s Schedule of Proposed Changes to the draft Development Consent Order [PD-012].</p>	<p>planning authority on matters related to its function.</p> <p>(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan annexed to the environmental statement .</p> <p>(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—</p> <p>(a) location, number, species mix, size and planting density of any proposed planting;</p> <p>(b) cultivation, importing of materials and other operations to ensure plant establishment;</p> <p>(c) existing trees to be retained, with measures for their protection during the construction period (subject to necessary works that may be required under article 35 (felling or lopping of trees and removal of hedgerows));</p> <p>(d) proposed finished ground levels; and</p>

Provision	Examination Issue	Recommendations
		<p>(e) implementation timetables for all landscaping works.</p> <p>(4) 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.</p> <p>(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.</p>
<p>Schedule 2, R15: Replacement green space</p>	<p>The Applicant added R15 at the dDCO submitted at D6 [REP6-002]. It remains in the Applicant's preferred dDCO [REPR17-004] and reads as follows:</p>	<p>15. No works or other actions resulting in the loss of any part of the existing open space at the Trinity Burial Ground None of the works to the replacement green space set out in Schedule 1, Work No. 13 are to commence until—</p>

Provision	Examination Issue	Recommendations
	<p><i>15. None of the works to the replacement green space set out in Schedule 1, Work No. 13 are to commence until—</i></p> <p><i>(a) details of the design of the replacement green space, including hard and soft landscaping;</i></p> <p><i>(b) details of the phasing of the works; and</i></p> <p><i>(c) the method for handover of the space to the local authority,</i></p> <p><i>have been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.</i></p> <p>In my view R15 needs to better reflect the purpose of the replacement greenspace, which is to replace existing open space to be lost during the development. Thus, it needs to ensure that the replacement open space is provided in a timely manner. In particular, it should ensure that the situation where existing open space is lost without the replacement open space being provided does not arise. This can be addressed by changing the wording of the first part of R15 to link it to the loss of an area of the Trinity</p>	<p>(a) details of the design of the replacement green space set out in Schedule 1, Work No. 13, including hard and soft landscaping;</p> <p>(b) details of the phasing of the works; and</p> <p>(c) the method for and timing of the handover of the space to the local authority, have been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.</p> <p>The works shall be carried out and the open space handed over to the local authority in accordance with the approved details.</p>

Provision	Examination Issue	Recommendations
	<p>Burial Ground, which is the principal area of open space to be lost. The wording I have provided does this.</p> <p>It should be noted that this change has not been canvassed with the Applicant. Accordingly, it is recommended that the SoS seek the Applicant's views on this suggested revision before the DCO is made.</p>	
<p>Schedule 2, R16: Beverley Gate Scheduled Monument</p>	<p>Throughout the Examination, I sought clarification from the Applicant as to how the scheme would affect the scheduled monument. In response to the Rule 17 request of 13 September [PD-017], the Applicant confirmed that no works affecting it are proposed. However, this is dependent on the precise depth of services in the vicinity of the monument, something which may not be possible to determine definitively until work commences on site. These matters are dealt with in more detail in Chapter 4. Accordingly, the Applicant now proposes a Requirement (R16) to address the possibility that services would need to be laid in</p>	<p>16. —(1) No works affecting the Beverley Gate Scheduled Monument may commence until a methodology and appropriate archaeological strategy for such works has been agreed with Historic England.</p> <p>(2) All such works must be carried out in accordance with the agreed methodology and appropriate archaeological strategy.</p> <p>(3) In this paragraph, “works” has the meaning given in section 2(2) of the Ancient Monuments and Archaeological Areas Act 1979.</p>

Provision	Examination Issue	Recommendations
	<p>the scheduled area. The Applicant's version of the Requirement reads as follows:</p> <p><i>'16. —(1) No part of the authorised development is to interfere with the Beverley Gate Scheduled Monument.</i></p> <p><i>(2) If at any time it is apparent that works are required within the scheduled area then a methodology and appropriate archaeological strategy for such works shall be agreed with Historic England prior to the works being undertaken.'</i></p> <p>While I accept the principle of this approach, 'interfere/interference' is not defined and may not cover the range of works which would normally be covered by scheduled monument consent. In s2(2) of the Ancient Monuments and Archaeological Areas Act 1979, consent is required for <i>'(a) any works resulting in the demolition or destruction of or any damage to a scheduled monument; (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.'</i></p>	

Provision	Examination Issue	Recommendations
	<p>Moreover, the Requirement as proposed does not include any control to ensure compliance with the agreed approach. To address these matters, I have set out a revised version of the Requirement.</p> <p>It should be noted that, since the Requirement was first proposed near the end of the Examination, it has not been possible to seek the Applicant's views on changes to it. However, since the purpose is fundamentally unchanged, no injustice arises from this.</p>	
<p>Additional Requirement: High Street underpass works</p>	<p>One of the 4 stated objectives of the scheme is to 'Improve connections between the city centre to the north and developments and tourist and recreational facilities to the south' (Planning Statement) [APP-070].</p> <p>The scheme would remove a number of at grade crossings. A key proposal to redress the impact of this is the upgrading of an existing route for NMUs under the A63. This is discussed in more detail at Chapter 4.</p> <p>Given these circumstances, it is imperative that the underpass is upgraded to a good standard,</p>	<p>(1) Work No. 41 is not to commence until the following details of the improvements to the High Street underpass have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function:</p> <ul style="list-style-type: none"> (a) design; (b) materials; (c) hard and soft landscaping;

Provision	Examination Issue	Recommendations
	<p>so that it is as pleasant and safe a route as possible for NMUs, particularly those with limited mobility. The Applicant has put forward ideas as to how the underpass could be improved [REP6-015] but has not provided a detailed proposal to be approved. Accordingly in my view, it is essential that a Requirement is put in place to ensure that the scheme is satisfactory.</p> <p>I set out a proposal for such a Requirement in the Examining Authority's Schedule of Proposed Changes to the draft Development Consent Order [PD-012] and it is based on wording suggested by HCC in its post-ISH submissions at D3 [REP3-215]. The Applicant does not consider that the Requirement is appropriate or necessary, arguing that the detailed design of the underpass will be covered by Requirement 3 (detailed design) (<i>Comments on ExA Schedule of Proposed DCO Revisions</i>) [REP5-029]. In my view however, given the importance of this NMU route to the scheme, it is important to set out some matters that need to be addressed in the design.</p> <p>In the Applicant's <i>Comments on ExA Schedule of Proposed DCO Revisions</i> [REP5-029] the Applicant argues that it <i>should not be required</i></p>	<p>(d) means of enclosure;</p> <p>(e) lighting;</p> <p>(f) wayfinding and interpretation;</p> <p>(g) public art;</p> <p>(h) CCTV.</p> <p>(2) The underpass improvement works must be undertaken before the commencement of any of Works 35, 36, 37, 38, 39, or 40 as set out within Schedule 1 hereto, and in accordance with the approved details, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to any variation.</p>

Provision	Examination Issue	Recommendations
	<p><i>to consider 'public art' or 'CCTV' as part of its design – both of which are items that would fall under Hull City Council's remit'.</i></p> <p>However, the need for the improved underpass arises directly from the scheme, and I regard all of the matters listed, including public art and CCTV, as necessary in order to create a genuinely satisfactory and safe route. To do otherwise would be to create an uninviting route which would not be an adequate substitute for the at-grade crossings to be lost. I am also mindful that the ES [AS-011] appears to have been carried out on the basis that the scheme would include CCTV (ES Table 15.11 and Paragraph 15.8.35).</p>	

Table 10: Minor DCO corrections

Article/Schedule	Text/issue	Replacement text
Schedule 3, Part 11: Uncontrolled crossings	Heading of column 2 reads, 'Length of Public Right of Way', which appears to have been cut and pasted from	'Length of Uncontrolled Crossing'

	the preceding table in error.	
Article 31(6): Statutory undertakers	This article has been amended but the word 'in' is now superfluous and compromises the clarity of the article.	(6) The land to which paragraph (3)(a) applies comprises in the land to which paragraph (3)(b) applies and Plots 3/1bv, 3/1by, 3/1cc and 3/2g as set out in the book of reference and on the land plans.
A34: Not used	This breaches formatting conventions for Statutory Instruments	In the event that the SoS decides not to accept my recommendation to reinstate A34, remove the reference to 'Not used', renumber the following Article as 34, and renumber all subsequent Articles and cross-references accordingly.
Schedule 1: Authorised works	Work numbers 18, 21, 43, 44 and 45 described as 'not used'.	Remove the references to 'not used' and renumber all works accordingly. <u>Please note that this change is not shown in the baDCO at Appendix D.</u>
Schedule 1, Work No 18B	Remove superfluous letter 's'	Work No. 18B — Alterations to Kingston Retail Park Car Park. s
Schedule 2, R14: Earl de Grey public house	The word 'has' should be replaced with 'have' at 14(1)(c) Paragraph 14(1)(c) should end at the words 'part (b)', with	Earl de Grey public house 14.—(1) None of the works to the Earl de Grey public house set out in Schedule 1, Work No.30 are to commence until— (a) details of the reconstruction or partial reconstruction of the building; and

	<p>the remainder set out as a continuation of 14(1)</p> <p>A spelling correction is required at 14(1)(b)(iii)</p>	<p>(b) a method statement describing full details of how the Earl de Grey public house is to be—</p> <p>(i) structurally assessed;</p> <p>(ii) recorded in situ to level 4 building recording in accordance with Historic England guidance;</p> <p>(iii) dismantled, including compiling an inventory of all building materials to be re-used, and justification for excluding any historic fabric;</p> <p>(iv) stored; and</p> <p>(v) reconstructed; and</p> <p>(c) a timetable for the completion of the work listed under part (b);</p> <p>hashave been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and Historic England on matters related to their functions.</p> <p>(2) The works to the Earl de Grey public house must be carried out in accordance with the approved details unless the Secretary of State, following consultation with the relevant planning authority and Historic England on matters related to their functions gives consent to a variation.</p>			
<p>Schedule 3, Part 3: Roads subject to 30mph limit</p>	<p>The final 3 rows of the Schedule contain incorrect references to Eastbound/Westbound,</p>	<p>Replace the final 3 rows in the Schedule with the following:</p> <table border="1" data-bbox="887 1321 2033 1394"> <tr> <td data-bbox="887 1321 1429 1394"> <p>A63 Eastbound Market Place on-slip</p> </td> <td data-bbox="1429 1321 2033 1394"> <p>A63 Eastbound Market Place on-slip, from point 5/28 to point</p> </td> </tr> </table>		<p>A63 Eastbound Market Place on-slip</p>	<p>A63 Eastbound Market Place on-slip, from point 5/28 to point</p>
<p>A63 Eastbound Market Place on-slip</p>	<p>A63 Eastbound Market Place on-slip, from point 5/28 to point</p>				

	on-slip/off-slip and Market Place/Queen Street.	Kingston Upon Hull	5/35 on the Traffic Regulation Plans Sheet 5
		A63 Westbound Queen Street off-slip Kingston Upon Hull	A63 Westbound Queen Street off-slip, from point 5/37 to point 5/30 on the Traffic Regulation Plans Sheet 5
		A63 Westbound Queen Street on-slip Kingston Upon Hull	A63 Westbound Queen Street on-slip, from point 5/27 to point 5/36 on the Traffic Regulation Plans Sheet 5

8.2. ARTICLE 44 – CROWN RIGHTS

8.2.1. This Article (formerly Article 45 in the original version of the dDCO) is included to protect Crown interests. As discussed in Chapter 7, the necessary consent of the Crown Estate had not been obtained by the close of the Examination. If the SoS is minded to make the Order, this could be addressed if consent is obtained before the decision on the application is issued. I include a recommendation to this effect in the conclusion to this chapter.

8.3. POTENTIAL AMENDMENTS TO THE DCO ARISING FROM REPRESENTATIONS BY EPIC (NO2) LTD

8.3.1. As I have described in Chapter 7, a settlement agreement between EPIC and the Applicant has been drafted but was not completed at the close of the Examination. Amongst other things, the settlement agreement would secure mitigation for adverse impacts of the proposals and provide protection for the ongoing operation of Kingston Retail Park.

8.3.2. In anticipation of the agreement not being completed, EPIC seeks changes to the DCO. These were set out in its D7 submissions [[REP7-012](#)] and had been provided earlier at D3 as well [[REP3-018](#)]. EPIC has made it clear that these changes are not necessary once the settlement agreement is completed.

8.3.3. Judging from the representations made both by the Applicant and EPIC, there are good prospects of the agreement being completed before any DCO is made. My view of this is reinforced by the fact that the signed SoCG between the Applicant and EPIC submitted at D7 [[REP7-006](#)] covers much of the same ground. In these circumstance, I have not incorporated EPIC's proposed changes into the baDCO at Appendix D.

8.3.4. Nevertheless, it is necessary to consider how to proceed if the SoS is minded to make the order in circumstances where the Applicant and EPIC have not completed a settlement agreement. To that end, I have considered the requested changes to the DCO set out by EPIC in its D7 submissions [[REP7-012](#)] and have provided recommended responses to them. These are set out at Appendix E.

8.3.5. In view of the above, if the SoS is minded to make the Order, I recommend that there should be consultation beforehand with the Applicant and EPIC (No2) Ltd in order to:

- Ascertain whether or not the settlement agreement has been completed; and
- In the event that it has not been completed, to seek both parties' views on the amendments to the dDCO set out at Appendix E.

8.4. LEGAL AGREEMENTS AND OTHER CONSENTS

- 8.4.1. There are no development consent obligations pursuant to TCPA1990 or equivalent undertakings or agreements of which the SoS needs to be aware or to take into account in the decision.

8.5. NUISANCE

- 8.5.1. Article 39 of the Applicant's preferred dDCO [[REPR17-004](#)] proposes to provide a defence to proceedings in respect of statutory nuisance. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP) regulation 5(2)(f) requires that an application must be accompanied by, '*a statement whether the proposal engaged one or more of the matters set out in section 79(1) [...] of the Environmental Protection Act 1990 and, if so, how the applicant proposes to mitigate or limit them.*' This obligation has been discharged in the Statement of Statutory Nuisance (SSN) submitted with the application [[APP-063](#)]. The SSN remains as submitted with the Application and did not need to be updated during the Examination.
- 8.5.2. The SSN [[APP-063](#)] considers potential Breaches of Section 79(1) of the Environmental Protection Act 1990 (EPA1990) that could arise from dust arising on businesses and residential properties, artificial light from premises or noise emitted from premises or caused by a vehicle, machinery or equipment. It concludes that, with mitigation measure in place, none of the statutory nuisances identified in section 79(1) of the EPA1990 are predicted to arise.
- 8.5.3. The content of proposed Article 39 and the SSN [[APP-063](#)] were not matters of contention during the Examination. At ExQ1.4.15 [[PD-006](#)] I asked whether Article 39 was consistent with the conclusion of the SSN that, with mitigation measures in place, none of the statutory nuisances identified in section 79(1) of the EPA1990 are predicted to arise on this scheme. The Applicant's response indicated that Article 39 was needed for unanticipated effects [[REP2-003](#)].
- 8.5.4. Having reviewed the SSN [[APP-063](#)], I agree that the Applicant has appropriately identified the scope of potential nuisance sources from the construction and operation of the proposed development. Relevant mitigation measures proposed are considered in Chapter 4 of this report and are satisfactory.
- 8.5.5. Having had regard to the information in the SSN [[APP-063](#)] and the mitigation measures in the DCO, together with relevant policy in the NNNPS, I recommend Article 39 without changes.

8.6. CONCLUSIONS

8.6.1. Taking all matters raised in this Chapter and in the report as a whole into account, if the SoS is minded to make the Order my recommendations are:

- That the DCO be made in the form set out in Appendix D. This amends the Applicant's preferred dDCO in accordance with Tables 9 and 10 above.
- That consultation take place with EPIC (No 2) Ltd and the Applicant, as described above and with reference to Appendix E, before any DCO is made.
- That the consent of the Crown Estate in respect of Article 44 is obtained before any DCO is made.
- That the SoS consult with the Applicant at an early stage regarding the need to renumber the Works listed at Schedule 1 of the DCO in order to remove the references to works 'not used'.
- That the SoS consult with the Applicant regarding the revisions I recommend to R15.
- That the SoS seeks for certification any documents listed at DCO Schedule 9 that are to be revised as a result of the recommendations in this chapter.

9. SUMMARY OF FINDINGS AND CONCLUSIONS

9.1. INTRODUCTION

9.1.1. This Chapter summarises my conclusions arising from the Report as a whole and sets out the primary recommendation to the SoS. It also considers how any change in circumstances relating to the Earl de Grey public house could affect the planning balance.

9.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

9.2.1. In relation to s104 of the Planning Act 2008 (PA2008) I conclude in summary that:

- For the reasons set out in Chapter 6, making the best achievable draft Development Consent Order (dDCO) would not be in accordance with the NNNPS. There would be conflict too with the Development Plan;
- I have taken all other relevant plans and policy into account, together with all matters arising from the Local Impact Report from Hull City Council;
- Whilst the SoS is the competent authority under the Habitats Regulations and will make the definitive assessment, the proposal would not be likely to have significant effects on European sites, species or habitats and this finding has been taken into account in reaching the recommendation;
- In regard to all other matters and representations received, there are no important and relevant matters that would individually or collectively lead to a different recommendation to that below;
- Even with the mitigation proposed through the best achievable DCO, there are adverse impacts arising from the proposed development that would outweigh its benefits; and
- There is no reason to indicate that the application should be decided other than in accordance with the relevant NNNPS.

9.2.2. I have considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights required in order to implement the proposed development. The objections to CA and TP have been considered. Some have been withdrawn and those not withdrawn do not, in themselves, give rise to a fundamental barrier to the granting of the powers sought. The Applicant also has a clear idea of how it intends to use the land and funds are available for implementation.

9.2.3. Nevertheless, for the reasons set out in Chapter 7, the Applicant has not adequately demonstrated that the entirety of the CA powers requested are necessary to enable the Applicant to complete the proposed development or that there is a compelling case in the public interest to acquire all of the land sought in accordance with PA2008 Section 122(3).

9.2.4. I have had regard to the provisions of the Human Rights Act 1998. As set out in Chapter 7, there would be interference with rights under Article 1

of The First Protocol which would not be proportionate and justified in the public interest.

- 9.2.5. I have had regard to the Public Sector Equality Duty (PSED). In certain instances, the proposed development would harm the interests of persons who share a protected characteristic and those people would be disproportionately affected by the scheme. My concerns in this regard are identified in Chapter 4 and relate to the protected characteristics of age and disability in respect of people wishing to cross the A63.
- 9.2.6. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving relevant listed buildings or their setting or any features of special architectural or historic interest which they possess. The proposed development affects a range of listed buildings, their settings and features. In one instance – the Earl de Grey public house - the extent of harm to the listed building in the absence of security for a satisfactory scheme of mitigation compliant with the NNNPS is not justified, for the reasons set out in Chapter 4.
- 9.2.7. Even with the changes to the dDCO proposed in Appendix D to this Report, the proposed development does not meet the tests in s104 of PA2008.

9.3. RECOMMENDATION

- 9.3.1. In the light of the findings and conclusions on important and relevant matters set out in this Report, the SoS is recommended not to make the A63 Castle Street Improvement - Hull Order applied for. However, if the SoS is minded to make the Order, the draft DCO attached at Appendix D represents what I consider to be the best achievable draft across the range of principle issues subject to consideration in this Report, subject to any further changes arising from consultation with the Applicant and EPIC (No2) Ltd on the further changes set out in Appendix E.
- 9.3.2. If minded to grant development consent, the SoS may wish to be satisfied on the following matters before the decision is issued:
- Whether or not an agreement between the Applicant and EPIC (No2) Ltd has now been finalised.
 - In the event that an agreement between the Applicant and EPIC (No2) Ltd has not been finalised, whether the Applicant and EPIC (No 2) Ltd would support the changes to the dDCO set out at Appendix E to this report.
 - Whether the Applicant would support the revisions I recommend to R15 at Chapter 8.
 - Whether the Applicant is able at this stage to provide further details regarding the central reserve barrier (of the type required by R12) and any views HCC may have regarding such details.
 - Whether the Applicant is able at this stage to provide further details regarding the relocation of the Earl de Grey Public House (of the type

required by R14) and any views HCC and Historic England may have regarding such details.

- That the views of the Applicant are obtained on the matters set out in my conclusions on Compulsory Acquisition and Temporary Possession at Chapter 7 (section 7.8) and that those matters are addressed as necessary if these powers were to be considered for granting.
- That the consideration is given to whether the Exception Test is met in light of the SoS's views on the sustainability benefits of the scheme (as per the conclusions at section 4.8 of this report and NNNPS Paragraph 5.108).

APPENDICES

APPENDIX A: THE EXAMINATION	(A:I)
APPENDIX B: EXAMINATION LIBRARY.....	(B:I)
APPENDIX C: LIST OF ABBREVIATIONS	(C:I)
APPENDIX D: THE BEST ACHIEVABLE DCO	(D:I)
APPENDIX E: CONDITIONAL DCO CHANGES (EPIC (NO2) LTD)	(E:I)

APPENDIX A: THE EXAMINATION

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

Date	Examination Event
26 March 2019	Preliminary Meeting (PM)
26 March 2019	Open Floor Hearing (OFH)
1 April 2019	Issue by ExA of: <ul style="list-style-type: none"> • Examination timetable • ExA’s Written Questions (ExQ1)
23 April 2019	Deadline 1 (D1) Deadline for receipt of: <ul style="list-style-type: none"> • comments on any updates to Application Documents submitted by the Applicant before or at the PM; • comments on Relevant Representations (RRs); • summaries of all RRs exceeding 1500 words; • Written Representations (WRs) by all Interested Parties (IPs); • summaries of all WRs exceeding 1500 words; • Statements of Common Ground (SoCG) requested by ExA – see Annex E; • response to any further information requested by the ExA for this deadline • post-hearing submissions including written submissions of oral cases • notification by Statutory Parties of their wish to be considered as an IP by the ExA; • notification of wish to speak at any subsequent Issue Specific Hearings(ISH); • notification of wish to speak at a Compulsory Acquisition Hearing (CAH); • notification of wish to speak at an Open Floor Hearing (OFH); • provision of suggested locations and justifications for site inspections for consideration by the ExA; • notification of wish to attend an Accompanied Site Inspection (ASI); and • notification of wish to have future correspondence received electronically.

