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28 May 2020

Dear Sir,

**PLANNING ACT 2008  
APPLICATION FOR THE PROPOSED A63 CASTLE STREET IMPROVEMENT – HULL  
DEVELOPMENT CONSENT ORDER**

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

- the Report dated 24 December 2019 of the Examining Authority (“ExA”), Peter Willows BA MRTPI, who conducted an examination into the application made by Highways England (“the Applicant”) for the A63 Castle Street Improvement – Hull Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”); and
- the consultation responses received to the further consultation undertaken by the Secretary of State following the close of the examination in respect of the application.

2. The application was accepted for examination on 18 October 2018. The examination began on 26 March 2019 and was completed on 26 September 2019. The examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook an accompanied site inspection and two unaccompanied site inspections.

3. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the Report”). All “PR” references are to the specified paragraph in the Report and references to “requirements” are to those in Schedule 2 of the DCO as recommended by the ExA at Appendix D to the Report.

4. The DCO as applied for would grant development consent for highway improvement works to approximately 1.5km of the A63 and connecting roads in Hull between Ropery Street and the Market Place/Queen Street Junction. These works are set out in PR 2.1.2. The Secretary of State is content that the proposals qualify as a Nationally Significant Infrastructure Project (“NSIP”) under sections 14(1)(h) and 22(1)(c) and (5) of the 2008 Act.

## Summary of ExA's Recommendations

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

- Legal and Policy Context (Chapter 3);
- Planning issues (Chapter 4);
- Findings and Conclusions in relation to the Habitats Regulations Assessment (Chapter 5);
- Conclusion on the case for Development Consent (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 7); and
- Draft Development Consent Order and Related Matters (Chapter 8).

6. For the reasons set out in the Report, the ExA found the scheme as a whole conflicted with the relevant National Policy Statement and recommended that the Secretary of State should withhold consent. If, however, the Secretary of State decides to grant consent, then the ExA recommended that the Order should be in the form attached at Appendix D to the Report.

## Summary of Secretary of State's Decision

**7. The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 – which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

## Secretary of State's Consideration

8. The Secretary of State's consideration of the Report, responses to consultations and all other material considerations are set out in the following paragraphs. Where not stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations as set out in the Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

## Legal and Policy Context

9. Given that the application requires development consent, section 104(2) of the 2008 Act has effect in relation to the development to which the application relates. In determining this application, the Secretary of State must therefore have regard to the relevant National Policy Statements; any appropriate marine policy documents, determined in accordance with section 59 of the Marine and Coastal Access Act 2009; any Local Impact Reports ("LIR") submitted; any matters prescribed in relation to the development of the description to which the application relates and; to any other matters that the Secretary of State considers to be both important and relevant to the decision (PR 3.2.1). Accordingly, this application needs to be considered in accordance with the National Policy Statement for National Networks ("NNNPS").

10. The Secretary of State notes that although 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) (PR 3.4.2). The Secretary of State has therefore had regard to the UK Marine Policy statement and the East Inshore Marine Plan in his decision.

11. The relevant development plans and LIRs the Secretary of State has regard to are set out in PR 3.9 and 3.10. The Secretary of State also notes the ExA's assessment set in in PR 3.4, 3.5, 3.6, and 3.8 of related UK legislation, European Directives, previous DCOs and other relevant policy statements, relevant to this scheme and agrees these are matters to be considered in deciding this application.

12. The Secretary of State notes that changes to application documents were made during the examination and the Secretary of State accepts the ExA's view that the changes do not amount to a material change to the scheme (PR 2.2.8). The Secretary of State agrees with the ExA's conclusions that the revised scheme lies within the worst-case parameters assessed within the Environmental Statement ("ES") (PR 2.2.10)

## **The Planning Issues**

### Transportation, Traffic and Movement

13. The Secretary of State notes the NNNPS identifies an overarching need for development of the strategic road network. Paragraph 2.23 of the NNNPS 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 (PR 4.2.2). The Secretary of State notes the key objectives that the Applicant has identified for the scheme (PR 4.2.8), the ExA's assessment (PR 4.2.16-4.2.24) and agrees with the ExA that the scheme would succeed in its aim of reducing congestion and improving the flow of traffic along the improved section of the A63 (PR 4.2.25).

14. The Secretary of State notes the effect on pedestrians and other non-motorised users ("NMUs") from the scheme set out in PR 4.2.26-4.2.51 and that currently there is a significant barrier for NMUs between the city centre and the area to the south of the road, alongside the Estuary (PR 4.2.27). Currently, there are six signalised crossings along this section of A63 and one uncontrolled crossing and all these would be removed and replaced with new means of crossing the road a part of the scheme (PR 4.2.28).

15. The loss of the two further existing signalised crossings between Princes Quay Shopping Centre and the High Street would mean there was a long section of the road with no crossings would mean those wanting to cross this section of the A63 would be faced with longer journeys. There would not be any new crossings between the new Princes Quay Bridge to the west and the High Street underpass crossing to the east, to replace the two existing level crossings. The Secretary of State notes the examples of potential longer journey for some because of diversions to journeys (PR 4.2.36). In addition, the Secretary of State has noted from the ES that restricted mobility user groups make up about 10% of NMU activity at the Humber Dock Street crossing based on September 2016 counts, which

the ExA regarded as a significant proportion and viewed the effect on these groups as a particular concern (PR 4.2.37).

16. The Secretary of State notes the Equality Act 2010 establishes that age and disability are protected characteristics and agrees with the ExA of the need to have regard to the disproportionate effect on mobility-impaired users in applying the Public-Sector Equality Duty to this scheme (PR 4.2.42). He also notes the ExA's conclusions that having regard to the safety benefits in separating NMUs from traffic, 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 (PR 4.2.43) The Secretary of State's overall conclusion on this issue is set out in paragraph 76.