10 May 2019	<p>Deadline 2 (D2)</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • comments on WRs; • comments on any SoCGs • Local Impact Reports (LIR) from any Local Authorities; • responses to ExA's Written Questions (ExQ1); • comments on any additional information/submissions received by Deadline 1 (D1); and • responses to any further information requested by the ExA for this deadline
04 June 2019	Accompanied Site Inspection (ASI)
04 June 2019	Issue Specific Hearing 1 (ISH1) – Traffic and Movement
05 June 2019	Issue Specific Hearing 2 (ISH2) – Water and Flood Risk
06 June 2019	Issue Specific Hearing 3 (ISH3) – Historic Environment
06 June 2019	Issue Specific Hearing 4 (ISH4) – draft DCO
07 June 2019	Compulsory Acquisition Hearing (CAH1) 1
17 June 2019	<p>Deadline 3 (D3)</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • post-hearing submissions including written submissions of oral cases; • comments on LIRs; • comments on responses to ExA's Written Questions (ExQ1); • revised/updated SoCGs (if any) • the Applicants revised dDCO; • comments on any additional information/submissions received by D2; and • responses to any further information requested by the ExA for this deadline.
1 July 2019	<p>Deadline 4 (D4)</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • comments on the Applicant's revised dDCO; • comments on any revised/updated SoCGs (if any); • comments on any additional information/submissions received by D3; and • responses to any further information requested by the ExA for this deadline.
1 July 2019	Procedural Decision

	Issue of Rule 9 letter - Changes to the proposed scheme.
11 July 2019	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • the Examining Authority's Further Written Questions (ExQ2); • the ExA's Proposed Changes to the draft DCO; and • the Report on the Implications for European Sites (RIES)
18 July 2019	Issue Specific Hearing 5 (ISH5) – Draft DCO and any Outstanding Matters
18 July 2019	Compulsory Acquisition Hearing 2 (CAH2)
5 August 2019	<p>Deadline 5 (D5)</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • post-hearing submissions including written submissions of oral cases; • any revised/ updated SoCGs • response to the ExA's Written Questions (ExQ2) (if required); • comments on the ExA's proposed changes to the draft DCO (if required) ; • comments on the ExA's RIES (if required); • comments on any additional information/ submissions received by D4 • responses to any further information requested by the ExA for this deadline.
27 August 2019	<p>Deadline 6 (D6)</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • comments on any revised/ updated SoCGs; • comments on responses to ExA's Written Questions (ExQ2) (if required); • the Applicant's Final Preferred DCO (if required); • comments on any additional information/ submissions received by D5; and • responses to any further information requested by the ExA for this deadline.
10 September 2019	<p>Deadline 7 (D7)</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • comments on the Applicant's Final Preferred DCO; • comments on any additional information/submissions received by D6; and • responses to any further information requested by the ExA for this deadline.
13 September 2019	<p>Procedural Decision</p> <p>Issue of Amendments to timetable – Rule 8(3) and Request for Further Information – Rule 17</p>

**26 September
2019**

Close of Examination

APPENDIX B: EXAMINATION LIBRARY

**EN010093 – A63 Castle Street Improvement Scheme – Hull
Examination Library**

Application Documents

APP-001	Highways England 1.1 Introduction to the Application
APP-002	Highways England 1.2 Covering Letter and Schedule of Compliance with Section 55
APP-003	Highways England 1.3 Application Form
APP-004	Highways England 2.1 Location Plan
APP-005	Highways England 2.2 General Arrangement Plans
APP-006	Highways England 2.3 Lands Plans
APP-007	Highways England 2.4 Works Plans
APP-008	Highways England 2.5 Streets, Rights of Way and Access Plans
APP-009	Highways England 2.6 Engineering Drawings and Sections
APP-010	Highways England 2.7 Drainage Engineering Drawings
APP-011	Highways England 2.8 Non Motorised User Route Plans
APP-012	Highways England 2.9 Special Category Land Plans
APP-013	Highways England 2.10 Traffic Regulations Plans
APP-014	Highways England 2.11 Crown Land Plans

APP-015	Highways England 3.1 Draft Development Consent Order
APP-016	Highways England 3.2 Explanatory Memorandum
APP-017	Highways England 3.3 Consents and Agreements Position Statement
APP-018	Highways England 4.1 Statement of Reasons
APP-019	Highways England 4.2 Funding Statement
APP-020	Highways England 4.3 Book of Reference
APP-021	Highways England 5.1 Consultation Report
APP-021a	Highways England 5.2 Consultation Report Annexes
APP-022	Highways England 6.1 Environmental Statement
APP-023	Highways England 2.3 Lands Plans
APP-024	Highways England 6.2 Environmental Statement - Chapter 1 Figures
APP-025	Highways England 6.2 Environmental Statement - Chapter 2 Figures
APP-026	Highways England 6.2 Environmental Statement - Chapter 6 Figures
APP-027	Highways England 6.2 Environmental Statement - Chapter 7 Figures
APP-028	Highways England 6.2 Environmental Statement - Chapter 8 Figures 8.1 & 8.2
APP-029	Highways England 6.2 Environmental Statement - Chapter 8 Figures 8.3

APP-030	Highways England 6.2 Environmental Statement - Chapter 8 Figures 8.4 (Part 1)
APP-031	Highways England 6.2 Environmental Statement - Chapter 8 Figures 8.4 (Part 2)
APP-032	Highways England 6.2 Environmental Statement - Chapter 8 Figures 8.5
APP-033	Highways England 6.2 Environmental Statement - Chapter 9 Figures 9.1 to 9.5
APP-034	Highways England 6.2 Environmental Statement - Chapter 9 Figures 9.6
APP-035	Highways England 6.2 Environmental Statement - Chapter 9 Figures 9.7 to 9.9
APP-036	Highways England 6.2 Environmental Statement - Chapter 10 Figures
APP-037	Highways England 6.2 Environmental Statement - Chapter 11 Figures
APP-038	Highways England 6.2 Environmental Statement - Chapter 12 Figures
APP-039	Highways England 6.2 Environmental Statement - Chapter 14 Figures
APP-040	Highways England 6.2 Environmental Statement - Chapter 15 Figures
APP-041	Highways England 6.2 Environmental Statement - Chapter 16 Figures
APP-042	Highways England 6.3 Environmental Statement - Appendix 1.1
APP-043	Highways England 6.3 Environmental Statement - Appendix 2.1
APP-044	Highways England 6.3 Environmental Statement - Appendix 3.1
APP-045	Highways England 6.3 Environmental Statement - Appendix 4.1

APP-046	Highways England 6.3 Environmental Statement - Appendix 6.1 to 6.4
APP-047	Highways England 6.3 Environmental Statement - Appendix 7.1 to 7.3
APP-048	Highways England 6.3 Environmental Statement - Appendix 8.1 to 8.8
APP-049	Highways England 6.3 Environmental Statement - Appendix 9.1 to 9.7
APP-050	Highways England 6.3 Environmental Statement - Appendix 10.1 to 10.4
APP-051	Highways England 6.3 Environmental Statement - Appendix 11.1
APP-052	Highways England 6.3 Environmental Statement - Appendix 11.2
APP-053	Highways England 6.3 Environmental Statement - Appendix 11.3
APP-054	Highways England 6.3 Environmental Statement - Appendix 11.4 (Part 1)
APP-055	Highways England 6.3 Environmental Statement - Appendix 11.4 (Part 2)
APP-056	Highways England 6.3 Environmental Statement - Appendix 11.5 to 11.9
APP-057	Highways England 6.3 Environmental Statement - Appendix 12.1
APP-058	Highways England 6.3 Environmental Statement - Appendix 13.1 & 13.2
APP-059	Highways England 6.3 Environmental Statement - Appendix 14.1 & 14.2
APP-060	Highways England 6.3 Environmental Statement - Appendix 15.1 & 15.2
APP-061	Highways England 6.3 Environmental Statement - Appendix 16.1 & 16.2

APP-062	Highways England 6.4 Environmental Statement Non-Technical Summary
APP-063	Highways England 6.5 Statement of Statutory Nuisance
APP-064	Highways England 6.6 Flood Risk Assessment
APP-065	Highways England 6.7 Ecology and Nature Conservation Assessment
APP-066	Highways England 6.8 Cultural Heritage Assessment
APP-067	Highways England 6.9 Scoping Opinion - Proposed A63 (Castle Street Improvement, Hull)
APP-068	Highways England 6.11 Register of Environmental Actions and Commitments
APP-069	Highways England 6.13 Assessment of Implications for European Sites (Habitat Regulations Assessment) Screening Report - No Significant Effects
APP-070	Highways England 7.1 Planning Statement
APP-071	Highways England 7.2 National Networks National Policy Statement (NNNPS) Accordance Table
APP-072	Highways England 7.3 Outline Environmental Management Plan (OEMP)
APP-073	Highways England 7.4 Transport Assessment Report
Adequacy of Consultation Responses	
AoC-001	North Lincolnshire Council Adequacy of Consultation Representation
AoC-002	East Riding of Yorkshire Council Adequacy of Consultation Representation

AoC-003	Hull City Council Adequacy of Consultation Representation
Relevant Representations	
RR-001	SCP on behalf of Andy Hayton
RR-002	Kate Oldroyd
RR-003	Aivilo
RR-004	Historic England
RR-005	The Coal Authority
RR-006	Mason Owen on behalf of B&M RETAIL LTD
RR-007	Boots UK Ltd
RR-008	Bryan Cave Leighton Paisner LLP on behalf of Hin Hull Limited and HICP Limited
RR-009	BNP Paribas Real Estate on behalf of Royal Mail Group Limited
RR-010	Hull City Council
RR-011	HAIG
RR-012	Marine Management Organisation
RR-013	Shulmans LLP on behalf of Princes Quay Development Ltd
RR-014	Shulmans LLP on behalf of Princes Quay Estates Limited
RR-015	Shulmans LLP on behalf of Princes Quay Retail Limited
RR-016	Malcolm Scott on behalf of Charlie Spencer
RR-017	EPIC (No.2) Limited (EPIC (No.2) Limited)
RR-018	Environment Agency
RR-019	Historic England
RR-020	Hull City Council
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Section 51 Advice
PD-002	Section 55 Checklist
PD-003	Acceptance Letter
PD-004	Rule 6 letter - notification of the preliminary meeting and matters to be discussed
PD-005	Rule 8 - notification of timetable for the examination
PD-006	Written Questions

PD-007	Hearing and ASI Notification
PD-008	Appointment of Examining Authority Notice of appointment of the Examining Authority
PD-009	Request for Further Information to Princes Quay Retail Ltd, Princess Quay Estates and Mytongate Development Co Ltd - Rule 17
PD-010	Report on the Implications for European Sites (RIES) Issued by the Examining Authority on 11 July 2019
PD-011	Further Written Questions and Requests for Information
PD-012	Schedule of Proposed Changes to the draft Development Consent Order
PD-013	Now located at EV-014
PD-014	Now located at EV-015
PD-015	Rule 13 - Notification of Hearings (2)
PD-016	Notification of Procedural Decision - Rule 9
PD-017	Rule 8 (3) and Rule 17 - Request for further Information and Amendment to the Examination Timetable
PD-018	Notification of Completion of the Examining Authority's Examination
Additional Submissions	
AS-001	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.3 Book of Reference Rev 1 (Tracked
AS-002	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.3 Book of Reference Rev 1 (Clean Copy)
AS-003	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Covering Letter
AS-004	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.3 Land Plans
AS-005	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.4 Work Plans

AS-006	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.9 Special Category Land Plans Pre
AS-007	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.1 Statement of Reasons (Clean)
AS-008	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.1 Statement of Reasons (Tracked Changes)
AS-009	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.4 Book of Reference (Clean)
AS-010	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.4 Book of Reference (Tracked Changes)
AS-011	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 6.1 Environmental Statement (Clean)
AS-012	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 6.1 Environmental Statement (Tracked Changes)
AS-013	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 6.11 Register of Environmental Commitments (Clean)
AS-014	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 6.11 Register of Environmental Commitments (Tracked Changes)
AS-015	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 7.3 Outline Environmental Management Plan (Clean)
AS-016	Highways England

	Additional Submission - Accepted at the discretion of the Examining Authority - 7.3 Outline Environmental Management Plan (Tracked Changes)
AS-017	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Note to Inspector regarding inclusion of alternative sites in draft DCO
AS-018	Shulmans on behalf of Prince Quay Retail Ltd Additional Submission - Accepted at the discretion of the Examining Authority
AS-019	Shulmans LLP on behalf of Princes Quay Retail Ltd Additional Submission - Accepted at the discretion of the Examining Authority - Response to the Inspector's Request at Preliminary Meeting and Open Hearing - 26 March 2019
AS-020	Peter Ayling - East Yorkshire & Derwent Area Ramblers Additional Submission - Accepted at the discretion of the Examining Authority
AS-021	Highways England Additional Submissions - Accepted at the discretion of the Examining Authority
AS-022	HICP Limited & HIN Hull Limited Additional Submission - Accepted at the discretion of the Examining Authority - Further Written Representation
AS-023	Duplicate document – original located at - AS-021
AS-024	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Supporting Figures to Applicant's Response to Environment Agency's Relevant Representation [REP1-016]
AS-025	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.2 General Arrangement Plans (Clean)
AS-026	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.2 General Arrangement Plans (Tracked Changes)
AS-027	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.3 Land Plans 1 of 2 (Clean)
AS-028	Highways England

	Additional Submission - Accepted at the discretion of the Examining Authority - 2.3 Land Plans 1 of 2 (Tracked Changes)
AS-029	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.3 Land Plans 2 of 2 (Clean)
AS-030	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.3 Land Plans 2 of 2 (Tracked Changes)
AS-031	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.4 Works Plans (Clean)
AS-032	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.4 Works Plans (Tracked Changes)
AS-033	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.5 Streets, Rights of Way and Access Plans (Clean)
AS-034	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.5 Streets, Rights of Way and Access Plans (Tracked Changes)
AS-035	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.7 Drainage Engineering Drawings (Clean)
AS-036	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.7 Drainage Engineering Drawings (Tracked Changes)
AS-037	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.8 NMU Provisions (Clean)
AS-038	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.8 NMU Provisions (Tracked Changes)
AS-039	Highways England

	Additional Submission - Accepted at the discretion of the Examining Authority - 2.9 Special Category Land Plans (Clean)
AS-040	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.9 Special Category Land Plans (Tracked Changes)
AS-041	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.10 Traffic Regulation Plans (Clean)
AS-042	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.10 Traffic Regulation Plans (Tracked Changes)
AS-043	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.11 Crown Land Plans (Clean)
AS-044	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 2.11 Crown Land Plans (Tracked Changes)
AS-045	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.1 Statement of Reasons (Clean)
AS-046	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.1 Statement of Reasons (Tracked Changes)
AS-047	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.4 Book of Reference (Clean)
AS-048	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.4 Book of Reference (Tracked Changes)
AS-049	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 6.1 Environmental Statement Volume 1 Addendum 1 - Assessment of changes to effects arising from removing the Staples site compound from the DCO
AS-050	Highways England

	Additional Submission - Accepted at the discretion of the Examining Authority - 6.1 Environmental Statement Volume 1 Addendum 2 - Yorkshire Water Drainage Network
AS-051	Hull City Council Additional Submission - Accepted at the discretion of the Examining Authority - Hull Local Plan 2016 to 2032 - Adopted November 2017
AS-052	Hull City Council Additional Submission - Accepted at the discretion of the Examining Authority - Adoption Draft City Centre Key Sites Design Guide
AS-053	Hull City Council Additional Submission - Accepted at the discretion of the Examining Authority - Flood depths with defences with climate change based on upper end fluvial flow increase of 50%
AS-054	Hull City Council Additional Submission - Accepted at the discretion of the Examining Authority - Figure 3 Flood depths with defences with climate change
AS-055	Hull City Council Additional Submission - Accepted at the discretion of the Examining Authority - Figure 4 Flood Zone 3 with and without defences
AS-056	Hull City Council Additional Submission - Accepted at the discretion of the Examining Authority - Figure 7_ Flood velocity for modelled breaches
AS-057	Hull City Council Additional Submission - Accepted at the discretion of the Examining Authority - Figure 8_ Flood hazard for modelled breaches
AS-058	Hull City Council Additional Submission - Accepted at the Discretion of the Examining Authority - Figure 9 Surface water flood depth 3.3 event F1
AS-059	Hull City Council Additional Submission - Accepted at the Discretion of the Examining Authority - Figure 10 Surface water flood depth 1 event F1

AS-060	Hull City Council Additional Submissions - Accepted at the Discretion of the Examining Authority - Figure 11 Surface water flood depth 0.1 event F1
AS-061	Hull City Council Additional Submission - Accepted at the Discretion of the Examining Authority - Figure 13_ Exception Test Information
AS-062	Hull City Council Additional Submission - Accepted at the Discretion of the Examining Authority - Figure 14_ Flood Zones for Sequential Test
AS-063	Hull City Council Additional Submission - Accepted at the Discretion of the Examining Authority - Figure 15 Floor levels for places of safety
AS-064	Trinity House Additional Submission – Accepted at the Discretion of the Examining Authority – Email Submission
AS-065	Shulmans LLP on behalf of Princes Quay Retail Limited Additional Submission - Accepted at the discretion of the Examining Authority
AS-066	Shulmans LLP on behalf of Princes Quay Retail Limited Additional Submission - Accepted at the Discretion of the Examining Authority
AS-067	Marine Management Organisation Additional Submission - Accepted at the discretion of the Examining Authority - Response to Examining Authority's Deadline 1
AS-068	Hull City Council Additional Submission - Accepted at the discretion of the Examining Authority - Post Hearing document for the Preliminary Meeting
AS-069	David Ostler on behalf of Hull Civic Society Additional Submission - Accepted at the discretion of the Examining Authority
AS-070	Aivilo Properties Limited Additional Submission - Accepted at the discretion of the Examining Authority - received before the Close of Examination on 26 September 2019 23:59
AS-071	EPIC No.2 Limited

	Additional Submission - Accepted at the discretion of the Examining Authority - received before the Close of the Examination on 26 September 2019 23:59
Events and Hearings	
Preliminary Meeting	
EV-001	Recording of Preliminary Meeting on 26th March 2019
EV-002	Recording of Open Floor Hearing on 26th March 2019
EV-003	Preliminary Meeting Note
Accompanied Site Visits and Hearings	
EV-003a	Agenda for Issue Specific Hearing 1 Previously Reference: EV-001 - Replaced as Reference duplicated
EV-003b	Agenda for Issue Specific Hearing 2 Previously Reference: EV-002 - Replaced as Reference duplicated
EV-003c	Agenda for Issue Specific Hearing 3 Previously Reference: EV-003 - Replaced as Reference duplicated
EV-004	Agenda for Issue Specific Hearing 4
EV-005	Compulsory Acquisition Hearing Agenda
EV-006	Recording of Issue Specific Hearing 1 (ISH1) - 4th June 2019 - Traffic and Movement
EV-007	Recording of Issue Specific Hearing 2 (ISH2) – 5th June 2019 – Water and Flood Risk
EV-008	Recording of Issue Specific Hearing 3 (ISH3) – 6th June 2019 – Historic Environment
EV-009	Recording of Issue Specific Hearing 4 (ISH4) – 6th June 2019 – Draft DCO
EV-010	Recording of Issue Specific Hearing 5 (ISH5) - 18th July 2019 - Draft DCO and any Outstanding Matters
EV-011	Recording of Compulsory Acquisition Hearing 2 (CAH2) - 18th July 2019
EV-012	Action Points from Issue Specific Hearing 5 (ISH5) - Draft DCO and any outstanding matters - 18 July 2019
EV-013	Recording of Compulsory Acquisition Hearing 1 (CAH1) – 7th June 2019

EV-014	Agenda for Compulsory Acquisition Hearing 2 - 18 July 2019 Previously located at PD-013
EV-015	Agenda for Issue Specific Hearing 5 – DCO and outstanding matters Previously located at PD-014
Note of Unaccompanied Site Inspection	
EV-013a	Note of Unaccompanied Site Inspection - 25 March 2019
EV-014a	Unaccompanied Site Inspection - 17 July 2019
<p>Deadline 1</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • comments on any updates to Application Documents submitted by the Applicant before or at the PM; • comments on Relevant Representations (RRs); • summaries of all RRs exceeding 1500 words; • Written Representations (WRs) by all Interested Parties (IPs); • summaries of all WRs exceeding 1500 words; • Statements of Common Ground (SoCG) requested by ExA – see Annex E; • response to any further information requested by the ExA for this deadline • post-hearing submissions including written submissions of oral cases • notification by Statutory Parties of their wish to be considered as an IP by the ExA; • notification of wish to speak at any subsequent Issue Specific Hearings(ISH); • notification of wish to speak at a Compulsory Acquisition Hearing (CAH); • notification of wish to speak at an Open Floor Hearing (OFH); • provision of suggested locations and Tuesday 23 April justifications for site inspections for consideration by the ExA; • notification of wish to attend an Accompanied Site Inspection (ASI); • notification of wish to have future correspondence received electronically. 	
REP1-001	East Yorkshire & Derwent Area Ramblers Deadline 1 Submission - Written Response
REP1-002	Environment Agency Deadline 1 Submission - Written Representation
REP1-003	Environment Agency Deadline 1 Submission - Written Representation Summary
REP1-004	Temple Bright LLP on behalf of EPIC (No.2) Limited Deadline 1 Submission - Written Representation
REP1-005	Temple Bright LLP on behalf of EPIC (No.2) Limited Deadline 1 Submission - Summary of Written Representation

REP1-006	Temple Bright LLP on behalf of EPIC (No.2) Limited Deadline 1 Submission - Appendices A-D of the Written Representation of EPIC (No.2) Limited
REP1-007	Temple Bright LLP on behalf of EPIC (No.2) Limited Deadline 1 Submission - Appendices E-G of the Written Representation of EPIC (No.2) Limited
REP1-008	Bryan Cave Leighton Paisner LLP on behalf of HICP Limited & HIN Hull Limited Deadline 1 Submission - Written Representation
REP1-009	Highways England Deadline 1 Submission - Covering Letter
REP1-010	Highways England Deadline 1 Submission - Accompanying Documents for the Relevant Representations - Appendix A - Arup Technical Note
REP1-011	Highways England Deadline 1 Submission - Accompanying Documents for the Relevant Representations - Appendix B Technical Note
REP1-012	Highways England Deadline 1 Submission - SoCG with the Environment Agency
REP1-013	Highways England Deadline 1 Submission - SoCG with Historic England
REP1-014	Highways England Deadline 1 Submission - SoCG with Hull City Council
REP1-015	Highways England Deadline 1 Submission - SoCG with Natural England
REP1-016	Highways England Deadline 1 Submission - Comments on Relevant Representations
REP1-017	Historic England Deadline 1 Submission - Written Representation
REP1-018	Historic England Deadline 1 Submission - Written Representation Summary
REP1-019	Historic England Deadline 1 Submission - Appendix A - (A.1)
REP1-020	Historic England

	Deadline 1 Submission - Appendix A - (A.2)
REP1-021	Historic England Deadline 1 Submission - Appendix A - (A.3)
REP1-022	Historic England Deadline 1 Submission - Appendix A - (A.4)
REP1-023	Historic England Deadline 1 Submission - Appendix B Letter - Historic England to Highways England 10th Feb 2017
REP1-024	Historic England Deadline 1 Submission - Appendix C Photograph Earl de Grey public house, Grade II Listed Building
REP1-025	Historic England Deadline 1 Submission - Appendix D Photograph Castle Buildings, Grade II Listed Building
REP1-026	Historic England Deadline 1 Submission - Appendix E Photograph Beverley Gate, Scheduled Monument
REP1-027	Shulmans LLP on behalf of Mytongate Development Company Limited Deadline 1 Submission - Written Representation
REP1-028	Northern Gas Networks Deadline 1 Submission - Written Response
REP1-029	Northern Gas Networks Deadline 1 Submission - Map 1
REP1-030	Northern Gas Networks Deadline 1 Submission - Map 2
REP1-031	Northern Gas Networks Deadline 1 Submission - Important Safety Guidance
REP1-032	Northern Gas Networks Deadline 1 Submission - A Guide to working near Infrastructure
REP1-033	Shulmans LLP on behalf of Princes Quay Retail Limited Deadline 1 Submission - Written Representation
REP1-034	Shulmans LLP on behalf of Princes Quay Estates Limited Deadline 1 Submission - Written Representations
REP1-035	Public Health England Deadline 1 Submission - Written Response

Deadline 2

Deadline for receipt of:

- comments on WRs;
- comments on any SoCGs
- Local Impact Reports (LIR) from any Local Authorities;
- responses to ExA's Written Questions (ExQ1);
- comments on any additional information/submissions received by Deadline 1 (D1);
- responses to any further information requested by the ExA for this deadline

REP2-001	Environment Agency Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-002	Highways England Deadline 2 Submission - Cover Letter
REP2-003	Highways England Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-004	Highways England Deadline 2 Submission - Applicant's comments on Written Representations
REP2-005	Highways England Deadline 2 Submission - Updated Draft DCO (Clean Version)
REP2-006	Highways England Deadline 2 Submission - Updated Draft DCO - (Track Changes)
REP2-007	Highways England Deadline 2 Submission - Updated Draft DCO - (Validation Report)
REP2-008	Highways England Deadline 2 Submission - Appendix A - Additional information in response to 1.10.9
REP2-009	Highways England Deadline 2 Submission - Appendix [X] – Crown Land Schedule (Responses to Examining Authority's Written Questions (ExQ1))
REP2-010	Highways England Deadline 2 Submission - A63 DCO Documents Errata
REP2-011	Historic England

	Deadline 2 Submission - Response to Examining Authority's Questions
REP2-012	Hull Access Improvement Group (HAIG) Deadline 2 Submission - Written Response
REP2-013	Hull City Council Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-014	Marine Management Organisation Deadline 2 Submission - Response to Rule 8
REP2-015	Temple Bright LLP on behalf of EPIC (No.2) Limited Deadline 2 Submission - Response to Written Questions
REP2-016	Hull City Council Deadline 2 Submission - Local Impact Report
<p>Deadline 3</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • post-hearing submissions including written submissions of oral cases; • comments on LIRs; • comments on responses to ExA's Written Questions (ExQ1); • revised/updated SoCGs (if any) • the Applicants revised dDCO; • comments on any additional information/submissions received by D2; • responses to any further information requested by the ExA for this deadline. 	
REP3-001	Highways England Deadline 3 Submission - 160.18 HULL MINSTER
REP3-002	Highways England Deadline 3 Submission - 4.1 Statement of Reasons
REP3-003	Highways England Deadline 3 Submission - DCO (Clean)
REP3-004	Highways England Deadline 3 Submission - DCO (Tracked Changes)
REP3-005	Highways England Deadline 3 Submission - Validation Report
REP3-006	Highways England Deadline 3 Submission - Amendments to Submission letter June 2019

REP3-007	Highways England Deadline 3 Submission - Written Submission of Applicant's case put orally at ISH on 4th June 2019
REP3-008	Highways England Deadline 3 Submission - Written Submission of Applicant's case put orally at Issue Specific Hearing on 5th June 2019
REP3-009	Highways England Deadline 3 Submission - Written Submission of Applicants case put orally at ISH3 on 6th June 2019
REP3-010	Highways England Deadline 3 Submission -Written Submission of Applicants case put orally at ISH4 on 6th June 2019
REP3-011	Highways England Deadline 3 Submission - Written Submission of Applicants case put orally at Compulsory Acquisition Hearing on 7th June 2019
REP3-012	Highways England Deadline 3 Submission - Applicant's Comments on Responses to the Examining Authority's First Written Questions
REP3-013	Highways England Deadline 3 Submission - Flood Emergency and Evacuation Plan Report
REP3-014	Highways England Deadline 3 Submission - Response to Local Impact Report and Written Questions from Hull City Council
REP3-015	Highways England Deadline 3 Submission - Statement of Common Ground with Epic No.2 Limited (Kingston Retail Park)
REP3-016	Highways England Deadline 3 Submission - Letter to Examining Authority
REP3-017	Yorkshire Water Deadline 3 Submission - Letter
REP3-018	EPIC No.2 Limited Deadline 3 Submission - Deadline 3 Submission
REP3-019	HICP Limited and HIN Hull Limited Deadline 3 Submission - Post-Hearing Note
REP3-020	Marine Management Organisation

	Deadline 3 Submission - Response to Deadline 3
REP3-021	Princes Quay Retail Limited Deadline 3 Submission - Statutory Representation
REP3-022	Princes Quay Retail Limited Deadline 3 Submission - Request for Further Information
REP3-023	Hull City Council Deadline 3 Submission - 805563 - Application Cover Letter - Late Submission accepted at the discretion of the Examining Authority
REP3-024	Hull City Council Deadline 3 Submission - 806555-0007 Rev A – Accommodation Schedule CAS. Building/Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-025	Hull City Council Deadline 3 Submission - 806556-0008 Rev A - Accommodation Schedule Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-026	Hull City Council Deadline 3 Submission - 804685-0010 Rev B Drawing - Location Plan - Late Submission accepted at the discretion of the Examining Authority
REP3-027	Hull City Council Deadline 3 Submission - 804686-0011 - Proposal Attachments Details - Late Submission accepted at the discretion of the Examining Authority
REP3-028	Hull City Council Deadline 3 Submission - 804681-0011 Rev B - Drawing - Existing Site Plan Superseded - Late Submission accepted at the discretion of the Examining Authority
REP3-029	Hull City Council Deadline 3 Submission - 804684-0012 Rev B Drawing – Proposed Site Plan - Late Submission accepted at the discretion of the Examining Authority
REP3-030	Hull City Council Deadline 3 Submission - 806557-0015 Rev B - Proposed Site Sections - Late Submission accepted at the discretion of the Examining Authority
REP3-031	Hull City Council

	Deadline 3 Submission - 806558-0020 Rev B - GA Ground Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-032	Hull City Council Deadline 3 Submission - 806559-0021 Rev B - GA First Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-033	Hull City Council Deadline 3 Submission - 806561-0022 Rev B - GA Second Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-034	Hull City Council Deadline 3 Submission - 806564-0023 Rev B - GA Third Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-035	Hull City Council Deadline 3 Submission - 806565-0024 Rev B - GA Fourth Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-036	Hull City Council Deadline 3 Submission - 806566-0025 Rev B - GA Fifth Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-037	Hull City Council Deadline 3 Submission - 806571-0026 Rev B - GA Sixth Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-038	Hull City Council Deadline 3 Submission - 806573-0027 Rev B - GA Seventh Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-039	Hull City Council Deadline 3 Submission - 806575-0028 Rev A - GA Eight Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-040	Hull City Council Deadline 3 Submission - 806577-0029 Rev B - GA Roof Plan Hotel - Late Submission accepted at the discretion of the Examining Authority

REP3-041	Hull City Council Deadline 3 Submission - 806578-0030 Rev B - GA South Elevation Hotel Late Submission accepted at the discretion of the Examining Authority
REP3-042	Hull City Council Deadline 3 Submission - 817349-0030 Rev D - GA South Elevation Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-043	Hull City Council Deadline 3 Submission - 806580-0031 Rev B - GA North Elevation Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-044	Hull City Council Deadline 3 Submission - 817351-0031 Rev D - GA north Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-045	Hull City Council Deadline 3 Submission - 806581-0032 Rev B - GA East Elevation Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-046	Hull City Council Deadline 3 Submission - 817357-0032 Rev D - GA East Elevation Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-047	Hull City Council Deadline 3 Submission - 806584-0033 Rev B - GA West Elevation Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-048	Hull City Council Deadline 3 Submission - 817358-0033 -Rev D - GA West Elevation Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-049	Hull City Council Deadline 3 Submission - 806585-0035 Rev B - GA Section 1-1 Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-050	Hull City Council

	Deadline 3 Submission - 817363-0035 Rev D - GA Section 1-1 Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-051	Hull City Council Deadline 3 Submission - 806586-0036 Rev B - GA Section 2-2 Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-052	Hull City Council Deadline 3 Submission - 817367-0036 Rev D - GA Section 2-2 Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-053	Hull City Council Deadline 3 Submission - 806588-0040 Rev B - Existing Ground Floor Plan Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-054	Hull City Council Deadline 3 Submission - 817369-0040 Rev D - Existing Ground Floor Plan Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-055	Hull City Council Deadline 3 Submission - 806591-0041 Rev B - Existing First Floor Plan Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-056	Hull City Council Deadline 3 Submission - 817371-0041 Rev D - Existing First Floor Plan Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-057	Hull City Council Deadline 3 Submission - 806593-0042 Rev B - Existing Second Floor Plan Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-058	Hull City Council Deadline 3 Submission - 817375-0042 Rev D - Existing Second Floor Plan Castle Buildings Late Submission accepted at the discretion of the Examining Authority
REP3-059	Hull City Council Deadline 3 Submission - 806596-0043 Rev B - Existing Roof Plan Castle Buildings - Late Submission accepted at the discretion of the Examining Authority

REP3-060	Hull City Council Deadline 3 Submission - 817378-0043 Rev D - Existing Roof Plan Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP-061	Hull City Council Deadline 3 Submission - 806600-0045 Rev B - Existing Elevation 1 Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP-062	Hull City Council Deadline 3 Submission - 817380-0045 Rev D - Existing Elevation 1 Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-063	Hull City Council Deadline 3 Submission - 806601-0046 Rev B - Existing Elevation 2 Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-064	Hull City Council Deadline 3 Submission - 817383-0046 Rev D - Existing Elevation 2 Plan Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-065	Hull City Council Deadline 3 Submission - 806602-0047 Rev B - Existing Elevation 3 Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-066	Hull City Council Deadline 3 Submission - 817388-0047 Rev D - Existing Elevation 3 Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-067	Hull City Council Deadline 3 Submission - 806603-0048 Rev B - Existing Elevation 4 Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-068	Hull City Council Deadline 3 Submission - 817394-0048 Rev D - Existing Elevation 4 Castle Buildings - Late Submission accepted at the discretion of the Examining Authority
REP3-069	Hull City Council

	Deadline 3 Submission - 806604-0050 Rev B - PR GA Ground Floor Plan Castle Buildings & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-070	Hull City Council Deadline 3 Submission - 817397-0050 Rev D - PR GA Ground Floor Plan Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-071	Hull City Council Deadline 3 Submission - 806607-0051 Rev B - PR GA First Floor Plan Castle Building & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-072	Hull City Council Deadline 3 Submission - 817401-0051 Rev D - PR GA First Floor Plan Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-073	Hull City Council Deadline 3 Submission - 806608-0052 Rev B - PR GA Second Floor Plan Castle Building & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-074	Hull City Council Deadline 3 Submission - 817405-0052 Rev D - PR GA Second Floor Plan Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-075	Hull City Council Deadline 3 Submission - 806611-0053 Rev B - PR GA Roof Plan Castle Building & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-076	Hull City Council Deadline 3 Submission - 817413-0053 Rev D - PR GA Roof Plan Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-077	Hull City Council Deadline 3 Submission - 806612-0055 Rev B - Proposed Elevation 1 Castle Building & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-078	Hull City Council Deadline 3 Submission - 817420-0055 Rev D - Proposed Elevation 1 Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority

REP3-079	Hull City Council Deadline 3 Submission - 806613-0056 Rev B - Proposed Elevation 2 Castle Building & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-080	Hull City Council Deadline 3 Submission - 817427-0056 Rev D - Proposed Elevation 2 Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-081	Hull City Council Deadline 3 Submission - 806615-0057 Rev B - Proposed Elevation 3 Castle Building & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-082	Hull City Council Deadline 3 Submission - 817431-0057 Rev D - Proposed Elevation 3 Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-083	Hull City Council Deadline 3 Submission - 806618-0058 Rev B - Proposed Elevation 4 Castle Building & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-084	Hull City Council Deadline 3 Submission - 817436-0058 Rev D - Proposed Elevation 4 Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-085	Hull City Council Deadline 3 Submission - 806620-0060 Rev B - Proposed GA - Isometrics Castle Building & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-086	Hull City Council Deadline 3 Submission - 817442-0060 Rev D - Proposed GA - Isometrics Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-087	Hull City Council Deadline 3 Submission - 806622-0061 Rev B - Proposed GA Sections Castle Building & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-088a	Hull City Council

	Deadline 3 Submission - 817448-0061 Rev D - Proposed GA sections Cas. Build. & Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-089b	Hull City Council Deadline 3 Submission - 806654-0065 Rev B - Existing Ground Floor Plan Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-088	Hull City Council Deadline 3 Submission - 817452-0065 Rev D - Existing Ground Floor Plan Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-089	Hull City Council Deadline 3 Submission - 806655-0066 Rev B - Existing First Floor Plan Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-090	Hull City Council Deadline 3 Submission - 806656-0067 Rev B - Existing Second Floor Plan Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-091	Hull City Council Deadline 3 Submission - 817459-0067 Rev D - Existing Second Floor Plan Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-092	Hull City Council Deadline 3 Submission - 806657-0068 Rev B - Existing Roof Plan Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-093	Hull City Council Deadline 3 Submission - 817463-0068 Rev D - Existing Roof Plan Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-094	Hull City Council Deadline 3 Submission - 806658-0070 Rev B - Existing Elevation 1 Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-095	Hull City Council Deadline 3 Submission - 817468-0070 Rev D - Existing Elevation 1 Earl De Grey - Late Submission accepted at the discretion of the Examining Authority

REP3-096	Hull City Council Deadline 3 Submission - 806659-0071 Rev B - Existing Elevation 2 Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-097	Hull City Council Deadline 3 Submission - 817473-0071 Rev D - Existing Elevation Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-098	Hull City Council Deadline 3 Submission - 806660-0072 Rev B - Existing Elevation 3 Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-099	Hull City Council Deadline 3 Submission - 817480-0072 Rev D - Existing Elevation 3 Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-100	Hull City Council Deadline 3 Submission - 806661-0073 Rev B - Existing Elevation 4 Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-101	Hull City Council Deadline 3 Submission - 817484-0073 Rev D - Existing Elevation 4 Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-102	Hull City Council Deadline 3 Submission - 806663-SK002 - Typical Wall Build-ups Glazed & Solid Ext. Areas - Late Submission accepted at the discretion of the Examining Authority
REP3-103	Hull City Council Deadline 3 Submission - 806662-9100 - Landscape Proposals - Late Submission accepted at the discretion of the Examining Authority
REP3-104	Hull City Council Deadline 3 Submission - 804688 - Application Form - Late Submission accepted at the discretion of the Examining Authority
REP3-105	Hull City Council Deadline 3 Submission - 806528 - Planning Statement - Late Submission accepted at the discretion of the Examining Authority
REP3-106	Hull City Council

	Deadline 3 Submission - 817590 - Planning Statement Addendum - Late Submission accepted at the discretion of the Examining Authority
REP3-107	Hull City Council Deadline 3 Submission - A future City Centre - Design Guide and Delivery and Investment Plan - Late Submission accepted at the discretion of the Examining Authority
REP3-108	Hull City Council Deadline 3 Submission - 806534 - Drainage Impact Assessment - Late Submission accepted at the discretion of the Examining Authority
REP3-109	Hull City Council Deadline 3 Submission - 806532 - Flood Risk Assessment - Late Submission accepted at the discretion of the Examining Authority
REP3-110	Hull City Council Deadline 3 Submission - 817504-39388 001 Rev A - Flood Risk Assessment May 2019 - Late Submission accepted at the discretion of the Examining Authority
REP3-111	Hull City Council Deadline 3 Submission - 232639/001 - Strategic Flood Risk Assessment 2016 FINAL - Late Submission accepted at the discretion of the Examining Authority
REP3-112	Hull City Council Deadline 3 Submission - 806533 - Energy Statement - Late Submission accepted at the discretion of the Examining Authority
REP3-113	Hull City Council Deadline 3 Submission - 806535 - Air Quality Assessment - Late Submission accepted at the discretion of the Examining Authority
REP3-114	Hull City Council Deadline 3 Submission - 806530 - Noise Assessment - Late Submission accepted at the discretion of the Examining Authority
REP3-115	Hull City Council Deadline 3 Submission - 806529 - Odour Assessment - Late Submission accepted at the discretion of the Examining Authority
REP3-116	Hull City Council Deadline 3 Submission - 806526 - Proposed Hotel Castle Buildings, Hull Transport Assessment - Late Submission accepted at the discretion of the Examining Authority

REP3-117	Hull City Council Deadline 3 Submission - 806525 - Proposed Hotel Castle Buildings, Hull Travel Plan Final Issue - Late Submission accepted at the discretion of the Examining Authority
REP3-118	Hull City Council Deadline 3 Submission - Heritage Statement - Late Submission accepted at the discretion of the Examining Authority
REP3-119	Hull City Council Deadline 3 Submission - 817593 Rev C - Heritage Statement & Heritage Impact Assessment - Late Submission accepted at the discretion of the Examining Authority
REP3-120	Hull City Council Deadline 3 Submission - 806527 - Preliminary Ecological Appraisal Report - Late Submission accepted at the discretion of the Examining Authority
REP3-121	Duplicate document – original located at REP3-028
REP3-122	Hull City Council Deadline 3 Submission - 804687 - Fee Calculation Summary - Late Submission accepted at the discretion of the Examining Authority
REP3-123	Hull City Council Deadline 3 Submission - 806881 - Correspondence Email - Late Submission accepted at the discretion of the Examining Authority
REP3-124	Hull City Council Deadline 3 Submission - 806536 - 42263/001 Rev A - Phase I Geo- Environmental Appraisal for Castle Street Building Part1 - Late Submission accepted at the discretion of the Examining Authority
REP3-125	Hull City Council Deadline 3 Submission - 806537 - 42263/001 Rev A - Phase I Geo-Environmental Appraisal - Part2 - Late Submission accepted at the discretion of the Examining Authority
REP3-126	Hull City Council Deadline 3 Submission - 806538 - 42263/001 Rev A - Phase I Geo-Environmental Appraisal Part3 - Late Submission accepted at the discretion of the Examining Authority
REP3-127	Hull City Council

	Deadline 3 Submission - 806539 -42263/001 Rev A - Phase I Geo- Environmental Appraisal Part4 - Late Submission accepted at the discretion of the Examining Authority
REP3-127a	Hull City Council Deadline 3 Submission - 806540 - 42263/001 Rev A - Phase I Geo- Environmental Appraisal Part5 - Late Submission accepted at the discretion of the Examining Authority
REP3-128	Hull City Council Deadline 3 Submission - 806541 - 42263/001 Rev A - Phase I Geo- Environmental Appraisal Part6 - Late Submission accepted at the discretion of the Examining Authority
REP3-129	Hull City Council Deadline 3 Submission - 806543 - 42263/001 Rev A - Phase I Geo- Environmental Appraisal Part7 - Late Submission accepted at the discretion of the Examining Authority
REP3-130	Hull City Council Deadline 3 Submission - 806545 - 42263/001 Rev A - Phase I Geo- Environmental Appraisal Part8 - Late Submission accepted at the discretion of the Examining Authority
REP3-131	Hull City Council Deadline 3 Submission - 806547 - 42263/001 Rev A - Phase I Geo- Environmental Appraisal Part9 - Late Submission accepted at the discretion of the Examining Authority
REP3-132	Hull City Council Deadline 3 Submission - 806548 - 42263/001 Rev A - Phase I Geo- Environmental Appraisal Part10 - Late Submission accepted at the discretion of the Examining Authority
REP3-133	Hull City Council Deadline 3 Submission - 806550 - 42263/001 Rev A - Phase I Geo-Environmental Appraisal Part11 - Late Submission accepted at the discretion of the Examining Authority
REP3-134	Hull City Council Deadline 3 Submission - 817284-0004 - Listed Building Alterations Schedule - Late Submission accepted at the discretion of the Examining Authority
REP3-135	Hull City Council Deadline 3 Submission - 817486-0075 Rev A - PR GA Ground Flood Alteration Plan Late Submission accepted at the discretion of the Examining Authority