17. The Secretary of State notes despite the improvements suggested, the High Street underpass would remain a less attractive option for NMUs than the existing crossing at Market Place/Queen Street. It is a more circuitous route and would be less obvious than simply crossing the road. There are also the inherent personal security worries arising from the use of an underpass. The Secretary of State notes the ExA has recommended as a requirement which would secure the provision of both lighting and CCTV and agrees with this recommendation (PR 4.2.41).

18. The Secretary of State notes the impact for NMUs travelling alongside the A63 and proposals for them set out in PR 4.2.44-4.2.48. He agrees with the ExA that overall, the scheme makes satisfactory provision for NMUs alongside the A63 (PR 4.2.49).

19. The Secretary of State notes the ExA's views on the effect on road safety from the scheme set out in PR 4.2.52-4.2.68 and that paragraph 4.60 of the NNNPS establishes that, even where safety is not the main driver of a development, the opportunity should be taken to improve safety (PR 4.2.53). The scheme is predicted to see a small reduction in the number of accidents – 72 over the 60-year scheme lifespan (PR 4.2.62). He agrees with the conclusion of the ExA that all relevant safety considerations and potential safety improvements have been taken into account (PR 4.2.76 8<sup>th</sup> bullet point).

20. The Secretary of State notes the effects during construction of the scheme set out in PR 4.2.69-4.2.75. NMUs would be adversely affected during the construction period due to increased journey times but the measures set out in the ES to minimise the adverse effects for NMUs during construction would include temporary diversions around the work site to be clearly signed and phased (PR 4.2.70). Whilst diversions in place during the construction period may create legibility issues affecting both residents and businesses, with a significant effect on the visually impaired and some residents with learning difficulties, the ExA considers such impacts should be minimised by traffic management plans secured by the DCO (PR 4.2.71). The Secretary of State notes that during the examination, the Applicant identified the possibility of a shuttle bus service that could mitigate the adverse effects on NMU connectivity across part of the works. The ExA considered this proposal could, in principle, provide a very beneficial mitigation measure, however, in the absence of any firm proposals the ExA gave it little weight (PR 4.2.72). The ExA accepted that the shuttle bus proposal might be dependent on the detailed planning of the construction phase and noted that the Applicant is committed to it 'if feasible' (PR 4.2.73). Whilst the Secretary of State considers there should be no requirement for this, he would encourage the Applicant to work with the appropriate authorities to consider the possibility for this. The Secretary of State agrees with ExA that whilst the scheme will have some adverse impacts during construction,

commensurate with a scheme of this scale in an urban location, appropriate mitigation measures are proposed (PR 4.2.75).

#### Air quality and related emissions

21. The Secretary of State notes the requirements on emissions set out in the NNNPS (PR 4.3.3-4.3.7). He further notes that the location of the scheme lies within an Air Quality Management Area (“AQMA”) declared in 2005 due to exceedances of the annual mean objective for nitrogen dioxide (“NO<sub>2</sub>”), primarily as a result of road traffic emissions (PR 4.3.8). The primary objective of the AQMA is to achieve the National Air Quality objective for NO<sub>2</sub> (annual average) of 40µg/m<sup>3</sup> (PR 4.3.10). 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 (PR 4.3.13).

22. The Secretary of State notes the ExA’s assessment of air quality during construction and operation of the scheme and analysis of the data (PR 4.3.25-4.3.42). Particulate matter (“PM<sub>10</sub>”) was not considered for the construction phase as the background levels are significantly below the Air Quality Strategy objectives (“AQOs”) in the study area (PR 4.3.28). During construction the highest predicted annual mean NO<sub>2</sub> concentrations in 2021 is predicted at receptor 61 and is below the AQOs (40µg/m<sup>3</sup>) for both the do minimum and do something scenario. Annual mean NO<sub>2</sub> concentrations are predicted to be below the AQOs at all receptors in the wider study area in both scenarios (PR 4.3.32). The Secretary of State therefore agrees with the ExA that there would be no unacceptable effects on air quality during the construction phase (PR 4.3.33).

23. The Secretary of State notes that the ExA is satisfied that the Applicant has properly assessed the local air quality during the operational phase of the scheme; although there would be increased concentrations of PM<sub>10</sub> and NO<sub>2</sub> at some locations, there would be reductions at others. There would be no exceedances, as a result of the scheme and, significantly, three locations would be brought below the NO<sub>2</sub> 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 (PR 4.3.42).

24. The Secretary of State notes that elevated Nitrogen Oxide (NO<sub>x</sub>) concentrations can adversely affect ecosystems and the Humber Estuary, which is a designated Site of Special Scientific Interest, Special Area of Conservation, Special Protection Area and Ramsar site, is located within 200m of the affected road network (PR 4.4.43 and 4.3.44). The scheme is predicted to lead to increases in NO<sub>x</sub> in the designated site due to a predicted increase in traffic (PR 4.3.46). However, 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 (PR 4.3.48).

25. The Secretary of State notes that the scheme is not of sufficient scale to have an impact on the ability of the Government meeting its carbon reduction targets (PR 4.3.50) and he agrees with the ExA that overall, the scheme is satisfactory in terms of its impact on air quality (PR 4.3.51).

## Biodiversity

26. The Secretary of State notes the provisions of paragraphs 5.24 to 5.38 of the NNNPS on biodiversity considerations and the Hull Local Plan Policy 44 (Biodiversity and wildlife) which are to be considered in relation to the scheme (PR 4.4.2-4.4.7); and the Applicant's case set out in PR 4.4.9-4.4.25. The main planning issues considered by the ExA are the effect of the scheme on the issues set out in PR 4.4.26 and the mitigation measures.