REP3-136	Hull City Council Deadline 3 Submission - 817488-0076 Rev A - PR GA First Floor Alteration Plan - Late Submission accepted at the discretion of the Examining Authority
REP3-137	Hull City Council Deadline 3 Submission - 817490-0077 Rev A - PR GA Second Floor Alteration Plan - Late Submission accepted at the discretion of the Examining Authority
REP3-138	Hull City Council Deadline 3 Submission - 817492-0078 Rev A - PR GA Roof Alteration Plan - Late Submission accepted at the discretion of the Examining Authority
REP3-139	Hull City Council Deadline 3 Submission - Appendix A. Late Submission accepted at the discretion of the Examining Authority.
REP3-140	Hull City Council Deadline 3 Submission - Consultation Draft City Centre Key Sites Design Guide Appendix A - Late Submission accepted at the discretion of the Examining Authority
REP3-141	Hull City Council Deadline 3 Submission - Hull City Centre Delivery and Investment Plan Appendix B - Late Submission accepted at the discretion of the Examining Authority
REP3-142	Hull City Council Deadline 3 Submission - 817509-39388 002 - Structural Report on the Former Earl The Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-143	Hull City Council Deadline 3 Submission - Figure 0 Issue F1 - Ground Levels - Late Submission accepted at the discretion of the Examining Authority
REP3-144	Hull City Council Deadline 3 Submission - Figure 1 Issue F1 - Standard of protection of River Hull and Humber defence - Late Submission accepted at the discretion of the Examining Authority
REP3-145	Hull City Council Deadline 3 Submission - Figure 2 Issue F1 - Flood Depths with Defences - Late Submission accepted at the discretion of the Examining Authority
REP3-146	Hull City Council

	Deadline 3 Submission - Figure 3 Issue F1 - Flood Depths with Defences with climate change - Late Submission accepted at the discretion of the Examining Authority
REP3-147	Hull City Council Deadline 3 Submission - Figure 3b Issue F1 - Flood Depths with defence with climate change based on upper end fluvial flow increase of 50% - Late Submission accepted at the discretion of the Examining Authority
REP3-148	Hull City Council Deadline 3 Submission - Figure 4 Issue F1 - Flood Zone 3 with and without defences - Late Submission accepted at the discretion of the Examining Authority
REP3-149	Hull City Council Deadline 3 Submission - Figure 6B Issue F1 - Flood Depth for Modelled Breaches with Climate Change - Late Submission accepted at the discretion of the Examining Authority
REP3-150	Hull City Council Deadline 3 Submission - Figure 9 Issue F1 - Surface Water Flood Depth - Late Submission accepted at the discretion of the Examining Authority
REP3-151	Hull City Council Deadline 3 Submission - Figure 10 Issue F1 - Surface water flood depth - Late Submission accepted at the discretion of the Examining Authority
REP3-152	Hull City Council Deadline 3 Submission - Figure 11 Issue F1 - Surface water flood depth - Late Submission accepted at the discretion of the Examining Authority
REP3-153	Hull City Council Deadline 3 Submission - Figure 13 Issue F1 - Expectation Test Information - Late Submission accepted at the discretion of the Examining Authority
REP3-154	Hull City Council Deadline 3 Submission - Figure 14 Issue F1 - Flood Zones for Sequential Test - Late Submission accepted at the discretion of the Examining Authority
REP3-155	Hull City Council

	Deadline 3 Submission - Figure 5 Issue F2 - Areas Benefitting from Hull Tidal Surge Barriers - Late Submission accepted at the discretion of the Examining Authority
REP3-156	Hull City Council Deadline 3 Submission - Figure 6 Issue F2 - Flood Depth for Modelled Breaches - Late Submission accepted at the discretion of the Examining Authority
REP3-157	Hull City Council Deadline 3 Submission - Figure 7 Issue F2 - Flood Velocity for Modelled Breaches - Late Submission accepted at the discretion of the Examining Authority
REP3-158	Hull City Council Deadline 3 Submission - Figure 8 Issue F2 - Flood Hazard for Modelled Breaches - Late Submission accepted at the discretion of the Examining Authority
REP3-159	Hull City Council Deadline 3 Submission - Figure 15 Issue F3 - Floor Levels for places of safety - Late Submission accepted at the discretion of the Examining Authority
REP3-160	Hull City Council Deadline 3 Submission - 818370 - Official Report - Late Submission accepted at the discretion of the Examining Authority
REP3-161	Hull City Council Deadline 3 Submission - 818368 - Official Report - Late Submission accepted at the discretion of the Examining Authority
REP3-162	Hull City Council Deadline 3 Submission - 817511 - Quod Comment on Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-163	Hull City Council Deadline 3 Submission - 817507-21 Rev 01 - Method Statement for demolition and re-construction of The Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-164	Hull City Council Deadline 3 Submission - 817496 Typical Wall Build-Ups Glazed & Solid Ext. Areas - Late Submission accepted at the discretion of the Examining Authority
REP3-165	Hull City Council

	Deadline 3 Submission - 817494 Rev A - Landscape Proposals - Late Submission accepted at the discretion of the Examining Authority
REP3-166	Hull City Council Deadline 3 Submission - 817455-006 Rev D - Existing First Floor Plan Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-167	Hull City Council Deadline 3 Submission - 817346-0029 Rev B - GA Roof Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-168	Hull City Council Deadline 3 Submission - 817344-0028 Rev A - GA Eighth Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-169	Hull City Council Deadline 3 Submission - 817342-0027 Rev B - GA Seventh Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-170	Hull City Council Deadline 3 Submission - 817333-0026 - GA Sixth Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-171	Hull City Council Deadline 3 Submission - 817329-0025 Rev B - GA Fifth Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-172	Hull City Council Deadline 3 Submission - 817327-0024 Rev GA Fourth Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-173	Hull City Council Deadline 3 Submission - 817325 Rev B - GA Third Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-174	Hull City Council Deadline 3 Submission - 817323-0022 Rev B - GA Second Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority

REP3-175	Hull City Council Deadline 3 Submission - 817321-0021 Rev B - GA First Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-176	Hull City Council Deadline 3 Submission - 817319-0020 Rev D - GA Ground Floor Plan Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-177	Hull City Council Deadline 3 Submission - 817316-015 Rev C - Proposed Site Sections - Late Submission accepted at the discretion of the Examining Authority
REP3-178	Hull City Council Deadline 3 Submission - 817310-0012 Rev D - Proposed Site Plan - Late Submission accepted at the discretion of the Examining Authority
REP3-179	Hull City Council Deadline 3 Submission - 817297-008 Rev C - Accommodation Schedule Hotel - Late Submission accepted at the discretion of the Examining Authority
REP3-180	Hull City Council Deadline 3 Submission - 817290-0007 Rev C - PR Accommodation Schedule Cas. Buildings/ Earl De Grey - Late Submission accepted at the discretion of the Examining Authority
REP3-181	Hull City Council Deadline 3 Submission - 817133 - Member of Public comments for Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-182	Hull City Council Deadline 3 Submission - 816466-19-00334 - Official Report - Late Submission accepted at the discretion of the Examining Authority
REP3-183	Hull City Council Deadline 3 Submission - 816464-19-00333 Official Report - Late Submission accepted at the discretion of the Examining Authority
REP3-184	Hull City Council

	Deadline 3 Submission - 815030 - Yorkshire Water Services comments on Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-185	Hull City Council Deadline 3 Submission - 813720 - Andy Gosling (Public Protection, Public Health HullCC) comments on Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-186	Hull City Council Deadline 3 Submission - 813539 - John Scotney (from Hull Civic Society) comments on Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-187	Hull City Council Deadline 3 Submission - 813535 - Hull Civic Society comments on Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-188	Hull City Council Deadline 3 Submission - 812054 - Highways Development Control comments on the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-189	Hull City Council Deadline 3 Submission - 811514 - Flood Team Response to the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-190	Hull City Council Deadline 3 Submission - 811340 - Georgian Group comments on the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-191	Hull City Council Deadline 3 Submission - 811336 - Lucie McCarthy (from Humber Archaeology Partnership) comments on the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-192	Hull City Council Deadline 3 Submission - 811335 - Humber Archaeology Partnership comments on the Planning Application - Late Submission accepted at the discretion of the Examining Authority

REP3-193	Hull City Council Deadline 3 Submission - 810798 - Environment Agency comments on Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-194	Hull City Council Deadline 3 Submission - 808930 - Historic England comments on the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-195	Hull City Council Deadline 3 Submission - 818027-00333 - Mr Paul Salvidge Member of the Public comments for the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-196	Hull City Council Deadline 3 Submission - 818756 - Environment Agency Comments of Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-197	Hull City Council Deadline 3 Submission - 818065-00334 - Mr Paul Salvidge Member of the Public comments for the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-198	Hull City Council Deadline 3 Submission - 817132 - Mr Pub public comments on the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-19	Hull City Council Deadline 3 Submission - 808362 - Simon Geoghegan (from Highways England) comments on Planning Application – Late Submission accepted at the discretion of the Examining Authority
REP3-200	Hull City Council Deadline 3 Submission - 806896 - Mr H Aig Public Comments for planning application - Late Submission accepted at the discretion of the Examining Authority
REP3-201	Hull City Council Deadline 3 Submission - 806897 - Paul Salvidge Member of Public Comments for Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-202	Hull City Council

	Deadline 3 Submission - 807549 - Andrew Hodge (from Health and Safety Executive's) comments on the planning application - Late Submission accepted at the discretion of the Examining Authority
REP3-203	Hull City Council Deadline 3 Submission - 808011 - Conservation Officer's comments (Hull City Council) on the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-204	Hull City Council Deadline 3 Submission - 807907 - Laura Hobbs (from Yorkshire Wildlife Trust) comments on the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP4-205	Hull City Council Deadline 3 Submission - 808359 - Highways England comments on Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-206	Hull City Council Deadline 3 Submission - 808357 - Dawn Kinrade (from Natural England) Comments on the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-207	Hull City Council Deadline 3 Submission - 808233 - Rob Beardsworth Conversation Officer (HullCC) comments on the Planning Application - Late Submission accepted at the discretion of the Examining Authority
REP3-208	Hull City Council Deadline 3 Submission - Photographs and Photomontages Coversheet - Version 1 - Late Submission accepted at the discretion of the Examining Authority
REP3-209	Hull City Council Deadline 3 Submission - Hull City Centre Parking Strategy - Late Submission accepted at the discretion of the Examining Authority
REP3-210	Hull City Council Deadline 3 Submission - Hull Local Plan 2016 - 2032 - Late Submission accepted at the discretion of the Examining Authority
REP3-212	Hull City Council Deadline 3 Submission - Hull Local Plan 2016 - 2032 Policies Map - Late Submission accepted at the discretion of the Examining Authority
REP3-213	Hull City Council

	Deadline 3 Submission – Flood Risk Standing Advice - Late Submission accepted at the discretion of the Examining Authority
REP3-214	Hull City Council Deadline 3 Submission – Supplementary Planning Document (SPD) 5: Hull City Centre Parking Strategy - Late Submission accepted at the discretion of the Examining Authority
REP3-215	Hull City Council Deadline 3 Submission – Post Issue Specific Hearings submissions. Late submission accepted at the discretion of the Examining Authority.
<p>Deadline 4</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • comments on the Applicant’s revised dDCO; • comments on any revised/updated SoCGs (if any); • comments on any additional information/submissions received by D3; and Monday 01 July • responses to any further information requested by the ExA for this deadline. 	
REP4-001	Highways England Deadline 4 Submission - Cover Letter
REP4-002	Highways England Deadline 4 Submission - Statement of Common Ground (SoCG) with Historic England (Draft)
REP4-003	Highways England Deadline 4 Submission - Applicant’s response to Hull City Councils Submission at Deadline 3
REP4-004	Highways England Deadline 4 Submission - 4.1 Statement of Reasons (Clean)
REP4-005	Highways England Deadline 4 Submission - 4.1 Statement of Reasons (Annex B)
REP4-006	Highways England Deadline 4 Submission - Development Consent Order (DCO) Errata - (Clean)
REP4-007	Highways England Deadline 4 Submission - Development Consent Order (DCO) Errata - (Tracked Changes)
REP4-008	Highways England

	Deadline 4 Submission - Environmental Statement Volume 1 Addendum 2 - Yorkshire Water Drainage Network - (Clean)
REP4-009	Highways England Deadline 4 Submission - Environmental Statement Volume 1 Addendum 2 Yorkshire Water Drainage Network - (Tracked Changes)
REP4-010	Hull City Council Deadline 4 Submission - Comments on the Applicant's Revised Draft Development Consent Order (DCO) and other Deadline 3 Submissions
REP4-011	Historic England Deadline 4 Submission - Response to Examining Authority's Written Questions
REP4-012	Marine Management Organisation Deadline 4 Submission - Response to Examining Authority's request for attendance at the Issue Specific Hearing (ISH) on the 18th July 2019
<p>Deadline 5</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • post-hearing submissions including written submissions of oral cases; • any revised/ updated SoCGs • response to the ExA's Written Questions (ExQ2) (if required); • comments on the ExA's proposed changes to the draft DCO (if required) ; • comments on the ExA's RIES (if required); • comments on any additional information/ submissions received by D4 • responses to any further information requested by the ExA for this deadline. 	
REP5-001	Highways England Deadline 5 Submission - Cover Letter
REP5-002	Highways England Deadline 5 Submission - Written Submission of Oral Case Compulsory Acquisition Hearing 18 July 2019
REP5-003	Highways England Deadline 5 Submission - Written Submission of Oral Case dDCO Hearing 18 July 2019
REP5-004	Highways England Deadline 5 Submission - Applicant's Comments on the Examining Authority's Further Written Questions (ExQ2)
REP5-005	Highways England

	Deadline 5 Submission - DCO Documents Errata (Clean)
REP5-006	Highways England Deadline 5 Submission - DCO Documents Errata (Tracked Changes)
REP5-007	Highways England Deadline 5 Submission - Applicant's Response to Hearing Action Points from Issue Specific Hearing 5 (ISH5)
REP5-008	Highways England Deadline 5 Submission - 2.2 General Arrangement Plans (Clean)
REP5-009	Highways England Deadline 5 Submission - 2.2 General Arrangement Plans (Tracked Changes)
REP5-010	Highways England Deadline 5 Submission - 2.3 Land Plans (Clean)
REP5-011	Highways England Deadline 5 Submission - 2.3 Land Plans (Tracked Changes)
REP5-012	Highways England Deadline 5 Submission - 2.4 Works Plans (Clean)
REP5-013	Highways England Deadline 5 Submission - 2.4 Works Plans (Tracked Changes)
REP5-014	Highways England Deadline 5 Submission - 2.5 Streets, RoW and Access Plans (Clean)
REP5-015	Highways England Deadline 5 Submission - 2.5 Streets, RoW and Access Plans (Tracked Changes)
REP5-016	Highways England Deadline 5 Submission - 2.7 Drainage Engineering Drawings (Clean)
REP5-017	Highways England Deadline 5 Submission - 2.7 Drainage Engineering Drawings (Tracked Changes)
REP5-018	Highways England Deadline 5 Submission - 2.8 NMU Provisions (Clean)

REP5-019	Highways England Deadline 5 Submission - 2.8 NMU Provisions (Tracked Changes)
REP5-020	Highways England Deadline 5 Submission - 2.10 Traffic Regulation Plans (Clean).
REP5-021	Highways England Deadline 5 Submission - 2.10 Traffic Regulation Plans (Tracked Changes)
REP5-022	Highways England Deadline 5 Submission - 4.1 Statement of Reasons (Clean)
REP5-023	Highways England Deadline 5 Submission - 4.1 Statement of Reasons (Tracked Changes)
REP5-024	Highways England Deadline 5 Submission - 4.4 Book of Reference (Clean)
REP5-025	Highways England Deadline 5 Submission - 4.4 Book of Reference (Tracked Changes)
REP5-026	Highways England Deadline 5 Submission - Draft DCO (Clean)
REP5-027	Highways England Deadline 5 Submission - Draft DCO (Tracked Changes)
REP5-028	Highways England Deadline 5 Submission - Draft DCO - Validation Report
REP5-029	Highways England Deadline 5 Submission - Applicant's Comments on ExA Schedule of Proposed DCO Revisions
REP5-030	Highways England Deadline 5 Submission - Environmental Statement - Flood Risk Assessment (Clean)
REP5-031	Highways England Deadline 5 Submission - Environmental Statement - Flood Risk Assessment (Tracked Changes)
REP5-032	Highways England

	Deadline 5 Submission - Environmental Statement - Road Drainage and the Water Environment Modelling Technical Report (Clean)
REP5-033	Highways England Deadline 5 Submission - Road Drainage and the Water Environment Modelling Technical Report (Tracked Changes)
REP5-034	Highways England Deadline 5 Submission - Statement of Common Ground with Environment Agency
REP5-035	Highways England Deadline 5 Submission - Statement of Common Ground with Natural England - Final v2
REP5-036	Highways England Deadline 5 Submission - Letter of undertaking in relation to land acquired
REP5-037	Hull City Council Deadline 5 Submission - July 2019 Plan
REP5-038	Hull City Council Deadline 5 Submission - The Humber LEP Strategic Economic Plan 2014 - 2020
REP5-039	Hull City Council Deadline 5 Submission - Review of the Humber Strategic Economic Plan 2014 - 2020
REP5-040	Hull City Council Deadline 5 Submission - Response to the Examining Authority's Further Written Questions - Network Management Plan 2009
REP5-041	Hull City Council Deadline 5 Submission - Air Quality Management Plan
REP5-042	Hull City Council Deadline 5 Submission - Old Town East Appraisal
REP5-043	Hull City Council Deadline 5 Submission - Old Town South Appraisal
REP5-044	Hull City Council Deadline 5 Submission - Old Town Western and Northern Appraisal
REP5-045	Hull City Council

	Deadline 5 Submission - Supplementary Planning Document 2 Heritage and archaeology
REP5-046	Hull City Council Deadline 5 Submission - Supplementary Planning Document 9 Vitality and viability of centres
REP5-047	Hull City Council Deadline 5 Submission - Supplementary Planning Documents 10 Trees
REP5-048	Hull City Council Deadline 5 Submission - Supplementary Planning Document 11 Open Space
REP5-049	East Riding of Yorkshire Council Deadline 5 Submission - Allocations Document - Adoption
REP5-050	East Riding of Yorkshire Council Deadline 5 Submission - Strategy Document - Adoption
REP5-051	Temple Bright on behalf of EPIC No.2 Limited Deadline 5 Submission - Response to the Examining Authority's Further Written Questions, requests for information and Statement of Common Ground
REP5-052	Harlaxton Energy Networks Ltd Deadline 5 Submission - Comments on the Proposed Development
REP5-053	HIN Hull Limited and HICP Limited Deadline 5 Submission - Post- Hearing Note
REP5-054	Historic England Deadline 5 Submission - Response to Examining Authority's Further Written Questions
REP5-055	Hull Civic Society Deadline 5 Submission - Earl de Grey 27.7.19
REP5-056	Mytongate Development Company Ltd Deadline 5 Submission - Letter of undertaking in relation to land acquired
REP5-057	Shulmans LLP on behalf of Mytongate Development Company Limited Deadline 5 Submission - Settlement Agreement (draft) with Highways England

REP5-058	Shulmans LLP on behalf of Mytongate Development Company Limited Deadline 5 Submission - Settlement Agreement (Final) with Highways England
REP5-059	Princes Quay Retail Limited and Princes Quay Estates Limited Deadline 5 Submission - Responses to any further information requested by the ExA for this deadline
REP5-060	Princes Quay Estates Limited Deadline 5 Submission - Letter to the National Infrastructure Planning
REP5-061	Hull City Council Deadline 5 Submission - Response to Examining Authority's Further Written Questions - Late Submission accepted at the discretion of the Examining Authority
<p>Deadline 6</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • comments on any revised/ updated SoCGs; • comments on responses to ExA's Written Questions (ExQ2) (if required); • the Applicant's Final Preferred DCO (if required); • comments on any additional information/ submissions received by D5; and • responses to any further information Tuesday 27 August requested by the ExA for this deadline. 	
REP6-001	Highways England Deadline 6 Submission - Cover Letter
REP6-002	Highways England Deadline 6 Submission - Development Consent Order (DCO) - Master Copy - (Clean)
REP6-003	Highways England Deadline 6 Submission - Development Consent Order (DCO) - Master Copy - Tracked Changes
REP6-004	Highways England Deadline 6 Submission - Development Consent Order (DCO) - DCO - Master Copy - Validation Report
REP6-005	Highways England Deadline 6 Submission - Development Consent Order (DCO) - Errata - Version 4 - Part 1 - (Clean)
REP6-006	Highways England

	Deadline 6 Submission - Development Consent Order (DCO) Errata - Version 4 - Part 1 - Tracked Changes
REP6-007	Highways England Deadline 6 Submission - Development Consent Order (DCO) - Errata - Version 4 - Part 2 - (Clean)
REP6-008	Highways England Deadline 6 Submission - Development Consent Order (DCO) - Errata - Version 4 - Part 2 - Tracked Changes
REP6-009	Highways England Deadline 6 Submission - 2.8 NMU Provisions (Clean)
REP6-010	Highways England Deadline 6 Submission - 2.8 NMU (Tracked Changes)
REP6-011	Highways England Deadline 6 Submission - 4.1 Statement of Reasons (Clean)
REP6-012	Highways England Deadline 6 Submission - 4.1 Statement of Reasons (Tracked Changes)
REP6-013	Highways England Deadline 6 Submission - Statement of Common Ground with Historic England - Version 1
REP6-014	Highways England Deadline 6 Submission - Review of Central Barrier Options
REP6-015	Highways England Deadline 6 Submission - High Street Underpass Draft Sketchbook
REP6-016	Highways England Deadline 6 Submission - Late Submission - Environmental Statement Review of the East Inshore Marine Plan - Accepted at the discretion of the Examining Authority
REP6-017	Hull City Council Deadline 6 Submission - Comments on the Applicant's Deadline 5 Submissions
REP6-018	Marine Management Organisation Deadline 6 Submission - Comments on the Applicant's revised draft Development Consent Order (DCO)
REP6-019	Mytongate Development Company Limited

	Deadline 6 Submission - Withdrawal of Objections and updated position
REP6-020	East Yorkshire & Derwent Area Ramblers Deadline 6 Submission - Non-IP accepted at the discretion of the Examining Authority – Comments on Open Floor Hearing 1
REP6-021	Highways England Deadline 6 Submission - Late Submission accepted at the discretion of the Examining Authority - 4.3 Book of Reference (BoR) - Clean
REP6-022	Highways England Deadline 6 Submission - Late Submission accepted at the discretion of the Examining Authority - 4.4 Book of Reference (BoR) – Tracked Changes
REP6-023	Highways England Deadline 6 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on additional submissions or information from Deadline 5
<p>Deadline 7</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on the Applicant’s Final Preferred DCO (if required); • comments on any additional information/ submissions received by D6; and • responses to any further information requested by the ExA for this deadline. 	
REP7-001	Highways England Deadline 7 Submission - Cover Letter
REP7-002	Highways England Deadline 7 Submission - Notice of Disclaimer
REP7-003	Highways England Deadline 7 Submission - DCO Documents Errata - Tracked Changes
REP7-004	Highways England Deadline 7 Submission - - DCO Documents Errata - Clean
REP7-005	Highways England Deadline 7 Submission - Applicant's response to Hull City Council's Section 106 proposal
REP7-006	Highways England

	Deadline 7 Submission - Signed Statement of Common Ground between Epic No.2 (Kingston Retail Park) and The Applicant
REP7-007	Highways England Deadline 7 Submission - Signed Statement of Common Ground between Hull City Council and The Applicant - Digital Version
REP7-008	Highways England Deadline 7 Submission - Signed Statement of Common Ground between Hull City Council and The Applicant
REP7-009	Highways England Deadline 7 Submission - Final agreed (awaiting signature) Statement of Common Ground between Historic England and The Applicant
REP7-010	Hull City Council Deadline 7 Submission - Comments on the review of central reservation barrier; High street underpass sketchbook; Applicants comments on Deadline 5 submissions
REP7-011	Historic England Deadline 7 Submission - comments on the Applicant's Final Preferred DCO
REP7-012	Temple Bright LLP on behalf of EPIC No.2 Limited Deadline 7 Submission - comments on the Applicant's Final Preferred DCO
Rule 17 Deadline	
Request for Further Information	
REPR17-001	Highways England Rule 17 Submission - Cover Letter
REPR17-002	Highways England Rule 17 Deadline Submission - Applicant's Comments on additional requests for information from rule 8(3) and Rule 17
REPR17-003	Highways England Rule 17 Deadline Submission - Applicant's Comments on additional requests for information - Beverley Gate Scheduled Monument Response - Accompanying Sketch
REPR17-004	Highways England Rule 17 Deadline Submission - A63 Castle Street Improvements Hull DCO - 20.09.19 Clean
REPR17-005	Highways England

	Rule 17 Deadline Submission - A63 Castle Street Improvements Hull DCO - 20.09.19 Tracked Changes
REPR17-006	Highways England Rule 17 Deadline Submission - A63 DCO Documents Errata v6 (clean)
REPR17-007	Highways England Rule 17 Deadline Submission - A63 DCO Documents Errata v6 (Tracked Changes)
REPR17-008	Highways England Rule 17 Deadline Submission - Earl De Grey Agreement - Heads of Terms
REPR17-009	Highways England Rule 17 Deadline Submission - Statement of Common Ground with Historic England - Signed
REPR17-010	Highways England Rule 17 Deadline Submission - 2.2 General Arrangement Plans (clean)
REPR17-011	Highways England Rule 17 Deadline Submission - 2.2 General Arrangement Plans (tracked change)
REPR17-012	Highways England Rule 17 Deadline Submission - 2.3 Land Plans (clean)
REPR17-013	Highways England Rule 17 Deadline Submission - 2.3 Land Plans (tracked change)
REPR17-014	Highways England Rule 17 Deadline Submission - 2.4 Works Plans (clean)
REPR17-015	Highways England Rule 17 Deadline Submission - 2.4 Works Plans (tracked change)
REPR17-016	Highways England Rule 17 Deadline Submission - 2.5 Streets Rights of Way and Access Plans (clean)
REPR17-017	Highways England Rule 17 Deadline Submission - 2.5 Streets Rights of Way and Access Plans (tracked change).
REPR17-018	Highways England

	Rule 17 Deadline Submission - 2.7 Drainage Engineering Drawings (clean)
REPR17-019	Highways England Rule 17 Deadline Submission - 2.7 Drainage Engineering Drawings (tracked change)
REPR17-020	Highways England Rule 17 Deadline Submission - 2.8 NMU Provisions (clean)
REPR17-021	Highways England Rule 17 Deadline Submission - 2.8 NMU Provisions (tracked change)
REPR17-022	Highways England Rule 17 Deadline Submission - 2.9 Special Category Land Plans (clean)
REPR17-023	Highways England Rule 17 Deadline Submission - 2.9 Special Category Land Plans (tracked change)
REPR17-024	Highways England Rule 17 Deadline Submission - 2.10 Traffic Regulations Plans (Clean)
REPR17-025	Highways England Rule 17 Deadline Submission - 2.10 Traffic Regulations Plans (tracked change)
REPR17-026	Highways England Rule 17 Deadline Submission - 2.11 Crown Land Plans (clean)
REPR17-027	Highways England Rule 17 Deadline Submission - 2.11 Crown Land Plans (tracked change)
REPR17-028	Highways England Rule 17 Deadline Submission - 4.1 Statement of Reasons (Clean)
REPR17-029	Highways England Rule 17 Deadline Submission - 4.1 Statement of Reasons (Tracked Changes)
REPR17-030	Highways England Rule 17 Deadline Submission - 4.4 Book of Reference (Clean)
REPR17-031	Highways England

	Rule 17 Deadline Submission - 4.4 Book of Reference (tracked change)
REPR17-032	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Grid 41
REPR17-033	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan 2012 - 2029 - Policies Map - July 2016 - Grid 42
REPR17-034	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Grid 43
REPR17-035	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Grid 44
REPR17-036	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Grid 50
REPR17-037	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Grid 51
REPR17-038	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Grid 52
REPR17-039	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Grid 53
REPR17-040	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Anlaby Willerby Kirk Ella - Inset 2
REPR17-041	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Hedon - Inset 20
REPR17-042	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Hedon Town Centre Inset 20a
REPR17-043	East Riding of Yorkshire Council

	Rule 17 Deadline Submission - Local Plan - Policies Map - July 2016 - Hedon Haven/Saltend - Inset 21
REPR17-044	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Hessle - Inset 22
REPR17-045	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - 2012 - 2029 - Policies Map - July 2016 - Hessle - Town Centre - Inset 22a
REPR17-046	East Riding of Yorkshire Council Rule 17 Deadline Submission - Local Plan - Policies Map Key - July 2016
REPR17-047	Dr Peter Ayling - East Yorkshire & Derwent Area Ramblers Rule 17 Deadline Submission - Response to request for further information and amendment to the Examination Timetable
REPR17-048	Doug las Dixon-Hall Rule 17 Deadline Submission - Response to request for further information and amendment to the Exam Timetable
REPR17-049	Hull City Council Rule 17 Deadline Submission - Late submission accepted at the discretion of the Examining Authority - received before the Close of Examination on 26 September 2019 and 23:59
Other Documents	
OD-001	Examining Authority Application by Highways England for an Order granting Development Consent for the A63 Castle Street Improvement Scheme
OD-002	Highways England Section 56 Notice
OD-003	TR010016 - Regulation 24 Transboundary Screening

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
AADT	Annual Average Daily Traffic
AEoI	Adverse Effects on Integrity
AIES	Assessment of the Implications for European Sites
ALA1981	Acquisition of Land Act 1981
AMT	Area Maintenance Team
AP	Affected Person
AQAP	Air Quality Action Plan
AQD	Air Quality Directive
AQMA	Air Quality Management Area
ASI	Accompanied Site Inspection
baDCO	best achievable Development Consent Order
BCR	Benefit to cost ratio
BoR	Book of Reference
CA	Compulsory Acquisition
the CA Regs	The Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CAH	Compulsory Acquisition Hearing
CEMP	Construction Environmental Management Plan
CIFA	Chartered Institute for Archaeology
CO ₂	Carbon dioxide
CPA1965	Compulsory Purchase Act 1965
CSB	Concrete Step Barrier
D (number)	Deadline, with a number referring to a specific deadline identified in the Examination Timetable
DCLG	Former Department for Communities and Local Government

Abbreviation or usage	Reference
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DfS	Departure from Standards
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
DP	Development Plan
DPD	Development Plan document
EA	Environment Agency
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EPA1990	Environmental Protection Act 1990
ERDF	European Regional Development Fund
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ1/ExQ2	First/second round of ExA's written questions.
FEP	Flood Emergency Plan
FEPP	Flooding Emergency and Evacuation Plan
FRA	Flood Risk Assessment
FS	Funding Statement
ha	hectare
HE	Highways England
HEMP	Handover Environmental Management Plan
HGV	Heavy Goods Vehicle
HMBCE	Historic Buildings Monuments Commission for England
HRA	Habitats Regulations Assessment

Abbreviation or usage	Reference
HRA1998	Human Rights Act 1998
IA	Important Area (for noise)
IAPI	Initial Assessment of Principal Issues
IP	Interested Party
ISH (number)	Issue Specific Hearing and where followed by a number,
km	kilometre
LIA	Local Impact Area
LIR	Local Impact Report
LOAEL	Lowest Observed Adverse Effect Levels
LSE	Likely Significant Effect
LV	Limit value(s) – a regulatory limit expressed as a value
LVIA	Landscape and Visual Impact Assessment
m	metre
MHCLG Network	Ministry of Housing, Communities and Local Government
mph	miles per hour
NE	Natural England
NERCA2006	Natural Environment and Rural Communities Act 2006
NERCC	North East Regional Control Centre
NIDP	National Infrastructure Delivery Plan
NMUs	Non-motorised users
NNNPS	National Networks National Policy Statement
NO ₂	Nitrogen Dioxide
NO _x	Nitrogen Oxide
NPA2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England

Abbreviation or usage	Reference
NSIP	Nationally Significant Infrastructure Project
OEMP	Outline Environmental Management Plan
OFH	Open Floor Hearing
OTCA	Old Town Conservation Area
PA2008	Planning Act 2008 (as amended)
PCF	(Highways England's) Project Control Framework
PCU	Passenger Car Unit
PM	Preliminary Meeting
PPG	Planning Practice Guidance
PQB	Princes Quay Bridge
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
R(1,2,3 etc)	Requirement number (1,2,3 etc) of Schedule 2 of the DCO
REAC	Register of Environmental Actions and Commitments
RIES	Report on the Implications for European Sites
RR	Relevant Representation
RSA	Road Safety Audit
s (number)	Section of a statute (followed by a number)
SAC	Special Area of Conservation
SFRA	Strategic Flood Risk Assessment
SM	Scheduled Monument
SNCI	Site of Nature Conservation Interest
SOAEL	Significant Observed Adverse Effect Levels
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State for Transport
SPA	Special Protection Area
SPP	Special Parliamentary Procedure

Abbreviation or usage	Reference
SRN	Strategic road network
SSSI	Site of Special Scientific Interest
SuDS	Sustainable Drainage System
TCPA1990	Town and Country Planning Act 1990
TP	Temporary Possession
TPO	Tree Preservation Order
UK	United Kingdom
USI	Unaccompanied Site Inspection
WebTAG	Web-based Transport Analysis Guidance
WHO	World Health Organisation
WHS	World Heritage Site

APPENDIX D: THE BEST ACHIEVABLE DCO

APPENDIX E: CONDITIONAL DCO CHANGES (EPIC (NO2) LTD)
REPORT TO THE SECRETARY OF STATE: "A63 CASTLE STREET IMPROVEMENT-HULL"
TR010016

(D:I)

20[] No. 0000

INFRASTRUCTURE PLANNING

**The A63 (Castle Street Improvement, Hull) Development
Consent Order 20[]**

Made - - - - - ***

Coming into force - - - - - ***

CONTENTS

PART 1

PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2

PRINCIPAL POWERS

3. Development consent etc. granted by the Order
4. Maintenance of authorised development
5. Maintenance of drainage works
6. Limits of deviation
7. Benefit of Order
8. Consent to transfer benefit of Order

PART 3

STREETS

9. Application of the 1991 Act
10. Construction and maintenance of new, altered or diverted streets and other structures
11. Classification of roads, etc.
12. Temporary stopping up and restriction of use of streets
13. Permanent stopping up and restriction of use of streets and private means of access
14. Access to works
15. Clearways
16. Traffic regulation

PART 4
SUPPLEMENTAL POWERS

- 17. Discharge of water
- 18. Protective work to buildings
- 19. Authority to survey and investigate the land

PART 5
POWERS OF ACQUISITION AND POSSESSION

- 20. Compulsory acquisition of land
- 21. Compulsory acquisition of land – incorporation of the mineral code
- 22. Time limit for exercise of authority to acquire land compulsorily
- 23. Compulsory acquisition of rights and restrictive covenants
- 24. Private rights over land
- 25. Modification of Part 1 of the 1965 Act
- 26. Application of the 1981 Act
- 27. Acquisition of subsoil or airspace only
- 28. Rights under or over streets
- 29. Temporary use of land for carrying out the authorised development
- 30. Temporary use of land for maintaining the authorised development
- 31. Statutory undertakers
- 32. Apparatus and rights of statutory undertakers in stopped up streets
- 33. Recovery of costs of new connections
- 34. Special category land

PART 6
OPERATIONS

- 35. Felling or lopping of trees and removal of hedgerows

PART 7
MISCELLANEOUS AND GENERAL

- 36. Removal of human remains
- 37. Application of landlord and tenant law
- 38. Operational land for purposes of the Town and Country Planning Act 1990
- 39. Defence to proceedings in respect of statutory nuisance
- 40. Protection of interests
- 41. Certification of documents, etc.
- 42. Service of notices
- 43. Arbitration
- 44. Crown rights

SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT

- SCHEDULE 2 — REQUIREMENTS
 - PART 1 — REQUIREMENTS
 - PART 2 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
- SCHEDULE 3 — CLASSIFICATION OF ROADS, ETC.
 - PART 1 — TRUNK ROADS
 - PART 2 — OTHER ROAD CLASSIFICATIONS
 - PART 3 — ROADS SUBJECT TO 30 MILES PER HOUR LIMIT
 - PART 4 — ROADS SUBJECT TO 40 MILES PER HOUR LIMIT
 - PART 5 — ROADS SUBJECT TO ONE WAY RESTRICTIONS
 - PART 6 — ROADS SUBJECT TO TWO WAY TRAFFIC
 - PART 7 — ROADS SUBJECT TO PROHIBITION OF PARKING – NO WAITING OR LOADING AT ANY TIME
 - PART 8 — CYCLE TRACKS AND FOOTWAYS
 - PART 9 — PRIVATE MEANS OF ACCESS
 - PART 10 — PUBLIC RIGHTS OF WAY
 - PART 11 — UN CONTROLLED CROSSINGS
- SCHEDULE 4 — PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS
 - PART 1 — STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
 - PART 2 — STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
 - PART 3 — PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
 - PART 4 — PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED
- SCHEDULE 5 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
- SCHEDULE 6 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS
- SCHEDULE 7 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 8 — PROTECTIVE PROVISIONS
 - PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS
 - PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
- SCHEDULE 9 — DOCUMENTS TO BE CERTIFIED

An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under section 37 of the Planning Act 2008(b) (“the 2008 Act”).

[The application was examined by a [single appointed person] [Panel] (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).]

[The [single appointed person] [Panel], having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.]

[The Secretary of State, having considered the representations made and not withdrawn, and the report of the [single appointed person] [Panel], has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].]

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the A63 (Castle Street Improvement, Hull) Development Consent Order 20[] and comes into force on [] 20[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1980 Act which are not relevant to this Order.

(e) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

“the 1980 Act” means the Highways Act 1980(a);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(b);

“the 1984 Act” means the Road Traffic Regulation Act 1984(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

“the 1991 Act” means the New Roads and Street Works Act 1991(e);

“the 2008 Act” means the Planning Act 2008(f);

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) or any 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 document certified by the Secretary of State under article 42 (certification of documents etc.) as the book of reference for the purposes of this Order;

“British Telecommunications PLC” and “BT” means the company registered in England and Wales, company number 01800000, whose registered address is 81 Newgate Street, London EC1A 7AJ;

“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;

“CEMP” means the construction environmental management plan;

“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than operations consisting of archaeological investigations, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure or the temporary display of site notices or advertisements and “commences”, “commenced” and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in the 1980 Act and includes part of a cycle track(g);

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- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) to the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections J(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) to the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 (c. 50) and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are others amendments to the 1981 Act which are not relevant to this Order.
- (c) 1984 c. 27.
- (d) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (f) 2008 c. 29.
- (g) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

“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 drawings and sections certified by the Secretary of State under article 42 (certification of documents etc.) as the engineering drawings and sections for the purposes of this Order;

“environmental statement” means the document of that description certified by the Secretary of State under article 42 (certification of documents etc.) as the environmental statement for the purposes of this Order;

“footway” and “footpath” have the same meaning as in the 1980 Act and include part of a footway or footpath;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act and “highway” includes part of a highway;

“KCOM Group PLC” and “KCOM” means the company registered in England and Wales, company number 02150618, whose registered address is 37 Carr Lane, Hull HU1 3RE;

“the land plans” means the plans certified by the Secretary of State under article 42 (certification of documents etc.) as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 6 (limits of deviation);

“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct to the extent that is unlikely to give rise to any materially new or materially worse environmental effects from those identified in the environmental statement and any derivative of “maintain” is to be construed accordingly;

“Northern Gas Networks Limited” means the company registered in England and Wales, company number 05167070, whose registered address is 1100 Century Way, Thorpe Park Business Park, Colton, Leeds LS15 8TU;

“Northern Powergrid Limited” and “NP” means the company registered in England and Wales, company number 03271033, whose registered address is Lloyds Court, 78 Grey Street, Newcastle Upon Tyne NE6 6AP;

“OEMP” means the outline CEMP certified by the Secretary of State under article 42 (certification of documents etc.) as the OEMP for the purposes of this Order;

“Order land” means the land shown on the land plans which is within the Order limits and described in the book of reference;

“the Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates;

“the special category land plans” means the plans certified by the Secretary of State under article 42 (certification of documents etc.) as the special category land plans for the purposes of this Order;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8), of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

“streets, rights of way and access plans” means the plans certified by the Secretary of State under article 42 (certification of documents etc.) as the streets, rights of way and access plans for the purposes of this Order;

“traffic authority” has the same meaning as in the 1984 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 or 19(1) of the 1980 Act;
- (b) an order or direction under section 10 of that Act; or
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means Highways England Company Limited (Company No. 09346363) of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“the works plans” means the plans certified by the Secretary of State under article 42 (certification of documents etc.) as the works plans for the purposes of this Order; and

“Yorkshire Water Services Limited” and “YW” means the company registered in England and Wales, company number 02366682, whose registered address is Western House, Halifax Road, Bradford BD6 2SZ.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the streets, rights of way and access plans.

(6) References in this Order to numbered works are references to works as numbered in Schedule 1 (authorised development).

(7) The provisions of the Neighbourhood Planning Act 2017(a), insofar as they relate to temporary possession of land under articles 29 and 30 of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 30(11), any maintenance of any part of the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(a) 2017 c. 20.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Maintenance of drainage works

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991.

Limits of deviation

6. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 0.5 metres upwards or 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, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement.

Benefit of Order

7.—(1) Subject to paragraph (2) and article 8 (consent to transfer benefit of Order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

8.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), includes references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) British Telecommunications PLC under works numbers 3, 6 and 11;
- (b) KCOM Group PLC under works numbers 8 and 11;
- (c) Northern Gas Networks Limited under parts (e) and (f) of Schedule 1;
- (d) Northern Powergrid Limited under parts (e) and (f) of Schedule 1; or
- (e) Yorkshire Water Services Limited under works numbers 10 and 23.

PART 3

STREETS

Application of the 1991 Act

9.—(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 the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts)(a) of the 1980 Act or section 184 (vehicle crossings over footways and verges)(b) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of Part 3 the 1991 Act (street works in England and Wales) do not apply in relation to any works executed under the powers of this Order—

- section 56 (directions as to timing)(c);
- section 56A (power to give directions as to placing of apparatus)(d);
- section 58 (restrictions following substantial road works)(e);
- section 58A (restriction on works following substantial street works)(f);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works)(g).

(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

(a) Section 64 was amended by Schedule 17 to the Local Government Act 1965 (c. 51) and Schedule 9 to the 1991 Act.
(b) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22) and sections 35 and 46 of the Criminal Justice Act 1982 (c. 48).
(c) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
(d) Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).
(e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(f) Section 58A was inserted by section 52 of the Traffic Management Act 2004 (c. 18).
(g) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).

nature by the undertaker under the powers conferred by article 12 (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(a) referred to in paragraph (4) are—
- section 54 (advance notice of certain works)(b), subject to paragraph (6);
 - section 55 (notice of starting date of works)(c), subject to paragraph (6);
 - section 57 (notice of emergency works)(d);
 - section 59 (general duty of street authority to co-ordinate works)(e);
 - 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 10 (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 maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets and other structures

10.—(1) Subject to paragraph (3) any street (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority in whose area the street lies and, unless otherwise agreed with the local street authority, be maintained by and at the expense of the local street authority from its completion.

(3) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence

(a) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(b) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).

(c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).

(d) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).

(e) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause dangers to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Classification of roads, etc.

11.—(1) On the date on which the roads described in Parts 1 and 2 of Schedule 3 (classification of roads, etc.) are completed and open for traffic—

- (a) the roads described in Part 1 (trunk roads) of Schedule 3 are to become trunk roads as if they had become so by virtue of an order under section 10(2) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads;
- (b) the roads described in column (1) of Part 2 (other road classifications) of Schedule 3 take the classification specified in column (3) of that Part; and
- (c) the roads given a classification in column (3) of Part 2 of Schedule 3 are to be 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.

(2) From the date on which the roads specified in Part 3 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding 30 miles per hour in the lengths of road identified in that Part of that Schedule.

(3) From the date on which the roads specified in Part 4 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of road identified in that Part of that Schedule.

(4) From the date on which the roads specified in column (1) of Part 5 of Schedule 3 are open for traffic they will be subject to one way restrictions to the extent specified in column (2) of that Part of that Schedule.

(5) From the date on which the roads specified in column (1) of Part 6 of Schedule 3 are completed and open for traffic their one way restrictions will be removed to the extent specified in column (2) of that Part of that Schedule.

(6) From the date on which the roads specified in column (1) of Part 7 of Schedule 3 are open for traffic they will be subject to the restrictions specified in that Part of that Schedule.

(7) Unless otherwise agreed with the relevant planning authority the cycle tracks and footways set out in Part 8 of Schedule 3 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 no later than the date on which the authorised development is open for traffic.