### *Bats*

27. The Secretary of State notes the possible impacts on bats from works on the Earl de Grey, Castle Buildings and the trees in Trinity Burial Ground and the mitigation measures put in place by the Applicant to identify the presence of bats and ensure that any bats present are protected from the adverse effects of the scheme (PR 4.4.28-4.4.36). The Secretary of State accepts the ExA's conclusions that there will be a loss of foraging grounds for bats on the Trinity Burial Ground, which is not regarded as significant and whilst there is a potential loss of bat roosts arising from the demolition of the Earl de Grey pub, this can be mitigated with appropriate measures (3<sup>rd</sup> bullet point PR 4.4.58). He therefore agrees with the ExA that bats would be adequately protected from adverse effects arising from the scheme (PR 4.4.37).

### *Birds*

28. The Secretary of State is assured that on wintering birds, the Statement of Common Ground between Natural England ("NE") and the Applicant confirmed that NE is satisfied that there will be no likely significant effects on the Humber Estuary designations (PR 4.4.43).

### *Trinity Burial Ground*

29. The Secretary of State notes the Trinity Burial Ground has a non-statutory designation as a Site of Nature Conservation Interest (PR 4.4.45). He notes that a substantial part of the site would be lost including a number of trees to accommodate the scheme and that mature and semi-mature native trees would be planted to mitigate these losses (PR 4.4.46 and 4.4.47). He notes the ExA accepts the evaluation within the ES of the operational residual impacts as a moderate adverse impact from the loss of the trees and from light pollution as a result of additional illumination (PR 4.4.49). The Secretary of State's overall conclusion on this matter is set out in paragraph 77.

## Historic Environment

30. The Secretary of State notes that the scheme runs through much of historic Hull and affects a range of designated and non-designated heritage assets (PR 4.5.1). He notes the Policy background (PR 4.5.2-4.5.8) and the examination issues regarding this topic (PR 4.5.9-4.5.19).

31. Paragraph 5.130 of the NNNPS provides that the Secretary of State 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 (PR 4.5.2). Paragraph 5.131 of the NNNPS says that, when considering the impact of a scheme

on the significance of a designated heritage asset, the Secretary of State should give great weight to the asset's conservation and that substantial harm to or loss of a grade II Listed Building should be exceptional (PR 4.5.3). Paragraph 5.133 of the NNNPS says that 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. (PR 4.5.36). The Secretary of State has also to consider the provisions of the Hull local plan, and in particular policy 16 which seeks to protect the City's heritage assets (PR 4.5.7).

32. In addition to the above policies, regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010 states that when deciding an application which affects a listed building or its setting, the Secretary of State must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses (PR 4.5.8).

### *The Earl de Grey*

33. The Secretary of State notes that the Earl de Grey is a disused pub fronting Castle Street, is a Grade II listed building (PR 4.5.20) and that 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 (PR 4.5.23). He notes there were two options for the building by the close of the examination. The first option ('the DCO scheme') is to move the building 3 metres to the north of its existing position. The DCO scheme is included in Work No. 30 in Schedule 1 to the Applicant's preferred DCO. 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 (PR 4.5.24).

34. Whilst the permitted scheme has clear advantages and has the support of both Historic England ("HE") and Hull City Council (HCC), there can be no guarantee that it will go ahead. It is separate from the proposed scheme and its implementation is dependent on the decisions of those seeking to promote, pursue and invest in it (PR 4.5.26-4.5.30).

35. The Secretary of State notes that requirement 14 would provide important controls over how the relocation of the building is addressed. It was 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 (PR 4.5.40).

36. The ExA's view is that the proposals within Work No. 30 of the DCO are not clear and on the basis of the limited information are not satisfactory. The ExA also considered that key consultees, including HE and HCC have not had a detailed scheme to comment on and to the extent that these bodies have been able to comment, they have indicated concerns regarding the proposal (PR 4.5.31-4.5.32). In the final agreed Statement of Common Grounds with the Applicant HE advises 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." (PR 4.5.32). The ExA noted that HCC expressed similar views (PR 4.5.33).

37. As suggested by the ExA, the Secretary of State in his consultation letter of 20 January 2020 asked the Applicant to provide further details regarding the relocation of the pub. The Applicant responded on 3 February 2020 stating the Applicant is still in discussion with Castle Buildings LLP regarding the permitted scheme. If this did not go ahead the Applicant will produce a method statement to discharge requirement 14 and therefore, there were no further details of the DCO scheme on which the Secretary of State could consult HE and HCC at that stage.

38. On the question of significance of harm, the ExA said that 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 was too vague to enable the ExA to adequately evaluate it and as noted it was not supported by HE or HCC. Accordingly, on the basis of the very limited information before the ExA, it was not regarded as a satisfactory form of mitigation and that accordingly, the harm to the significance of the listed building would still be substantial (PR 4.5.35).

39. In the context of paragraph 5.131 of the NNNPS, the Secretary of State notes that the ExA was not persuaded that there had been an adequate attempt to evolve the DCO scheme which could lead to the best possible alternative outcome for the Earl de Grey in the event that the permitted scheme does not proceed. The ExA's view was that it has consequently not been demonstrated that the substantial harm and loss of significance that would arise from the DCO scheme is necessary (PR 4.5.37).

40. The Secretary of State notes the ExA's view that the DCO proposal does not show how the building would integrate with its surroundings in its proposed location (PR 4.5.37) and the ExA's conclusions, set out in PR 4.5.43, that whilst the permitted scheme includes an appropriate solution to moving the Earl de Grey, the DCO scheme needs to include a properly thought through scheme for reconstructing the building in case the permitted scheme does not proceed. The ExA found that it has not been demonstrated that the DCO scheme would be effective in mitigating the harm to a listed building and it has not been demonstrated that the DCO scheme is the best outcome possible for the building. This places the DCO scheme 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. The Secretary of State's overall conclusion on this matter is set out in paragraphs 79-83.