(8) Unless otherwise agreed with the relevant land owner the private accesses set out in Part 9 of Schedule 3 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 no later than the date on which the authorised development is open for traffic.

(9) Unless otherwise agreed with the relevant landowner the public rights of way set out in Part 10 of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker and open for use no later than the date on which the authorised development is open for traffic.

(10) Unless otherwise agreed with the relevant planning authority the uncontrolled crossings set out in Part 11 of Schedule 3 and identified on the non-motorised user route plans are to be constructed by the undertaker in the specified locations and open for use no later than the date on which the authorised development is open for traffic.

(11) The application of paragraphs (1) to (10) 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

12.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article and which is within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(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

13.—(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 column (1) of Parts 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of streets and private means of access) to the extent specified and described in column (2) of that Schedule.

(2) No street or private means of access specified in column (1) of Parts 1 and 3 of Schedule 4 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 (3) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street 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 column (1) of Parts 2 or 4 of Schedule 4 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 32 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

14. The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Clearways

15.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) may apply—

- (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, maintenance or renewal 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 electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(a); or
 - (iv) any building operation or demolition;

(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

- (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(a); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(b); 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 persons control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Part 1 of Schedule 3 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(c).

Traffic regulation

16.—(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 it has—

- (a) given not less than—

(a) 1991 c. 56.
 (b) 2000 c. 26.
 (c) 2004 c. 18.

- (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
- to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—
- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces) 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 of paragraph (2) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers of paragraph (2) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, 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.

(a) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c. 18.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is free from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016^(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes 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^(b) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

Protective work to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and

(a) S.I. 2016/1154.

(b) 1991 c. 57.

- (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 44 (arbitration).

(7) Where the proposed protective works would, but for the provisions of this Order, require consent under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (other than in respect of the buildings identified in Work No 30 of Schedule 1), the undertaker may not serve a notice under paragraph 5(a) until the proposed protective works have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and, if required by the Arrangements for Handling Heritage Applications – Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015, Historic England.

(8) 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.

(9) 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.

(10) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(11) Any compensation payable under paragraph (8) or (9) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(12) 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

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;

- (b) without limitation to the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the surveyor investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within a highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

PART 5

POWERS OF ACQUISITION AND POSSESSION

Compulsory acquisition of land

20.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it, or is required as replacement land.

(2) This article is subject to paragraph (2) of article 23 (compulsory acquisition of rights and restrictive covenants) and paragraph (8) of article 29 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

21. Part 2 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) is incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

22.—(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 26 (application of the 1981 Act).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and restrictive covenants

23.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 20 (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 Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 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.

Private rights over land

24.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(a) 1981 c. 67.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of the rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights over or the imposition of the restrictive covenant or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the A63 (Castle Street Improvement, Hull) Development Consent Order 20[]”;

(3) In section 11A(e) (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”; and

(b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 22 (time limit for exercise of authority to acquire land compulsorily) of the A63 (Castle Street Improvement, Hull) Development Consent Order 20[]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective work to buildings), 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the A63 (Castle Street Improvement, Hull) Development Consent Order 20[]”.

Application of the 1981 Act

26.—(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 modifications set out in this article.

(3) In section 1 (application of act) for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(b) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(c) (time limit for general vesting declaration).

(6) In section 5B(1)(d) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008 the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the A63 (Castle Street Improvement, Hull) Development Consent Order 20[](e)”.

(a) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(b) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(c) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(d) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(e) S.I. 20[]/ [] .

(7) In section 6(a) (notices after execution of declaration) subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(b) (notice of authorisation of compulsory acquisition) of the Planning Act 2018”.

(8) In section 7(c) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1(d) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 25 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A)(e) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990(f).

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

28.—(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.

(a) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(b) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2012/16.

(c) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(d) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(e) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

(f) 1990 (c. 8).

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

29.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 22(2) (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works on that land as are mentioned in Schedule 1 (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 may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7, or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

- (a) acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights and restrictive covenants); or
- (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (acquisition of subsoil or airspace only).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority)(a) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining the authorised development

30.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken.

(4) The undertaker 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.

(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(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 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (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 the 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) 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

31.—(1) Subject to the provisions of Schedule 9 (protective provisions), article 23 (compulsory acquisition of rights and restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over any Order land belonging to statutory undertakers;
- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 of the 1991 Act; and
- (b) article 32 of this Order (apparatus and rights of statutory undertakers in stopped up streets).

(3) Subject to paragraph (4), neither the undertaker nor any statutory undertaker may—

- (a) carry out any part of the authorised development on; or
- (b) for the purposes of carrying out, maintaining and operating any part of the authorised development enter upon, use or acquire any interest in,

the land to which this paragraph (3) applies pursuant to any Act or enactment, or any instrument or subordinate legislation made under any Act or enactment, other than this Order.

(4) Nothing in paragraph (3) applies to a statutory undertaker—

- (a) carrying out any activity in relation to its apparatus existing on the date of this Order on the land to which paragraph (3) applies in the ordinary course of its statutory duties necessary absent the proposals for the authorised development; or
- (b) after the authorised development on the land to which paragraph (3) applies has been completed and opened for use for the purposes for which it was designed and any interest in the land required for the retention of that part of the authorised development has been acquired in accordance with that paragraph.

(5) The land to which paragraph (3)(b) applies comprises Plots 3/1bd, 3/1bh, 3/1bi, 3/1bp, 3/1ca, 3/1cd, 3/1ce, 3/1cf, 3/1cg, 3/1ch, 3/1be, 3/1bf, 3/1bg3/1c, 3/1cb, 5/2a, 5/2i 5/2f, 5/2g and 5/2j as set out in the book of reference and on the land plans.

(6) The land to which paragraph (3)(a) applies comprises the land to which paragraph (3)(b) applies and Plots 3/1bv, 3/1by, 3/1cc and 3/2g as set out in the book of reference and on the land plans.

(7) In paragraphs (3) and (4) “statutory undertaker” includes the persons listed in article 8(4) (consent to transfer benefit of Order) of this Order and any utility undertaker or operator (which have the meanings given in Schedule 9 (protective provisions)).

Apparatus and rights of statutory undertakers in stopped up streets

32.—(1) Where a street is stopped up under article 13 (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 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) 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

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (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 31, 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 32 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(b); and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

Special category land

34.—(1) On the exercise by the undertaker of the relevant Order powers, the special category land and any rights imposed over that land are 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 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.

(3) On the date on which the replacement land is laid out and provided in accordance with the scheme requirements at paragraph (1) 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.

(a) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

(b) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

(4) In this article—

“the relevant Order powers” means the powers exercisable over the special category land by the undertaker under articles 20 (compulsory acquisition of land) and 23 (compulsory acquisition of rights and restrictive covenants);

“the special category land” means the land numbered 3/1bd, 3/1be, 3/1ag, 3/1zd, 3/1zg, 3/1zi and 3/1k in the book of reference and on the land plans and forming part of the open space which may be acquired compulsorily under this Order;

“the replacement land” means the land identified as such and numbered 3/1s, 3/1y, 3/1aa and 3/1za in the book of reference and on the land plans.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

35.—(1) The undertaker may lop any tree within or overhanging land within the Order limits (other than a tree which is the subject of a Tree Preservation Order), or fell, lop or cut back the roots of any shrub 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 do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997(a) and includes important hedgerows.

PART 7 MISCELLANEOUS AND GENERAL

Removal of human remains

36.—(1) Before the undertaker carries out any development or works which are to or may disturb any human remains it is to remove those human remains, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed the undertaker is to give notice of the intended removal, describing the land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(a) S.I. 1997/1160.

- (b) displaying a notice in a conspicuous place on or near to the land for a minimum of 28 days.
- (3) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker is to send a copy of the notice to Hull City Council.
- (4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the land specified in the notice may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.
- (5) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—
 - (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
 - (b) removed to, and cremated in, any crematorium,
 - (c) and that person is to, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).
- (6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.
- (7) The undertaker is to pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under powers conferred by this article.
- (8) If—
 - (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
 - (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
 - (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
 - (d) it is determined that the remains to which any such notice relates cannot be identified,
 - (e) subject to paragraph (9) the undertaker is to remove the remains and cause them to be re-interred in Trinity Burial Ground or such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.
- (9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker is to comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.
- (10) On the re-interment or cremation of any remains under powers conferred by this article—
 - (a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
 - (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) is to be sent by the undertaker to Hull City Council.

(11) The removal of the remains of any deceased person under powers conferred by this article is to be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1853(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(14) Section 3 of the Burial Act 1853 (burial not to take place after Order in Council for discontinuance) does not apply to a removal carried out in accordance with this article.

Application of landlord and tenant law

37.—(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;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the Town and Country Planning Act 1990

38. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

39.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(b) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance

(a) 1853 c. 134.

(b) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(a); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

40. Schedule 8 (protective provisions) to the Order has effect.

Certification of documents, etc.

41.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

42.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(b) (references to service by post) 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.

(a) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

(b) 1978 c. 30.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

43. 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.

Crown rights

44.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description—
 - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

- (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land;
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).
- (2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

Date

Signed
Title
Department

SCHEDULES

SCHEDULE 1

Articles 2 and 3

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development as defined in section 115 of the 2008 Act, comprising:

In the administration area of East Riding of Yorkshire

Work No.1 — The construction of Livingstone Road materials compound site.

In the administration area of Kingston upon Hull

Work No.2 — Eastbound vehicle recovery lay-by located on north side A63 Clive Sullivan Way to west of St Andrews Quay.

Work No.3 — The diversion of statutory undertakers' apparatus (BT) along West Dock Street, Goulton Street and Daltry Street.

Work No.4 — Improvement of access and land at Neptune Street for use as a site compound and vehicle recovery site.

Work No.5 — The improvement and realignment of the existing dual carriageway of the A63 commencing at its junction with Ropery Street, and terminating at a point approximately 130 metres east of its junction with Market Place. Works to Trinity Burial Ground – archaeology, exhumation and re-interring of exhumed remains.

Work No.6 — The diversion of statutory undertakers' apparatus (BT) across the A63 Hessle Road and along Porter Street and Osbourne Street.

Work No.7 — The construction of St James' Street turning head.

Work No.8 — The diversion of statutory undertakers' apparatus (KCOM) across the A63 Hessle Road and along St James Street, Lister Street, Kingston Street and Commercial Road.

Work No.9 — The demolition of the Arco premises and clearance of land for use as a site compound.

Work No.10. — The diversion of statutory undertakers' apparatus (YW sewer) along Waverley Street, Arco's site and across and along the north side of A63 Hessle Road to Cogan Street.

Work No.11. — The diversion of statutory undertakers' apparatus (BT and KCOM) along Porter Street, Adelaide Street, Amy Johnson Court and Ferensway and along the A63 Castle Street to Waterhouse Lane.

Work No.12 — The construction of a new bridge over the A63 Hessle Road between St. James Street and Porter Street.

Work No.13 — The demolition of the existing Myton Centre, construction of temporary car park and construction of green space.

Work No.14 — The construction of a new eastbound A63 off-slip and retaining wall, to the west of Mytongate Junction.

Work No.15 — The construction of a new westbound A63 on-slip and retaining wall, to the west of Mytongate Junction.

Work No.16 — The construction of a new access road from Lister Street to local businesses.

Work No.17 — The construction of a new turning head at William Street and the provision of a new landscaped area at William Street and Cogan Street.

Work No.18 — Not used.

Work No. 18A — Working room for construction.

Work No. 18B — Alterations to Kingston Retail Park Car Park.

Work No.19 — The improvement of the existing dual carriageway of the A1079 Ferensway to the north of Mytongate Junction. The construction of a new dual carriageway on a bridge over the A63 to extend the A1079 across Mytongate Junction. The improvements to Commercial Road to the south of Mytongate Junction.

Work No.20 — The construction of a new eastbound A63 on-slip and retaining wall, to the east of Mytongate Junction.

Work No.21 — Not used.

Work No.22 — Replacing existing potable water main along the north side of the A63 Castle Street to the east of Mytongate Junction.

Work No.23 — The diversion of statutory undertakers' apparatus (YW sewer) from Commercial Road, along the south side of Trinity Burial Ground and across and along the A63 Castle Street to Myton Street.

Work No.24 — Trinity Burial Ground compound location, construction of pumping station, gas governor and Northern Powergrid substation.

Work No.25 — Statutory undertakers (KCOM) diversion works along Myton Street, Carr Lane and Princes Dock Street.

Work No.26 — Alterations to Holiday Inn car park, access, internal roads and amendments to the existing drainage arrangements.

Work No.27 — The construction of a new westbound A63 off-slip and retaining wall, to the east of Mytongate Junction. Work to Trinity Burial Ground – archaeology, exhumation and re-interring of exhumed remains.

Work No.28 — Works to Trinity Burial Ground – archaeology, exhumation and re-interring of exhumed remains, re-alignment of internal path and construction of a new retaining wall.

Work No.29 — Construction of main office compound at Wellington Street West.

Work No.30 — Work to listed buildings – Castle buildings and Earl de Grey public house; demolition of the Earl de Grey public house and partially rebuilding approximately 3 metres to the north of existing position; and installation of vibration monitoring equipment at Castle buildings.

Work No.31 — The construction of a new bridge over the A63 between Princes Quay shopping centre and Humber Dock.

Work No.32 — Offset archaeological investigation works at Princes Dock Street.

Work No.33 — Minor improvement works to the existing Old Town area including, Fish Street, Dagger Lane, Vicar Lane, South Church Side, and Posterngate.

Work No.34 — Construction of turning head and improvements to Humber Dock Street.

Work No.35 — The construction of a new westbound A63 on-slip to the west of Queen Street.

Work No.36 — The construction of a new eastbound A63 off-slip to the west of Market Place.

Work No.37 — The improvement of Queen Street to the south of its junction with the A63.

Work No.38 — The improvement of Market Place to the north of its junction with the A63.

Work No.39 — The construction of a new eastbound A63 on-slip to the east of Market Place.

Work No.40 — The construction of a new westbound A63 off-slip to the east of Queen Street.

Work No.41 — The improvement of Myton Bridge underpass on High Street.

Work No.42 — Westbound vehicle recovery lay-by located on south side A63 Roger Millward Way to west of Plimsoll Way.

Work No.43 — Not used.

Work No.44 — Not used.

Work No.45 — Not used.

Work No. 46 — Construction of a surface water rising main from the new underpass pumping station to the existing sewer on Commercial Road.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, pollution control devices, wing walls, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (f) works to place, alter, divert, relocate, remove or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;
- (g) works to alter the course of, or otherwise interfere with a watercourse;
- (h) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works for the benefit or protection of land affected by the authorised development;
- (j) works to place, alter, remove or maintain road furniture;
- (k) 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);
- (l) the felling of trees and hedgerows;
- (m) establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences;
- (n) the provisions 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

- (o) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development which do not give rise to any materially new or materially worse environmental effects to those assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990(a);

“European protected species” has the same meaning as in regulation 40 (European protected species of animals) and 44 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(b);

“HEMP” means the handover environmental management plan;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England, or any equivalent replacement published for that document;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(c); and

“REAC” means the register of environmental actions and commitments (Annex B to the OEMP with document reference TR010016/APP/6.11).

Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Detailed design

3.—(1) The authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially 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 engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

(a) 1990 c. 43 as amended by section 86(2) of the Water Act 2003 c. 37.

(b) S.I. 2017/1012.

(c) 1981 c. 69.

Construction and handover environmental management plan

4.—(1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the OEMP, for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority to the extent that it relates to matters relevant to its function.

(2) The CEMP must be written in accordance with ISO14001 and must—

- (a) reflect the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to working hours of 07:30–18:00 Mondays to Fridays and 08:00–13:00 on Saturday and no working on Sundays or Bank Holidays except for—
 - (i) night-time closures for bridge demolition and installation;
 - (ii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iii) junction tie-in works;
 - (iv) removal of overhead power lines;
 - (v) overnight traffic management measures; or
 - (vi) cases of emergency,unless otherwise agreed by the local planning authority in advance;

(d) include the following management plans—

- (i) Archaeological Project Design (APD);
- (ii) Arboricultural Implications Assessment (AIA);
- (iii) Arboricultural Method Statement (AMS);
- (iv) Landscape and Ecology Management Plan (LEMP);
- (v) Handover Environmental Management Plan (HEMP);
- (vi) Marine Mammal Mitigation Plan (MMMP);
- (vii) Groundwater Monitoring Plan (GMP);
- (viii) Erosion Prevention and Sediment Control Plan (ESPCP);
- (ix) Noise and Vibration Management Plan (NVMP);
- (x) Materials Management Plan (MMP);
- (xi) Site Waste Management Plan (SWMP);
- (xii) Foundation Works Risk Assessment (FWRA);
- (xiii) Materials Logistics Plan (MLP);
- (xiv) Community Relations Strategy (CRS);
- (xv) Traffic and Transport Management Plan (TTMP);
- (xvi) Flood Evacuation Plan (FEP); and
- (xvii) Flood Emergency and Evacuation Plan (FEEP).

(3) The construction of the authorised development must be carried out in accordance with the approved CEMP.

(4) A HEMP must be developed and completed by the end of construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(5) The HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development and must contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;

- (b) the long term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

(6) The authorised development must be operated and maintained in accordance with the HEMP.

Landscaping

5.—(1) No part of the authorised development is to commence until a landscaping scheme which sets out details of all proposed hard and soft landscaping works has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan annexed to the environmental statement.

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels; and
- (e) implementation timetables for all landscaping works.

(4) 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.

(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

Contaminated land and groundwater

6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination which includes consideration of whether construction, either in whole or in part, should be halted and appropriate timescales for remediation in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to the Secretary of State for approval, and the Secretary of State will consult the relevant planning authority and the Environment Agency on matters related to their functions before giving such approval.

(3) Where it has been determined under sub-paragraph (1) that development, either in whole or in part, should be halted, development will not re-commence until—

- (i) the written scheme and programme for remedial measures in sub-paragraph (2) has been approved by the Secretary of State; and

- (ii) any works identified in the approved scheme as necessary before recommencement have been carried out.

(4) Remediation must be carried out in accordance with the approved scheme.

Protected species

7.—(1) No part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) If the relevant works require a protected species licence, the undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) prior to submission to the Secretary of State for approval.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation with Natural England, and under any necessary licences.

Surface and foul water drainage

8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority and the Environment Agency on matters related to their functions.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and the Environment Agency on matters related to their functions, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement.

Archaeological remains

9.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the relevant mitigation measures set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised

development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and notice served on the relevant planning authority as soon as reasonably practicable from the date they are identified.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date of any notice served under sub-paragraph (4) unless otherwise agreed in writing by the relevant planning authority.

(6) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details which have been submitted in writing to, and approved in writing by, the relevant planning authority.

Traffic management

10.—(1) No part of the authorised development is to commence until a traffic and transport management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be constructed in accordance with the traffic and transport management plan referred to in sub-paragraph (1).

Amendments to approved details

11. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing.

Fencing and barriers

12.—(1) Any permanent or temporary fencing, barriers or other means of enclosure for the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 (for fencing) and Volume 1 Series 0400 (for road restraints) of the 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.

(2) No part of Work No.5 is to commence until details and specifications for the scale, design and materials of the central reserve vehicle restraint system, including any associated fence, barrier, wall or other means of enclosure, have been submitted to and approved by the Secretary of State following consultation with the relevant planning authority on matters related to its function.

(3) The central reserve vehicle restraint system, including any associated fence or barrier must be constructed in accordance with the approved details, unless the Secretary of State, following consultations with the relevant planning authority on matters related to its function, gives consent to any variation.

Pumping station

13.—(1) No part of the authorised development is to commence until the following details for the pumping station forming part of Work No.24 have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency on matters related to their functions—

- (a) siting;
- (b) scale;
- (c) design;
- (d) materials;

- (e) landscaping;
- (f) means of enclosure;
- (g) flood risk resistance measures to be incorporated to a minimum level of 4.0m above ordnance datum;
- (h) flood risk resilience measures to be incorporated to a minimum level of 4.0m above ordnance datum.

(2) The pumping station must be constructed in accordance with the approved details unless the Secretary of State, following consultation with the relevant planning authority and the Environment Agency on matters related to their functions, gives consent to any variation.

Earl de Grey public house

14.—(1) None of the works to the Earl de Grey public house set out in Schedule 1, Work No.30 are to commence until—

- (a) details of the reconstruction or partial reconstruction of the building; and
- (b) a method statement describing full details of how the Earl de Grey public house is to be—
 - (i) structurally assessed;
 - (ii) recorded in situ to level 4 building recording in accordance with Historic England guidance;
 - (iii) dismantled, including compiling an inventory of all building materials to be re-used, and justification for excluding any historic fabric;
 - (iv) stored; and
 - (v) reconstructed; and
- (c) a timetable for the completion of the work listed under part (b);

have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and Historic England on matters related to their functions.

(2) The works to the Earl de Grey public house must be carried out in accordance with the approved details unless the Secretary of State, following consultation with the relevant planning authority and Historic England on matters related to their functions gives consent to a variation.

Replacement green space

15. No works or other actions resulting in the loss of any part of the existing open space at the Trinity Burial Ground are to commence until—

- (a) details of the design of the replacement green space set out in Schedule 1, Work No. 13, including hard and soft landscaping;
- (b) details of the phasing of the works; and
- (c) the method for and timing of the handover of the space to the local authority,

have been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

The works shall be carried out and the open space handed over to the local authority in accordance with the approved details.

Beverley Gate Scheduled Monument

16.—(1) No works affecting the Beverley Gate Scheduled Monument may commence until a methodology and appropriate archaeological strategy for such works has been agreed with Historic England.

(2) All such works must be carried out in accordance with the agreed methodology and appropriate archaeological strategy.

(3) In this paragraph, “works” has the meaning given in section 2(2) of the Ancient Monuments and Archaeological Areas Act 1979.

17.—(1) Work No. 41 is not to commence until the following details of the improvements to the High Street underpass have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function:

- (a) design;
- (b) materials;
- (c) hard and soft landscaping;
- (d) means of enclosure;
- (e) lighting;
- (f) wayfinding and interpretation;
- (g) public art;
- (h) CCTV.

(2) The underpass improvement works must be undertaken before the commencement of any of Works 35, 36, 37, 38, 39, or 40 as set out within Schedule 1 hereto, and in accordance with the approved details, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to any variation.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

18.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval requirement by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State; or
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 14; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

(4) Where any requirement in this Order requires the undertaker to consult with the relevant planning authority, the undertaker must—

- (a) not less than 21 days before making the application referred to in paragraph (1)(a) provide all information to the relevant planning authority subsequently to be submitted to the Secretary of State as constituting the undertaker's proposed application;
- (b) give due consideration to any representations made by the relevant planning authority about the proposed application; and
- (c) include with its application to the Secretary of State copies of any representations made by the relevant planning authority about the proposed application, and a written account of how any such representations have been taken into account in the submitted application.

Further information

19.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 13 (applications made under requirements) and in this paragraph.

Register of requirements

20.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

21. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Articles 11 and 15

CLASSIFICATION OF ROADS, ETC.

PART 1

TRUNK ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
A63 Eastbound off-slip Kingston Upon Hull	A63 Eastbound off-slip from point 3/3 to point 3/12 on the Streets, Rights of Way and Access Plans Sheet 3.
A63 Eastbound on-slip Kingston Upon Hull	A63 Eastbound on-slip from point 3/14 to point 5/2 on the Streets, Rights of Way and Access Plans Sheet 3 and Sheet 5.
A63 Westbound off-slip Kingston Upon Hull	A63 Westbound off-slip from point 5/1 to point 3/20 on the Streets, Rights of Way and Access Plans Sheet 3 and Sheet 5
A63 Westbound on-slip Kingston Upon Hull	A63 Westbound on-slip from point 3/15 to point 3/4 on the Streets, Rights of Way and Access Plans Sheet 3.
A63 Eastbound Market Place off-slip Kingston Upon Hull	A63 Eastbound Market Place off-slip, from point 5/23 to point 5/24 on the Streets, Rights of Way and Access Plans Sheet 5
A63 Eastbound Market Place on-slip Kingston Upon Hull	A63 Eastbound Market Place on-slip, from point 5/32 to point 5/33 on the Streets, Rights of Way and Access Plans Sheet 5
A63 Westbound Queen Street off-slip Kingston Upon Hull	A63 Westbound Queen Street off-slip, from point 5/30 to point 5/29 on the Streets, Rights of Way and Access Plans Sheet 5
A63 Westbound Queen Street on-slip Kingston Upon Hull	A63 Westbound Queen Street on-slip, from point 5/27 to point 5/26 on the Streets, Rights of Way and Access Plans Sheet 5
A63 Mainline Kingston Upon Hull	A63 from point 2/1 to point 5/34 on the Streets, Rights of Way and Access Plans Sheet 2, Sheet 3 and Sheet 5

PART 2

OTHER ROAD CLASSIFICATIONS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Classification</i>
St James Street Kingston Upon Hull	St James Street from point 3/1 to point 3/2 on the Streets, Rights of Way and Access Plans Sheet 3	Unclassified
Proposed highway from Lister Street Kingston Upon Hull	Proposed highway from Lister Street, from point 3/5 to point 3/6 on the Streets, Rights of Way and Access Plans Sheet 3	Unclassified

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Classification</i>
William Street Kingston Upon Hull	William Street, from point 3/8 to points 3/7 and 3/9 on the Streets, Rights of Way and Access Plans Sheet 3	Unclassified
William Street and Cogan Street Kingston Upon Hull	Cogan Street, from point 3/10 to point 3/11 on the Streets, Rights of Way and Access Plans Sheet 3	Unclassified
Ferensway Kingston Upon Hull	Ferensway, from point 4/1 to point 3/13 on the Streets, Rights of Way and Access Plans Sheet 3 and Sheet 4	A-road
Mytongate Junction Kingston Upon Hull	Mytongate Junction, from point 3/13 to point 3/19 on the Streets, Rights of Way and Access Plans Sheet 3	A-road
Commercial Road Kingston Upon Hull	Commercial Road, from point 3/19 to point 3/16 on the Streets, Rights of Way and Access Plans Sheet 3	Classified un-numbered
Myton Street Kingston Upon Hull	Myton Street, from point 3/21 to point 3/22 on the Streets, Rights of Way and Access Plans Sheet 3	Unclassified
Princes Dock Street Kingston Upon Hull	Princes Dock Street from point 5/3 to point 5/4 and from point 5/5 to point 4/2 on the Streets, Rights of Way and Access Plans Sheet 4 and Sheet 5	Unclassified
Humber Dock Street Kingston Upon Hull	Humber Dock Street from point 5/6 to point 5/7 on the Streets, Rights of Way and Access Plans Sheet 5	Unclassified
Posterngate Kingston Upon Hull	Posterngate from point 5/13 to point 5/14 on the Streets, Rights of Way and Access Plans Sheet 5	Unclassified
Dagger Lane Kingston Upon Hull	Dagger Lane, from point 5/9 to point 5/10 on the Streets, Rights of Way and Access Plans Sheet 5	Unclassified
Dagger Lane Turning Head Kingston Upon Hull	Dagger Lane, from point 5/11 to point 5/12 on the Streets, Rights of Way and Access Plans Sheet 5	Unclassified
Fish Street Turning Head Kingston Upon Hull	Fish Street from point 5/15 to point 5/16 on the Streets, Rights of Way and Access Plans Sheet 5	Unclassified
South Church Side Kingston Upon Hull	South Church Side from point 5/21 to point 5/22 on the Streets, Rights of Way and Access Plans Sheet 5	Unclassified
Vicar Lane Turning Head Kingston Upon Hull	Vicar Lane from point 5/19 to point 5/20 on the Streets, Rights of Way and Access Plans Sheet 5	Unclassified
Market Place Kingston Upon Hull	Market Place, from point 5/24 to point 5/25 and from point 5/31 to point 5/32 on the Streets, Rights of Way and Access Plans Sheet 5	Classified un-numbered
Queen Street Kingston Upon Hull	Queen Street, from point 5/28 to point 5/27 and point 5/29 on the Streets, Rights of Way and Access Plans Sheet 5	Unclassified

PART 3

ROADS SUBJECT TO 30 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
A63 Eastbound off-slip Kingston Upon Hull	A63 Eastbound off-slip from point 3/8 to point 3/12 on the Traffic Regulation Plans Sheet 3
A1079 Ferensway and Commercial Road Kingston Upon Hull	A1079 Ferensway and Commercial Road from point 4/1 to point 3/13 on the Traffic Regulation Plans Sheet 3 and Sheet 4
A63 Eastbound on-slip Kingston Upon Hull	A63 Eastbound on-slip from point 3/15 to point 5/5 on the Traffic Regulation Plans Sheet 3 and Sheet 5
A63 Westbound off-slip Kingston Upon Hull	A63 Westbound off-slip from point 3/19 to point 3/16 on the Traffic Regulation Plans Sheet 3
A63 Westbound on-slip Kingston Upon Hull	A63 Westbound on-slip from point 3/14 to point 3/6 on the Traffic Regulation Plans Sheet 3
Myton Street Kingston Upon Hull	Myton Street from point 3/17 to point 3/18 on the Traffic Regulation Plans Sheet 3
A63 Eastbound Market Place off-slip Kingston Upon Hull	A63 Eastbound Market Place off-slip, from point 5/34 to point 5/25 on the Traffic Regulation Plans Sheet 5
A63 Eastbound Market Place on-slip Kingston Upon Hull	A63 Eastbound Market Place on-slip, from point 5/28 to point 5/35 on the Traffic Regulation Plans Sheet 5
A63 Westbound Queen Street off-slip Kingston Upon Hull	A63 Westbound Queen Street off-slip, from point 5/37 to point 5/30 on the Traffic Regulation Plans Sheet 5
A63 Westbound Queen Street on-slip Kingston Upon Hull	A63 Westbound Queen Street on-slip, from point 5/27 to point 5/36 on the Traffic Regulation Plans Sheet 5

PART 4

ROADS SUBJECT TO 40 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
A63 Eastbound Kingston Upon Hull	A63 Eastbound from point 2/1 to point 5/32 on the Traffic Regulation Plans Sheet 3 and Sheet 5
A63 Westbound Kingston Upon Hull	A63 Westbound from point 5/33 to point 2/2 on the Traffic Regulation Plans Sheet 3 and Sheet 5
A63, Mytongate Junction Eastbound off-slip Kingston Upon Hull	A63, Mytongate Junction Eastbound off-slip, from point 3/7 to point 3/8 on the Traffic Regulation Plans Sheet 3
A63, Mytongate Junction Eastbound on-slip Kingston Upon Hull	A63, Mytongate Junction Eastbound on-slip, from point 5/5 to point 5/6 on the Traffic Regulation Plans Sheet 5
A63, Mytongate Junction Westbound off-slip Kingston Upon Hull	A63, Mytongate Junction Westbound off-slip, from point 5/1 to point 3/19 on the Traffic Regulation Plans Sheet 3 and Sheet 5

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
A63, Mytongate Junction Westbound on-slip Kingston Upon Hull	A63, Mytongate Junction Westbound on-slip from point 3/6 to point 3/3 on the Traffic Regulation Plans Sheet 3
A63 Westbound Queen Street off-slip Kingston Upon Hull	A63 Westbound Queen Street off-slip, from point 5/31 to point 5/37 on the Traffic Regulation Plans Sheet 5
A63 Westbound Queen Street on-slip Kingston Upon Hull	A63 Westbound Queen Street on-slip, from point 5/36 to point 5/26 on the Traffic Regulation Plans Sheet 5
A63 Eastbound Market Place off-slip Kingston Upon Hull	A63 Eastbound Market Place off-slip, from point 5/24 to point 5/34 on the Traffic Regulation Plans Sheet 5
A63 Eastbound Market Place on-slip Kingston Upon Hull	A63 Eastbound Market Place on-slip, from point 5/35 to point 5/29 on the Traffic Regulation Plans Sheet 5
A63 Eastbound link road Kingston Upon Hull	A63 Eastbound link road, from point 5/6 to point 5/24 on the Traffic Regulation Plans Sheet 5

PART 5

ROADS SUBJECT TO ONE WAY RESTRICTIONS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to one way restriction</i>
Princes Dock Street Kingston Upon Hull	Princes Dock Street from point 5/2 to point 5/3 and from point 5/4 to point 4/2 on the Traffic Regulation Plans Sheet 4 and Sheet 5

PART 6

ROADS SUBJECT TO TWO WAY TRAFFIC

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to two way traffic</i>
Posterngate	Posterngate from point 5/12 to point 5/13 on the Traffic Regulation Plans Sheet 5
Dagger Lane	Dagger Lane from point 5/14 to point 5/15 on the Traffic Regulation Plans Sheet 5
South Church Side	South Church Side from point 5/20 to point 5/21 on the Traffic Regulation Place Sheet 5

PART 7

ROADS SUBJECT TO PROHIBITION OF PARKING – NO WAITING OR LOADING AT ANY TIME

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to prohibition of parking</i>
St James Street Kingston Upon Hull	St James Street from point 3/1 to point 3/2 on the Traffic Regulation Plans Sheet 3
Proposed highway from Lister Street Kingston Upon Hull	Proposed highway from Lister Street from point 3/4 to point 3/5 on the Traffic Regulation Plans Sheet 3
William Street and turning head Kingston Upon Hull	William Street and proposed turning head from point 3/9 to point 3/10 and point 3/11 on the Traffic Regulation Plans Sheet 3
Humber Dock Street Kingston Upon Hull	Humber Dock Street from point 5/7 to point 5/8 on the Traffic Regulation Plans Sheet 5
Proposed Dagger Lane turning head Kingston Upon Hull	Proposed Dagger Lane turning head from point 5/16 to point 5/17 on the Traffic Regulation Plans Sheet 5
Proposed Fish Street turning head Kingston Upon Hull	Proposed Fish Street turning head from point 5/18 to point 5/19 on the Traffic Regulation Plans Sheet 5
Proposed Vicar Lane turning head Kingston Upon Hull	Proposed Vicar Lane turning head from point 5/22 to point 5/23 on the Traffic Regulation Plans Sheet 5

PART 8

CYCLE TRACKS AND FOOTWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Cycle track/Footway</i>
Kingston Upon Hull	From point 3/1 to point 3/37 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 2/1 to point 3/23 on Non-Motorised User Route Plans Sheets 2 and 3
Kingston Upon Hull	From point 3/46 to point 3/60 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 3/82 to point 3/83 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 3/83 to point 3/60 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 3/40 to point 3/41 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 3/50 to point 3/52 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 3/64 to point 5/31 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Kingston Upon Hull	From point 5/4 to point 5/53 on Non-Motorised User

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Cycle track/Footway</i>
	Route Plans Sheet 5
Kingston Upon Hull	From point 5/36 to point 5/37 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/12 to point 5/31 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/39 to point 5/49 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/45 to point 5/50 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 3/73 to point 3/72 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 3/76 to point 3/77 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 5/43 to point 5/48 on Non-Motorised User Route Plan Sheet 5
Kingston Upon Hull	From point 5/56 to point 5/59 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/61 to point 5/35 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/60 to point 5/61 on Non-Motorised User Route Plans Sheet 5

PART 9

PRIVATE MEANS OF ACCESS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of Access</i>
Kingston Upon Hull	Holiday Inn (Private Means of Access), from point 3/17 to point 3/18 on the Streets, Rights of Way and Access Plans Sheet 3.
Kingston Upon Hull	Grammar School Yard (Private Means of Access), from point 5/17 to point 5/18 on the Streets, Rights of Way and Access Plans Sheet 5.

PART 10

PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of public right of way</i>
Kingston Upon Hull	Footway from point 3/23 to point 3/44 on Non-Motorised User Route Plans Sheet 2 and Sheet 3
Kingston Upon Hull	Footway from point 3/2 to point 3/4 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	Footway from point 3/6 to point 3/78 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	Footway from point 3/15 to point 3/23 on Non-Motorised

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of public right of way</i>
	User Route Plans Sheet 3
Kingston Upon Hull	Footway from point 3/16 to point 3/18 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	Footway from point 3/28 to point 3/29 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	Footway from point 3/31 to point 3/32 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	Footway from point 3/55 to point 3/61 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	Footway from point 3/56 to point 5/61 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Kingston Upon Hull	From point 3/71 to point 3/72 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 3/73 to point 3/74 on Non-Motorised User Route Plans Sheet 3
Kingston Upon Hull	From point 5/2 to point 5/52 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/15 to point 5/19 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/40 to point 5/41 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/34 to point 5/44 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/54 to point 5/55 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/57 to point 5/58 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	From point 5/51 to point 5/11 on Non-Motorised User Route Plans Sheet 5
Kingston Upon Hull	Footway from point 5/38 to point 5/41 on Non-Motorised User Route Plans Sheet 5

PART 11

UN CONTROLLED CROSSINGS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Uncontrolled Crossing</i>
Kingston Upon Hull	Uncontrolled crossing from point 3/28 to point 3/32 on Non-Motorised User Route Plans Sheet 3

SCHEDULE 4

Article 13

PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
Kingston Upon Hull	Spruce Road	From point 3/K to point 3/L on Streets, Rights of Way and Access Plans Sheet 3	From point 3/5 to point 3/6 on Streets, Rights of Way and Access Plans Sheet 3
Kingston Upon Hull	Private means of access	From point 5/I to point 5/J on Streets, Rights of Way and Access Plans Sheet 5	From point 5/17 to point 5/18 on Streets, Rights of Way and Access Plans Sheet 5

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Kingston Upon Hull	St James Street	From point 3/A to point 3/B on Streets, Rights of Way and Access Plans Sheet 3
Kingston Upon Hull	Waverley Street	From point 3/C to point 3/D and from point 3/E to point 3/F and from point 3/G to point 3/H on Streets, Rights of Way and Access Plans Sheet 3
Kingston Upon Hull	A63 Hessle Road	Point 3/I to point 3/J on Streets, Rights of Way and Access Plans Sheet 3
Kingston Upon Hull	Cogan Street	From point 3/M to point 3/N on Streets, Rights of Way and Access Plans Sheet 3
Kingston Upon Hull	Private Means of Access, Holiday Inn	From point 5/A to point 5/B on Streets, Rights of Way and Access Plans Sheet 5
Kingston Upon Hull	Humber Dock Street	From point 5/C to point 5/D on Streets, Rights of Way and Access Plans Sheet 5
Kingston Upon Hull	Dagger Lane	From point 5/E to point 5/F on Streets, Rights of Way and Access Plans Sheet 5
Kingston Upon Hull	Fish Street	From point 5/G to point 5/H on Streets, Rights of Way and Access Plans Sheet 5
Kingston Upon Hull	Vicar Lane	From point 5/K to point 5/L on Streets, Rights of Way and Access Plans Sheet 5

PART 3

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New street to be substituted</i>
Footway to be removed	From point 2/1 to point 3/3 on Non-Motorised User Route Plans Sheet 2 and Sheet 3	From point 2/1 to point 3/44 on Non-Motorised User Route Plans Sheet 2 and Sheet 3
Footway to be removed	From point 3/1 to point 3/80 on Non-Motorised User Route Plans Sheet 3	From point 3/1 to point 3/37 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/7 to point 3/78 on Non-Motorised User Route Plans Sheet 3	From point 3/6 to point 3/78 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/8 to point 3/13 on Non-Motorised User Route Plans Sheet 3	From point 2/1 to point 3/44 on Non-Motorised User Route Plans Sheet 2 and Sheet 3
Footway to be removed	From point 3/14 to point 3/21 on Non-Motorised User Route Plans Sheet 3	From point 2/1 to point 3/44 on Non-Motorised User Route Plans Sheet 2 and Sheet 3
Footway to be removed	From point 3/22 to point 3/81 on Non-Motorised User Route Plans Sheet 3	From point 2/1 to point 3/44 on Non-Motorised User Route Plans Sheet 2 and Sheet 3
Footway to be removed	From point 3/81 to point 3/43 on Non-Motorised User Route Plans Sheet 3	From point 2/1 to point 3/44 on Non-Motorised User Route Plans Sheet 2 and Sheet 3
Footway to be removed	From point 3/22 to point 3/75 on Non-Motorised User Route Plans Sheet 3	From point 3/15 to point 3/23 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/24 to point 3/25 on Non-Motorised User Route Plans Sheet 3	From point 3/39 to point 3/42 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/27 to point 3/26 on Non-Motorised User Route Plans Sheet 3	From point 3/39 to point 3/42 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/33 to point 3/34 on Non-Motorised User Route Plans Sheet 3	From point 3/1 to point 3/37 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/51 to point 3/84 on Non-Motorised User Route Plans Sheet 3	From point 3/47 to point 3/54 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/56 to point 3/45 on Non-Motorised User Route Plans Sheet 3	From point 3/56 to point 5/3 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Footway to be removed	From point 3/45 to point 3/85 on Non-Motorised User Route Plans Sheet 3	From point 3/56 to point 5/3 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Footway to be removed	From point 3/85 to point 5/3 on Non-Motorised User Route Plans Sheet 3 and Sheet 5	From point 3/56 to point 5/3 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Footway to be removed	From point 3/28 to point 3/30 on Non-Motorised User Route	From point 3/28 to point 3/29 on Non-Motorised User Route Plans

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New street to be substituted</i>
	Plans Sheet 3	Sheet 3
Footway to be removed	From point 3/83 to point 3/49 on Non-Motorised User Route Plans Sheet 3	From point 3/83 to point 3/60 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/49 to point 3/60 on Non-Motorised User Route Plans Sheet 3	From point 3/46 to point 3/60 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/65 to point 5/11 on Non-Motorised User Route Plans Sheet 3 and Sheet 5	From point 3/64 to point 5/11 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Footway to be removed	From point 3/79 to point 3/80 on Non-Motorised User Route Plans Sheet 3	From point 3/1 to point 3/37 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 5/39 to point 5/41 on Non-Motorised User Route Plans Sheet 5	From point 5/39 to point 5/49 on Non-Motorised User Route Plans Sheet 5
Footway to be removed	From point 5/4 to point 5/14 on Non-Motorised User Route Plans Sheet 5	From point 3/56 to point 5/61 on Non-Motorised User Route Plans Sheet 5
Footway to be removed	From point 5/15 to point 5/25 on Non-Motorised User Route Plans Sheet 5	From point 3/61 to point 5/35 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Footway to be removed	From point 5/17 to point 5/18 on Non-Motorised User Route Plans Sheet 5	From point 5/15 to point 5/19 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Footway to be removed	From point 5/26 to point 5/35 on Non-Motorised User Route Plans Sheet 5	From point 3/61 to point 5/35 on Non-Motorised User Route Plans Sheets 3 and 5
Footway to be removed	From point 5/42 to point 5/48 on Non-Motorised User Route Plans Sheet 5	From point 5/43 to point 5/48 on Non-Motorised User Route Plans Sheet 5
Uncontrolled crossing removed	From point 3/3 to point 3/8 on Non-Motorised User Route Plans Sheet 3	From point 2/1 to point 3/44 on Non-Motorised User Route Plans Sheets 2 and 3
Uncontrolled crossing removed	From point 3/13 to point 3/14 on Non-Motorised User Route Plans Sheet 3	From point 2/1 to point 3/44 on Non-Motorised User Route Plans Sheet 2 and Sheet 3
Uncontrolled crossing removed	From point 3/21 to point 3/22 on Non-Motorised User Route Plans Sheet 3	From point 2/1 to point 3/44 on Non-Motorised User Route Plans Sheet 2 and Sheet 3
Uncontrolled crossing removed	From point 3/25 to point 3/27 on Non-Motorised User Route Plans Sheet 3	From point 3/39 to point 3/42 on Non-Motorised User Route Plans Sheet 3
Uncontrolled crossing removed	From point 3/37 to point 3/46 on Non-Motorised User Route Plans Sheet 3	From point 3/38 to point 3/47 on Non-Motorised User Route Plans Sheet 3
Uncontrolled crossing removed	From point 3/43 to point 3/45 on Non-Motorised User Route Plans Sheet 3	From point 3/42 to point 3/54 on Non-Motorised User Route Plans Sheet 3
Uncontrolled crossing removed	From point 5/1 to point 5/5 on Non-Motorised User Route Plans Sheet 5	From point 3/56 to point 5/61 on Non-Motorised User Route Plans Sheet 3 and Sheet 5

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New street to be substituted</i>
Uncontrolled crossing removed	From point 5/13 to point 5/15 on Non-Motorised User Route Plans Sheet 5	From point 3/56 to point 5/61 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Uncontrolled crossing removed	From point 5/21 to point 5/22 on Non-Motorised User Route Plans Sheet 5	From point 5/12 to point 5/31 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Uncontrolled crossing removed	From point 5/23 to point 5/24 on Non-Motorised User Route Plans Sheet 5	From point 5/12 to point 5/31 on Non-Motorised User Route Plans Sheet 3 and Sheet 5
Uncontrolled crossing removed	From point 5/27 to point 5/28 on Non-Motorised User Route Plans Sheet 5	From point 5/12 to point 5/31 on Non-Motorised User Route Plans Sheet 5
Controlled crossing removed	From point 3/9 to point 3/10 on Non-Motorised User Route Plans Sheet 3	From point 3/72 to point 3/73 on Non-Motorised User Route Plans Sheet 3
Controlled crossing removed	From point 3/35 to point 3/36 on Non-Motorised User Route Plans Sheet 3	From point 3/39 to point 3/42 on Non-Motorised User Route Plans Sheet 3
Controlled crossing removed	From point 3/48 to point 3/51 on Non-Motorised User Route Plans Sheet 3	From point 3/47 to point 3/54 on Non-Motorised User Route Plans Sheet 3
Controlled crossing removed	From point 5/16 to point 5/20 on Non-Motorised User Route Plans Sheet 5	From point 5/4 to point 5/53 on Non-Motorised User Route Plans Sheet 5
Controlled crossing removed	From point 5/6 to point 5/7 on Non-Motorised User Route Plans Sheet 5	From point 5/4 to point 5/53 on Non-Motorised User Route Plans Sheet 5
Controlled crossing removed	From points 5/29 and 5/39 to points 5/32 and 5/47 on Non-Motorised User Route Plans Sheet 5.	From point 5/39 to point 5/49 on Non-Motorised User Route Plans Sheet 5.
Controlled crossing removed	From point 5/29 to point 5/39 on Non-Motorised User Route Plans Sheet 5.	From point 5/30 to points 5/36, 5/37 and 5/39 on Non-Motorised User Route Plans Sheet 5.
Controlled crossing removed	From point 5/32 to point 5/47 on Non-Motorised User Route Plans Sheet 5.	From point 5/33 to points 5/34, 5/44 and 5/46 on Non-Motorised User Route Plans Sheet 5.