### *Castle Buildings*

41. The Secretary of State notes the impact on the Grade II listed Castle Buildings situated on the junction of Castle Street and Warehouse Lane, close to the Earl de Grey. The ES sets out 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 and changes to the layout of the Mytongate Junction. Whilst the Secretary of State notes the precise effect depends upon proposals to reconstruct the Earl de Grey, he agrees with the ExA's conclusions that the changes to the setting of Castle Buildings would result in moderate harm to its settings and significance (PR 4.5.45-4.5.48).

### *The Grade I listed statute of King William II and Flanking Lamps*

42. The Secretary of State notes that this statute, a Grade I listed building, is very prominently located at the southern end of Market Place, close to the junction with Castle Street (PR 4.5.49). The scheme has been revised during the examination by the addition



of light-controlled pedestrian crossings at the slip roads at Market Place. Although the details of the crossings were still to be finalised, HE was willing to work with the Applicant and HCC to resolve this new addition to the scheme (PR 4.5.52). The ExA considered that the effect on the listed building would not fundamentally change due to the crossings now proposed as there are already light-controlled crossings at the existing junction (PR 4.5.53). The Secretary of State agrees with ExA's conclusion there would be a slight, permanent adverse effect on the setting of the listed building as a result of the scheme (PR 4.5.54).

#### *The Old Town Conservation Area ("OTCA")*

43. The Secretary of State notes that the OTCA was designated in 1973 and has subsequently been extended and that the size of the OTCA is such that its character as a whole is extremely varied (PR 4.5.55 and 4.5.56). The scheme runs up to and through the OTCA and therefore has both direct effects on the OTCA and effects on its setting. The listed buildings considered in the paragraphs immediately above, as well as the Trinity Burial Grounds, lie within the OTCA and contribute to its significance. Accordingly, the harm to these assets results in harm to the OTCA (PR 4.5.60). The OTCA would also be affected by the design elements of the scheme, including the Mytongate underpass, the central reserve barrier, the pumping station and the Princes Quay Bridge (PR 4.5.61). The Secretary of State has taken note that the ExA concluded that there would be harm to the OTCA that would arise from a number of different sources, of which the key ones would be the dismantling of the Earl de Grey and the loss of a substantial part of the Trinity Burial Ground. The Secretary of State agrees with the ExA that considering the effect on the OTCA as a whole, the harm would be less than substantial (PR 4.5.62).

#### *Trinity Burial Grounds*

44. The Trinity Burial Ground is not designated but is located within the southern part of the OTCA. The ExA regarded it as a non-designated heritage asset. The A63 severs it from the other parts of the City and it has a quiet, semi-natural character and contains many mature trees and a range of structures, including walls, memorials and several old gas lamp columns (PR 4.5.63). As set out in paragraph 29, the scheme would cut across Trinity Burial Ground, removing about a third of it, and would also result in the loss of mature trees and structures of significant amenity value (PR 4.5.64).

45. The Secretary of State has taken note that the removal of part of the Trinity Burial Ground would lead to the issue of dealing with the buried remains that are present there (PR 4.5.66). The ExA asked the Applicant whether any options for the road could have avoided the Burial Ground, but the Applicant indicated that the scheme had engineered out conflict with the Burial Ground as far as possible (PR 4.5.67). On the issue of dealing with the buried remains, the Secretary of State notes the Applicant has secured a faculty from the Diocese of York to allow the removal of bodies from the affected part of the site, and plans to re-bury them in the retained part (PR 4.5.68). 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 (PR 4.5.69).

46. The Secretary of State notes the Applicant has estimated that potentially 16,000-19,000 burials may be contained within the area affected by the scheme (PR 4.5.68). Whilst the Applicant's proposal is to analyse a sample of 10% of the buried remains excavated (PR 4.5.70), HE would like to see a larger sample analysed, basing their position on two

published documents that were published by the Advisory Panel on the Archaeology of Burials in England. HE regards this site as a unique opportunity to understand the way in which populations and places change (PR 4.5.71). To comply with the terms of the faculty, the remains would have to be analysed on the site before being re-buried in the retained part of the Burial Ground (PR 4.5.73). The Secretary of State agrees with the Applicant's view that the guidance referred to by HE would generally point to a larger sample size but also there was a need that it should be considered with regard to the circumstances of the case, in the context of the constraints imposed by the faculty, the timescales and practicalities of the scheme, including the need to complete the works and landscaping at the Trinity Burial Ground within a reasonable timeframe. The ExA was also mindful that the Applicant's stance was supported by the HCC's Principal Archaeologist (4.5.74). The Secretary of State agrees with the ExA that the Applicant's proposals relating to burials at the Trinity Burial Ground are satisfactory (PR 4.5.77).

#### *Beverley Gate Scheduled Monument*

47. The Secretary of State notes this listed building 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 (PR 4.5.78). The Applicant indicated that the only potential effect would be because of laying services in the vicinity of the scheduled monument and has engaged with the utility company on this matter. (PR 4.5.79). HE expressed concerns, requiring archaeological supervision of the works and stopping work and consulting with it in the event that service infrastructure is deeper than 500mm (PR 4.5.82). The Secretary of State notes the ExA's proposal for a revised requirement 16 in this regard. He agrees with the ExA that subject to the necessary revisions to requirement 16 (see paragraph 105), the proposal would be satisfactory in terms of its effect on the Beverly Gate Scheduled Monument (PR 4.5.83).

#### *Temporary effects during construction*

48. The Secretary of State notes the road is a major feature in this locality and that the setting of a wide range of heritage assets would be temporarily affected during construction. He agrees with the ExA that none of the temporary constructions effects is of an importance comparable with the permanent effects to heritage assets, and can be mitigated by good construction practice secured through requirement 4 and accordingly these matters weigh only very lightly against the scheme (PR 4.5.94-4.5.95).

#### Townscape and Visual Impact

49. The Secretary of State notes the Policy Background and the examination and issues regarding the townscape and visual impact (PR 4.6.1-4.6.21).

#### *Central Reserve Barrier*

50. The Secretary of State notes the scheme includes a central reserve barrier along its length required for safety reasons and the Applicant's proposals is for a 900mm high rigid concrete step barrier ("CSB") (PR 4.6.22-4.6.24). Whilst the Applicant highlights the good performance of the CSB and benefits in term of low cost and maintenance, the ES sets out 'it would contribute to a 'sense of separation between the north and south of the road', a view shared by HCC whom suggested a requirement to address the design of the barrier (PR 4.6.25-4.6.27). The Secretary of State also notes that the Applicant produced a Review

of Central Reservation Barrier Options report and that a workshop took place on 27 June 2019, attended by representatives of the Applicant and HCC to try and resolve the matter but it was not agreed (PR 4.6.12-4.6.13).

51. The ExA's view is that the Applicant's proposals for the CSB would have the effect of reinforcing the major road character of the A63 and it would do nothing to help the road to integrate into its surroundings and would be harmful aesthetically in this city centre context (PR 4.6.31 and 4.6.37). As recommended by the ExA, the Secretary of State in his consultation letter of 20 January 2020 asked the Applicant if it was able to provide further details regarding the central reserve barrier (of the type required by requirement 12). In its response the Applicant stated that the detailed design is currently ongoing and likely to be completed by winter 2020. However, the Secretary of State notes revisions to requirement 12 now requires specific reference to the central reserve barrier and requires details and specification for this scale, design and material for this to be submitted for the Secretary of State's approval following consultation with the Planning Authority (PR 4.6.35). The Secretary of State's overall conclusions on this issue is set out in paragraph 78.

#### *Trees, green space and landscaping*

52. The Secretary of State notes that approximately 317 trees would be removed in total, including those at the Trinity Burial Ground, and that approximately 362 replacement trees and shrubs are proposed where there is sufficient space along the new routes. The majority of the 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. The ExA notes that in time, the new trees will make an important contribution to mitigating the loss of existing trees (PR 4.6.52-4.6.53). The Secretary of State notes the ES summary of this position as 'significant moderate adverse visual effects' as tree cover would not be fully reinstated within 15 years of completion of construction (PR 4.6.54). The Secretary of State notes that HE is critical of the landscaping proposals but ExA's view is that the landscaping proposals are adequate and would be the subject of further control by way requirement 5 (PR 4.6.55-4.6.56 and 4.6.67 6<sup>th</sup> bullet). The Secretary of State agrees with the ExA's conclusion that 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 (PR 4.6.67 5<sup>th</sup> bullet point). The ExA made recommendations relating to article 35 of the draft DCO (felling or lopping of trees and removal of hedgerows) which are dealt with later (see paragraph 105).

#### Social, Economic and Land-Use Effects

53. The Secretary of State notes the proposed development would have a significant local social, economic and land-use effects and notes the policy background, matters and the issues considered during the examination (PR 4.7.1-4.7.17).

#### *General Impacts on the local economy*

54. The Secretary of State notes one of the main objectives of the scheme is to improve access to the Port of Hull as its competitiveness and plans for future expansion are limited by the constraints of the existing road structure (PR 4.7.18). The ES summarised the predicted effects on the local economy and suggests that the scheme would have the potential to support the delivery of additional jobs and would bring local economic gain (PR 4.7.21). The Secretary of State notes the HCC advice that the scheme will help to bring

forward some sites for development (PR 4.7.20) and it is estimated that the scheme would deliver 100-200 jobs during the construction phase which would be a benefit to the local economy for a temporary but significant period (PR 4.7.22). He agrees with the ExA 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 (PR 4.7.23).

#### *Specific impacts on local businesses*

55. The Secretary of State notes that construction is anticipated to take approximately five years, which would be carried out in phases and that during the construction phase, the scheme would have a number of direct and harmful effects on many local businesses (PR 4.7.26-4.7.27). He notes the effect of the scheme on businesses in the Kingston Retail Park which was pursued in particular by EPIC (No2) Ltd (“EPIC”), whom owns and controls the freehold interest of Kingston Retail Park and is the landlord to numerous tenants there (PR 4.7.29 and 7.6.62). Following consultation, EPIC wrote to the Secretary of State on 30 March 2020 stating a settlement agreement had been reached with the Applicant. The Secretary of State also notes that access to the Holiday Inn would be permanently changed as a result of the scheme but it appears there is a suitable arrangement and Holiday Inn has withdrawn its objection following the completion of an option and impact mitigation deed with the Applicant (PR 4.7.36). Impact on businesses from compulsory acquisition and temporary possession is set out later in this letter and setting aside this issue, the Secretary of State agrees with the ExA that with appropriate mitigation, the impact of the proposed works on local businesses could be managed and would be acceptable (PR 4.7.38).

#### *Effects arising from noise and vibration*

56. The Secretary of State notes the findings from noise and vibration set out in the ES during construction and operation of the scheme (PR 4.7.39-4.7.54). He notes for the reasons set out in PR 4.7.53 that the ES concludes the scheme meets the aims of the NNNPS. He agrees with the ExA 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 from noise and vibration (PR 4.7.55).