PART 4

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
Footway to be removed	From point 3/8 to point 3/11 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/20 to point 3/17 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/19 to point 3/21 on Non-Motorised User

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
	Route Plans Sheet 3
Footway to be removed	From point 3/57 to point 3/62 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/58 to point 3/68 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/59 to point 3/63 on Non-Motorised User Route Plans Sheet 3
Footway to be removed	From point 3/66 to point 3/67 on Non-Motorised User Route Plans Sheet 3

SCHEDULE 5

Article 23(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
Land Plans – Sheet 3	
3/1l, 3/1m, 3/3h, 3/3m, 3/3za, 3/3zb, 3/3zc	Construction, use and maintenance of Porter Street bridge
3/1ae, 3/1zi, 3/1zh, 3/1zf, 3/1ze, 3/1zc, 3/1af, 3/3j, 3/3o, 3/3u	Construction and maintenance of Yorkshire Water Sewer
3/1bf, 3/1bg, 3/1ca, 3/1cf	Construction, use and maintenance of Yorkshire Water sewer diversion
3/1cc, 3/1cf, 3/9b	Construction, use and maintenance of retaining wall
Land Plans – Sheet 4	
4/1ab, 4/1ad	Construction, use and maintenance of statutory utility diversion
Land Plans – Sheet 5	
5/1e, 5/2g, 5/2j	Construction, use and maintenance of Yorkshire Water sewer diversion
5/1f, 5/1g, 5/2k, 5/2l, 5/2n, 5/2p, 5/2q, 5/2r, 5/2t, 5/2ac, 5/2ag, 5/2ai	Construction, use and maintenance of Princes Quay Bridge
5/2ad, 5/2aj	Construction, use and maintenance of statutory utility diversion for ASK Italian Restaurant
5/1i, 5/1j, 5/2ah, 5/2ak	Construction, use and maintenance of statutory utility diversion
5/2ba, 5/2bd, 5/2zb	Construction, use and maintenance of parking on Humber Dock Street
5/2av	Construction, use and maintenance of Humber Dock Street turning head
5/1z	Construction, use and maintenance of retaining wall
5/2bk, 5/2bl	Construction, use and maintenance of access to Select Business Products Limited offices

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND IMPOSITION OF RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the A63 (Castle Street Improvement, Hull) Development Consent Order 20[] (“the 20[] Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the 20[] Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of the 1965 Act)) to the acquisition of land under article 20 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 23 (compulsory acquisition of rights and restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and

(a) 1973 c. 26.

(b) with such other modifications as may be necessary.

5.—(1) The modification referred to in paragraph 4(a) are as follows.

(2) References in the 1964 Act to land are, in the appropriate contexts, to be read (according to the requirements of the 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.

(3) For section 7 (measure of compensation) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 20), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), section 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11B was inserted by section 187(2) of the Housing and Planning act 2016 (c. 22).
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 26 (application of the 1981 Act) of the A63 (Castle Street Improvement, Hull) Development Consent Order 20[](a) in respect of the land to which the notice to treat relates.

(2) But see article 27(3) (acquisition of subsoil and airspace only) of the A63 (Castle Street Improvement, Hull) Development Consent Order 20[] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

(a) S.I. 20[]/[] .

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the proposed use of the right or the imposition of the covenant, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 7

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 1		
1/1a, 1/1b, 1/1c, 1/1d, 1/1e, 1/1f	Diversion of statutory undertakers' apparatus, telecommunications cable	Work No.3
Land Plans – Sheet 2		
2/1a, 2/3a, 2/2a, 2/4b, 2/4a, 2/4c, 2/4d, 2/5b, 2/4h, 2/4g, 2/2b, 2/4j, 2/1b, 2/1h, 2/1i, 2/1g, 2/1j, 2/1b, 2/1c, 2/4e, 2/4f, 2/1d	Diversion of statutory undertakers' apparatus, telecommunications cable	Work No.3
2/5a	Construction of a site compound and vehicle recovery site.	Work No.4
Land Plans – Sheet 3		
3/1e, 3/1h, 3/1i, 3/1q, 3/1t, 3/1u, 3/1z, 3/1ab, 3/1ad, 3/1ah, 3/1al	Diversion of statutory undertakers' apparatus (BT) along Osbourne Street, Porter Street and across the A63 Hessle Road.	Work No.6
3/1c	Construction of St James' Street turning head.	Work No.7
3/1c, 3/1bc	Diversion of statutory undertakers' apparatus (KCOM) along Lister Street, Kingston Street and Commercial Road.	Work No.8
3/1e, 3/1h, 3/1i, 3/1q, 3/1t, 3/1u, 3/1z, 3/1ab, 3/1am, 3/1ar, 3/1au, 3/1at	Diversion of statutory undertakers' apparatus (BT and KCOM) along Porter Street, Adelaide Street, Amy Johnson Court and Waterhouse Lane.	Work No.11
3/3d, 3/3i, 3/3f, 3/3k, 3/3n, 3/3p, 3/3t, 3/7a, 3/1aj, 3/2d	Demolition of the Arco office complex for use as a site compound	Work No.9
3/2d	Diversion of statutory undertakers' apparatus (YW) along Waverley Street.	Work No.10
3/1s, 3/1y, 3/1aa, 3/1ac, 3/1zb, 3/1za	Demolition of the existing Myton centre, construction of temporary carpark and construction of green space as replacement open space land.	Work No.13
3/1ac, 3/1ai, 3/1an, 3/1ao, 3/1ap	Construction of a new turning head at William Street, and the provision of a new area at William Street and Cogan Street.	Work No.17
3/5b, 3/5c, 3/5d, 3/5e, 3/5g, 3/5za	Alterations to Kingston Retail Park car park and working room for construction.	Work No.18A and Work No.18B
3/1as, 3/1au, 3/1at, 3/7e, 3/8a, 3/8b	Improvement of the existing dual carriageway of the A1079 Ferensway to the north of Mytongate Junction and improvements to Commercial Road to the south of Mytongate Junction.	Work No.19
3/1bj, 3/1bl, 3/1bq, 3/1bt	Diversion of statutory undertakers' apparatus (KCOM) along Myton Street, Carr Lane and	Work No.25

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	Princes Dock Street.	
3/1bp	Alterations to Holiday Inn car park, access, internal roads and amendments to the existing drainage arrangements	Work No.26
3/10b	Construction of main site compound at Wellington Street	Work No.29
3/11a, 3/11b	Work to Castle Building and Earl de Grey public house, including demolition of Earl De Grey public house and rebuilding 3m to the north of existing position.	Work No.30
3/1be, 3/1bf, 3/1bg, 3/1zl	Construction of a surface water rising main.	Work No.46
Land Plans – Sheet 4		
4/1q, 4/1r, 4/1s, 4/1m, 4/1n, 4/1o, 4/1p, 4/1l, 4/1w 4/x, 4/1y, 4/1z, 4/1aa, 4/1ac	Diversion of statutory undertakers apparatus (KCOM) along Myton Street, Carr Lane and Princes Dock Street.	Work No.25
4/1b, 4/1a, 4/1c, 4/1j, 4/1i, 4/1k	Diversion of statutory undertakers apparatus (BT) along Osbourne Street, Porter Street and across the A63 Hesse Road.	Work No.6
Land Plans – Sheet 5		
5/2a	Alterations to Holiday Inn car park	Work No.26
5/3a, 5/3d	Construction of main site compound at Wellington Street	Work No. 29
5/2af	Offsite archaeology works	Work No.32
5/2al, 5/2ay, 5/2bg, 5/2bo, 5/2bi, 5/2bq, 5/2bm, 5/2ce	Old Town improvement works	Work No.33
5/2aq, 5/2za, 5/2zc, 5/2zd	Construction and improvements to Humber Dock Street.	Work No.34
Land Plans – Sheet 6		
6/1a	Construction of material storage compound	Work No.1
6/2a	Construction of vehicle recovery compound	Work No.2
6/2b	Construction of vehicle recovery compound	Work No.42

SCHEDULE 8

Articles 31 and 40

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and

(a) 1989 c. 29.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(c) 1991 c. 56.

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 13 (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 12 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (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 44, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its

intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,
- (c) by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(b) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

(a) 2003 c. 21.

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003 (2003 c. 21).

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act^(a);

“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.

16. The exercise of the powers conferred by article 31 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker’s works) to the Telecommunication Act 1984^(b).

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 44 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

(a) See section 106.

(b) 1984 c. 12.

SCHEDULE 9

Article 41

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of reference	TR010016/APP/4.3	
Engineering drawings and sections	TR010016/APP/2.6	
Environmental statement	TR010016/APP/6.2	
Land plans	TR010016/APP/2.3	
Location plan	TR010016/APP/2.1	
OEMP	TR010016/APP/7.3	
Special category land plans	TR010016/APP/2.10	
Streets, rights of way and access plans	TR010016/APP/2.5	
Works plans	TR010016/APP/2.4	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to provide improved traffic flow and pedestrian safety in Kingston upon Hull by improving approximately 1.5km of the A63 Castle Street and connecting side roads in Kingston Upon Hull between the junctions with Ropery Street and the Market Place/Queen Street junction.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, the book of reference, the environmental statement and the OEMP mentioned in this Order and certified in accordance with article 42 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, Lateral, 8 City Walk, Leeds, West Yorkshire, LS11 9AT.

APPENDIX E: CONDITIONAL DCO CHANGES (EPIC (NO2) LTD)

ExA's recommendations for revisions to the DCO in respect of the changes sought by EPIC (No2) Ltd in the event that a settlement agreement is not reached with the Applicant.

The Table below shows the changes requested by EPIC (No2) Ltd in the event that a settlement agreement is not reached with the Applicant. Details of this are set out in Chapters 7 and 8. The changes are as requested by EPIC in its D7 submission [REP7-12] and its submission on the final day of the Examination [[AS-071](#)]. The final column of the table sets out the ExA's view regarding how the DCO should be changed in response to each proposal by EPIC. As explained in the body of the report, it is recommended that these changes be the subject of consultation with the Applicant and EPIC in the event that a settlement agreement is not completed before the SoS's decision. In the event that a settlement agreement is completed, then no changes to the baDCO at Appendix D are necessary.

Requirements

Requirement	Amendment sought by EPIC	ExA's recommended response
R4	<p>The suggested amendments are as follows (number referring to amendments in Part 1 of Schedule 2 of the draft Order):</p> <p>4(2A) - The Traffic and Transport Management Plan under paragraph (2)(d)(xv) shall include traffic modelling and a traffic scheme ("the Daltry Street scheme") in respect of the operations of the Daltry Street roundabout and the route along English Street to Kingston Street during the construction of the authorised works.</p>	<p>Add the following to R4 and renumber any cross-references as necessary</p> <p>7) The Traffic and Transport Management Plan under paragraph (2)(d)(xv) must include traffic modelling and a traffic scheme ("the Daltry Street scheme") in respect of the operation of the Daltry Street roundabout and the route along English Street to Kingston Street during the construction of the authorised works. The Daltry Street Scheme must include, as necessary, appropriate improvement works to roads and junctions</p>

	<p>4(2B) The Secretary of State may only approve the Daltry Street scheme if satisfied that contains appropriate improvement works to roads and junctions and a timetable for any works or other measures.</p> <p>4(2C) The Traffic and Transport Management Plan under paragraph 4(2)(d)(xv) shall include vehicular and pedestrian signage including signage for the Kingston Retail Park to customers from the A63 eastbound via the Daltry Steet / Madeley Street / Rawling Way / Hessele Road Roundabout, Daltry Street, Jackson Street and English Street.</p>	<p>and a timetable for any works or other measures.</p> <p>8) The Traffic and Transport Management Plan under paragraph 4(2)(d)(xv) must include vehicular and pedestrian signage including signage for the Kingston Retail Park to customers from the A63 eastbound via the Daltry Steet / Madeley Street / Rawling Way / Hessele Road Roundabout, Daltry Street, Jackson Street and English Street.</p>
<p>Additional Requirement: Pedestrian Routes during the construction period</p>	<p>[new]13. A direct pedestrian route from Ferensway to Commercial Road or the Kingston Retail Park at the Mytongate Junction will be retained open for public use during the carrying out of the authorised works and following their completion.</p> <p><i>[Or, if the first proposal is not required]</i></p>	<p>Add the following new Requirement after R16 and renumber all subsequent Requirements and cross-references accordingly</p> <p>A direct pedestrian route from Ferensway to Commercial Road or the Kingston Retail Park at the Mytongate Junction must be retained open for public use during the carrying out of the authorised works unless the Secretary of State, following consultation with the relevant planning authority on matters relating to its function, gives consent to any variation. In</p>

	<p>[new]13(1) Public use of the pedestrian route from Ferensway to Commercial Road or the Kingston Retail Park across the Mytongate Junction shall be maintained unless:</p> <ul style="list-style-type: none"> (a) the Secretary of State has approved the closure of the route; (b) a scheme has been submitted to and approved by the Secretary of State for alternative arrangements for promoting public access between the City Centre and the Kingston Retail Park and leisure uses on Kingston Street and for the permanent restoration of the route, and (c) that scheme is in operation. <p>(2) In considering whether to approve the closure and the scheme under sub-paragraph (1) above, the Secretary of State shall have special regard to the desirability of maintaining the direct pedestrian route and the need to minimise any period of closure.</p> <p>(3) The scheme shall include the provision of a regular shuttle bus service between those destinations.</p>	<p>considering whether to give such consent, the Secretary of State must have regard to any mitigation measures proposed by the undertaker, including, but not limited to, the provision of a regular shuttle bus service between those destinations.</p>
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<p>Additional Requirement: Access to properties off Spruce Road</p>	<p>[new]14 Spruce Road shall not be stopped up, nor its use by frontagers be restricted, until:</p> <ul style="list-style-type: none"> (a) Alternative vehicular access for premises served by Spruce Road was been provided via Lister Street, for vehicles up to 16.5m long articulated heavy goods vehicles; and (b) Parking on Lister Street has been controlled by a Traffic Regulation Order to allow the safe and convenient passage of such heavy goods vehicles. 	<p>Add the following new Requirement after R16 and renumber all subsequent Requirements and cross-references accordingly</p> <p>Spruce Road must not be stopped up, nor its use by frontagers restricted, until:</p> <ul style="list-style-type: none"> (a) Alternative vehicular access, suitable for articulated heavy goods vehicles up to 16.5m long for premises served by Spruce Road has been provided via Lister Street; and (b) Parking on Lister Street has been controlled by a Traffic Regulation Order to allow the safe and convenient passage of such heavy goods vehicles.
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Protective Provisions

No	Amendment sought by EPIC	ExA's recommended response
1	<p>Access will be maintained to both service yards at Kingston Retail Park for vehicles up to 16.5m articulated HGVs at all times (24 hours a day, seven days a week) during the construction and operation of the authorised development.</p>	<p>After Part 2 of Schedule 8, add a new 'Part 3: For the protection of the interests of EPIC (No.2) Limited and the occupiers of the Kingston Retail Park'</p> <p>Add new protective provisions as follows:</p> <p>For the protection of EPIC (No.2) Limited and the occupiers of the Kingston Retail Park, the following provisions have effect, unless otherwise agreed in writing between the undertaker and EPIC (No.2) Limited.</p> <p>Access must be maintained to both service yards at Kingston Retail Park for vehicles up to 16.5m articulated HGVs at all times (24 hours a day, seven days a week) during the construction of the authorised development.</p>
2	<p>The undertaker will minimise the extent and duration of temporary possession of the Kingston Retail Park service yard and car park.</p>	<p>Add a new protective provision to the new Schedule 8, Part 3 as follows:</p> <p>The undertaker must minimise the extent and duration of temporary possession of the Kingston Retail Park service yard and car park.</p>

3	Prior to taking possession of any of plots 3/5a, 3/5b, 3/5i or 3/5j the undertaker will agree the temporary arrangement of the Kingston Retail Park service yard and car park with EPIC (No.2) Limited and will carry out the agreed works, in accordance with an agreed timetable.	Add a new protective provision to the new Schedule 8, Part 3 as follows: Prior to taking possession of plot 3/5a or 3/5b, the undertaker must agree the temporary arrangement of the Kingston Retail Park service yard and car park with EPIC (No.2) Limited and must carry out the agreed works, in accordance with an agreed timetable.
4	Prior to the completion of Work 15, the undertaker will agree the permanent layout of the Kingston Retail Park service yard and car park with EPIC (No.2) Limited and will carry out the agreed works, in accordance with an agreed timetable.	Add a new protective provision to the new Schedule 8, Part 3 as follows: Prior to the completion of Work No 15, the undertaker must agree the permanent layout of the Kingston Retail Park service yard and car park with EPIC (No.2) Limited and must carry out the agreed works, in accordance with an agreed timetable.
5	The undertaker will reinstate permanent level pedestrian access to the Kingston Retail Park from the Mytongate Junction in agreement with EPIC (No.2) Limited and prior to the completion of the authorised works.	Add a new protective provision to the new Schedule 8, Part 3 as follows: The undertaker must reinstate permanent level pedestrian access to the Kingston Retail Park from the Mytongate Junction in agreement with EPIC (No.2) Limited and prior to the completion of the authorised works.
6	The undertaker shall relocate the two existing totem poles on the Kingston Retail Park, during the works period and after completion of the works, to locations agreed with the owner of the retail park. The poles shall be reinstated within 14 days of their removal.	Add a new protective provision to the new Schedule 8, Part 3 as follows: The undertaker must relocate the two existing totem poles on the Kingston Retail Park, during the works period and after completion of the works, to locations agreed with the

		owner of the retail park. The poles must be reinstated within 14 days of their removal.
7	The undertaker will agree with EPIC (No.2) Limited on the design and finish of the hoarding to be erected by the undertaker on the Kingston Retail Park. On the A63 facing side the hoarding will contain a combination of KRP and Highways England panels.	<p>Add a new protective provision to the new Schedule 8, Part 3 as follows:</p> <p>The undertaker must agree with EPIC (No.2) Limited on the design and finish of the hoarding to be erected by the undertaker on the Kingston Retail Park. The A63-facing side the hoarding must contain a combination of Kingston Retail Park and Highways England panels. The side of the hoarding facing the Kingston Retail Park car park and service yard must have a facing as designed and agreed by EPIC (No.2) Limited.</p>
8	The side of the hoarding facing the Kingston Retail Park car park and service yard will have a facing as designed and agreed by EPIC (No.2) Limited.	This is addressed by 7 above.
9	<p>The undertaker and EPIC (No.2) Limited are to agree a management plan in respect of operations affecting the Kingston Retail Park, which will include details of:</p> <p>(a) Advance notification of works;</p> <p>(b) Parking and movement of constructor vehicles;</p> <p>(c) Restrictions on noise, dust, vibration and working hours;</p>	These matters would be adequately addressed by R4 and no change is needed.

	<p>(d) Agreed methods to monitor adherence to the CEMP in respect of the Retail Park, reporting and corrective action; and</p> <p>(e) Health, safety and security requirements</p>	
10	<p>The undertaker will:</p> <p>(a) Identify and provide site noise monitoring stations adjacent to the Kingston Retail Park;</p> <p>(b) Monitor noise before and during the scheme construction phase in the vicinity of Kingston Retail Park and provide EPIC (No.2) with the results;</p> <p>(c) Put in place arrangements for the reporting of noise concerns to the undertaker and addressing those matters.</p>	<p>These matters would be adequately addressed by R4 and no change is needed.</p>
11	<p>Article 29(3)(a) (temporary use of land for carrying out the authorised development) shall not apply with respect to any land within Kingston Retail Park.</p>	<p>This is not necessary as the ExA has considered TP matters relating to this land at Chapter 7 of the report.</p>
12	<p>In the event that the parties are not able to reach agreement on any matter the subject of this article, then Article 44 (arbitration) shall apply, save that EPIC (No.2) Limited shall not be obliged to allow the undertaker to</p>	<p>Article 43 of the baDCO would provide for appropriate arbitration and would be undermined by this proposed provision. Accordingly, no change should be made.</p>

	carry out alterations to the Kingston Retail Park car park or service yard outside plots 3/5a, 3/5b, 3/5i or 3/5j.	
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