#### *Open Space*

57. The Secretary of State notes the scheme includes two key open space interventions – the loss of part of the Trinity Burial Ground and the creation of new open space at the Myton Centre. The ExA asked whether the proposed new open space at the Myton Centre would fully compensate for the space to be lost at the Trinity Burial Ground (PR 4.7.56-4.7.57). Paragraph 5.166 of the NNNPS states that “... Existing open space... 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”. The deficit would only be modest (about 0.07Ha) (PR 4.7.60) and the Secretary of State notes the ExA’s assessment of quality aspects of the open space as set out in PR 4.7.61-4.7.66. He agrees with the ExA that considering the matter as a whole, 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 in terms of open space provision (PR 4.7.67). The issue of open space in the context of special category land is dealt with later (see paragraphs 89-93).

## Water Environment

58. The Secretary of State notes that Hull lies at the confluence of the River Hull and the Humber Estuary and the City is highly vulnerable to pluvial and other forms of flooding, therefore matters relating to the water environment, and in particular the flood risk, were a major issue at the Examination (PR 4.8.1). He notes that the Government's policy on flood risk is contained in section 5 of the NNNPS (PR 4.8.2-4.8.9); that the topic was considered extensively during the examination.

### *Flood Risk and Flood Risk Assessment*

59. The Secretary of State notes that the Mytongate underpass is the most vulnerable element of the scheme and the Environment Agency's ("EA") concern that lowering the road to the extent proposed means that the underpass would fill with water during severe floods and that safety is reliant on emergency planning procedures (PR 4.8.25-4.8.26). He further notes the ExA's view that 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) and therefore it means that the scheme is not fundamentally flawed or unsafe, although emergency procedures still need to be robust (PR 4.8.27). He notes the drainage system for the underpass is reliant on a proposed new pumping station and concerns on the resilience of the pumping station during a flood. However, the Secretary of State notes requirement 13 ensures that details, including flood resistance and flood reliance measures, are provided and the requirement to be discharged only following consultation with HCC and the EA. The requirement is based on wording suggested by HCC and the EA is satisfied that it is an appropriate way to address the matter (PR 4.8.29-4.8.30).

60. The Secretary of State notes the Flooding Emergency and Evacuation Plan ("FEEP") sets out how an inundation of the Mytongate underpass would be dealt with. The EA has concerns regarding proposals for closing the underpass in an emergency including the need for purpose-built barriers. The Secretary of State notes that the Applicant's Area Maintenance Team would physically close the underpass with appropriate traffic management plans and, additionally, signage and signals would show the underpass as closed and direct traffic away from it. On barriers, the Applicant stated that creating automated barriers were not compatible with the design of the underpass and while it would be possible to incorporate manually operated barriers, this would put staff at risk when operating or maintaining them. The Secretary of State agrees with the ExA that the lack of barriers to the underpass is not a flaw in the scheme and that a robust FEEP document setting out appropriate measures can be finalised. He further notes a construction flood emergency plan will also be prepared and this will detail emergency procedures during construction to ensure safety of personnel (PR 4.8.31-4.8.37).

61. The Secretary of State notes that 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. He further notes that the North East Regional Control Centre recommended that the sign would not provide any significant value and that the Applicant pointed out that it would increase the scheme's cost and that there would be difficulty in linking to the sign due to its remote proposed location. In addition, road users travelling toward Hull could be made aware of a potential flood event on the existing gantry signs on

the M62 and A63. The Secretary of State shares the conclusions of the ExA that early warning signage specific to the scheme is not necessary (PR 4.3.38-4.8.39).

62. The Secretary of State notes the modelled effects of the flood risk and beyond. Any effects of the scheme on the extent of the flooding in the surrounding area would be very limited. Whilst there are some increases in the depth of the flood waters on certain sites because of the scheme, depths would be reduced on others. The ExA has no technical evidence to cast doubt on the modelling work and no reason to doubt that it is robust (PR 4.8.41-4.8.43).

63. Overall, the Secretary of State agrees with the ExA that the design of the underpass and its drainage system are satisfactory and with appropriate measures, it would be safe (PR 4.8.47). On the effects on flooding in the surrounding area, he shares the ExA's view that it would be broadly neutral, with negative effects counterbalanced by positive affects (PR 4.8.48).

#### *The Sequential and Exception Test*

64. The Secretary of State notes the Sequential Test is set out in the NNNPS, the National Planning Policy Framework and the Planning Practice Guidance and that it seeks to steer new development to areas with the lowest risk of flooding. As the scheme is located within Flood Zone 3a, it has a relatively high probability of flooding and consequently the Sequential Test applies. However, the Applicant has set out that the entirety of Kingston upon Hull is within Flood Zone 3 and there are no reasonable available alternative sites that are not within Flood Zone 3. The ExA agreed with that assessment and since the physical constraints of the area and extensive areas susceptible to flooding means there is no possibility of the development taking place at a lower risk area. Consequently, the ExA concluded that the scheme is not ruled out on the basis of the Sequential Test (PR 4.8.49-4.8.51).

65. The Secretary of State notes that paragraph 5.106 of the NNNPS sets out that following the application of the Sequential Test, if 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 (PR 4.8.52). As set out in PR 4.8.53, there are two criteria to the Exception Test and both criteria have to be passed (Paragraph 5.108 of the NNNPS). The first criterion is that it must be demonstrated that the project provides wider sustainability benefits to the community that outweigh the flood risk. The ExA noted in the Flood Risk Assessment that it set out that the scheme would generate significant and economic benefits, thereby providing a basis for demonstrating compliance with the first criterion of the Exception Test. The ExA has concluded that there is no reason to withhold development consent on that basis of this element of the Exception Test (PR 4.8.56). The Secretary of State agrees with the ExA's assessment of the benefits of the scheme and considers that these outweigh the flood risk.

66. On the second criterion of the Exception Test, a Flood Risk Assessment must demonstrate that the scheme will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall. The Secretary of State notes that the ExA is satisfied that the scheme will be safe but this must be achieved without increasing flood risk elsewhere. The interpretation of this was the subject of discussion during the examination (PR 4.8.57). The Secretary of State has had regard to the view of EA that any increase in flood risk elsewhere, irrespective of improvements means the requirement has failed, and therefore the Exception Test as a whole (PR 4.8.58). The

Secretary of State notes the Applicant's position 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 Secretary of State has had regard to the ExA's agreement that this approach to be followed here. The ExA went on to consider that adopting the EA's approach could lead to illogical outcomes if the Exception Test were to fail due to very limited harms with no account being taken of any (perhaps greater) benefits. Moreover, the advice from HCC that the characteristics of Hull, including the extensive areas of Zone 3, means that virtually all construction works affect flooding on land nearby (PR 4.8.59). The ExA's view is that given the limited negative effects and the neutral net effect of the scheme on flood risk elsewhere, the conclusion is that the second element of the Exception Test has been met (PR 4.8.62). The Secretary of State agrees with that view and therefore concludes that the two requirements of the Exception test are met (PR 4.8.64).

### *The Views of the EA*

67. The Secretary of State notes paragraph 5.101 of the NNNPS sets out that if the EA continues to have concerns on the grounds of flood risk, he can still grant development 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 matters (PR 4.8.68). The EA accepts that the Applicant has engaged with the Agency and done all it can to assess and mitigate flood risk. The Secretary of State shares the opinion of the ExA that whilst the views of EA are an important consideration, its outstanding concerns do not lead the ExA to the view that consent should be withheld on flood risk grounds (PR 4.8.70).

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

68. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State is required to consider whether the scheme would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site. There are three European designated sites within 2km of the proposed scheme – the Humber Estuary Special Protection Area ("SPA"), Special Area of Conservation ("SAC") and Ramsar sites. The three designations relate to the same area and the designation boundaries are the same (PR 5.2.2).

69. The Applicant provided an Assessment of the Implications for European Sites ("AIES"), which identifies and addresses the potential impacts pathways from the proposed development to the European sites. The Secretary of State notes that the AIES approach has been agreed with Natural England, which considers the construction of the Princes Quay Bridge in combination with this scheme and that no concerns were raised during the examination about the approach and scope of the Applicant's in-combination assessment (PR 5.3.4-5.3.7).

70. The screening assessment in the AIES concluded that the proposed development would have no likely significant effect, either alone or in-combination with the other plans or projects on the qualifying features of the European sites. The grounds for this are set out in PR 5.4.1.

71. The Secretary of State notes that following questions from the ExA, the Applicant confirmed its position as set out in the AIES that without mitigation, the proposed development would cause "no significant effects" to the European sites located within 2km of the proposed development either alone in combination with other plans or projects (PR

5.4.4). However, despite the Applicant's confirmation that an Appropriate Assessment was not required, the ExA noted that mitigation measures necessary to avoid or reduce effects on the Humber Estuary designated sites were referred to in other submitted documents. The ExA understood that the measures included in the register of environmental actions and commitments ("REAC") and the Outline Environmental Management Plan (OEMP) are intended to reduce or avoid impacts on species which are qualifying features of the European sites and not just site compounds during construction of the Princes Quay Bridge. In the light of such measures, the ExA considered that it was necessary to examine whether there would be any adverse effects on the integrity of the European sites. The ExA produced Stage 2 integrity matrices for all European designated sites to consider Adverse Effects on Integrity ("AEol"), which were included in Annex 3 of the Report on the Implications for European Sites ("RIES"). The ExA concluded that he was satisfied that the proposed development (alone and in-combination with other plans or projects) is not likely to have an AEol of the Humber Estuary SPA/ SAC and Ramsar sites (PR 5.6.5). The RIES was published in July 2019 and received no comments (PR 5.4.13).

72. The Secretary of State notes the position of Natural England that likely significant effects can be excluded (PR 5.6.4) and the ExA's position that the proposed development would have no AEol, either alone or in-combination with other plans or projects, on any European site (PR 5.7.1). Having considered the ExA's view the Secretary of State nevertheless believed that it was necessary to examine whether there would be any adverse effects on the integrity of the European sites. The Secretary of State decided an Appropriate Assessment ("AA") should be undertaken to discharge his obligations under the Habitats Regulations. This is attached at annex B of this letter. Having considered the findings of the AA, the Secretary of State's agrees with the ExA that the proposed development, in combination with other plans or projects, would have no adverse effect, either alone or in-combination with other plans or projects, on any European site (PR 5.7.1).

### **Conclusion on the Case for Development Consent**

73. The Secretary of State notes the ExA's view that the scheme provides significant benefits. He agrees with the ExA that that 3 key objectives would be achieved – improve access to the Port of Hull; relieve congestion; and improve safety (PR 6.2.1). On the achievement of the 4<sup>th</sup> key objective, to improve connections between the city centre to the north and developments and tourist and recreation facilities to the south, the Secretary of State shares the ExA's view that the picture is mixed, due to the negative effects arising for the loss of at-grade pedestrian crossings. Nevertheless, the ExA considered that there would be significant improvements arising from improved road connections, NMU bridges and improvements to other pedestrian facilities such as the High Street underpass (PR 6.2.2).

74. The Secretary of State also notes 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. The ExA was also mindful of the potential of the scheme to assist in the delivery of new development sites. The scheme has been appraised using an Economic Assessment undertaken in line with the most up to date Transport Appraisal Guidance. The output from this is a Benefits to Cost Ratio figure for the scheme of 1.59 which translate to a medium value for money rating (PR 6.2.3-6.2.4).



75. The Secretary of State notes the ExA's considerations of the Planning Balance set out in PR 6.3. He further notes the ExA has identified 4 key harms - the loss of part of the Trinity Burial Ground; visual impact arising from the design of the central reserve barrier; the reduced options for NMUs seeking to cross the A63 due to the removal of at-grade crossings and substantial harm to the Earl de Grey pub (PR 6.4.11). The Secretary of State notes that Paragraph 4.2 of the NNNPS says that subject to the detailed policies and protections in the NNNPS, and the legal constraints set out in the Planning Act 2008, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in the NNNPS (see PR 6.4.3). The Secretary of State's position on these issues are set out below.

### NMUs seeking to cross the A63

76. The Secretary of State has taken account of paragraph 3.20 of the NNNPS regarding the Government's commitment to creating a more accessible and inclusive transport network and paragraphs 5.215 and 5.216 regarding mitigation measures for schemes should be proportionate and reasonable and that impacts on accessibility for non-motorised users should be mitigated. He also considered the provisions of the Equality Act 2010 and has had regard to the public-sector equality duty under Chapter 1 of Part 11 of that Act. Whilst he accepts there will be an adverse impact with those of restricted ability and is aware of the Hull Access Improvement Group views regarding increased travel distances, he is also mindful that HCC considers, on balance, the increased journey times for some NMUs are justifiable (PR 6.4.17). The Secretary of State notes that mitigation measures are proposed in the form of new means of crossing the road and although those measures do not fully address the ExA's concerns, it appeared to the ExA that the Applicant has sought to address the matter, so far as is reasonably possible, in accordance with paragraph 5.215 of the NNNPS (PR 6.4.18). He agrees with the ExA conclusions that, considering these matters as a whole, this matter would not, on its own, justify refusal of the scheme, given the benefits identified and the presumption in favour of development at paragraph 4.2 of the NNNPS (PR 6.4.19).

### Trinity Burial ground

77. The loss of part of the Trinity Burial Grounds would cause significant harm to the Old Town Conservation Area and visual and biodiversity harm due to the loss of trees. The Secretary of State notes paragraph 5.31 of the NNNPS sets out that regionally and locally designated sites 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 (PR 4.4.50). The Secretary of State notes the constraints of the route of the A63, and that a substantial impact of the Burial Ground cannot be avoided if the scheme is to be delivered. He shares the ExA's view that it appears the Applicant has done all it can to address the harm and agrees with the ExA that given the substantial benefits of the scheme and the presumption in favour of development in the NNNPS, the harm to the Burial Ground is justified (PR 6.4.13).

### Visual Impact Arising from the Central Reserve Barrier

78. The Secretary of State notes the ExA's and HCC's significant concerns on the visual impact from the design of the central reserve barrier as set out in paragraphs 44 and 45. He further notes requirement 12 which includes specific reference to the design of the barrier and the ExA's view that if an improved design can be agreed, perhaps in consultation with

HCC, then this issue could be regarded as resolved (PR 6.4.14). However, even if a revised alternative is not approved, he agrees with the ExA that it would not, on its own, justify refusal of the scheme, given the benefits identified and the presumption in favour of development at paragraph 4.2 of the NNNPS (PR 6.4.15).

### Earl de Grey Pub

79. Paragraph 5.133 of NNNPS says that 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. The ExA took the view that because there was not enough detail given in relation to the DCO scheme (i.e. the reinstatement of the Earl de Grey 3 metres to the north of its current position) to enable him to adequately evaluate it, he could not say that the harm was necessary.

80 The Secretary of State notes that an agreement has now been signed between the Applicant and Castle LLP regarding the potential relocation of the pub as part of the proposals to the permitted scheme. The Secretary of State welcomes this and encourages the Applicant to continue to work to relocate the pub as part of this permitted scheme. While the Secretary of State agrees with the ExA that the harm to the pub would be less than substantial if relocated as part of the permitted scheme, the Secretary of State agrees with the Applicant and the ExA that reliance cannot be placed upon this scheme coming forward and has accordingly placed no weight upon this.

81 The Secretary of State sees no reason to disagree with the ExA's conclusion that relocating the pub 3 metres to the north as proposed within the DCO could result in substantial harm to the pub (PR 4.5.35) and therefore agrees that the tests within paragraph 5.131 and 5.133 of the NNNPS are engaged. The Secretary of State has considered the substantial public benefits that will be delivered by the scheme - to improve access to the Port of Hull; to relieve congestion; and improve safety and the significant financial benefits that this entails. He has weighed this against the substantial harm that will be caused to the Earl de Grey pub should the DCO scheme be implemented and has concluded that the substantial public benefits outweigh the substantial harm to the Earl de Grey.

82. With regard to whether the harm is necessary, the Secretary of State notes that (apart from the preferred scheme, whose implementation is preferred but cannot be guaranteed) no other alternatives to those contained in the DCO have been put forward by any party and that the pub cannot remain in place if the road is to be built. The Secretary of State considers that Requirement 14 provides certainty about the location of the reinstatement of the Earl de Grey and certainty that the demolition of the Earl de Grey cannot proceed until details of the reconstruction or partial reconstruction of the building, a method statement and a timetable for completion of the work is agreed by the Secretary of State, in consultation with HE and HCC.

83. Taking these factors into account, the Secretary of State has concluded that the substantial harm to the pub is necessary in order to deliver the substantial public benefits of the scheme, which in his view outweigh the harm. In coming to that conclusion, the Secretary of State has given considerable importance and weight to the harm that will be caused to the Earl de Grey pub and has had regard to the desirability of preserving the listed building, its setting and its features as required by the Infrastructure Planning (Decisions)

Regulations 2010. The Secretary of State has also borne in mind that substantial harm to a Grade II listed building should be exceptional, but has concluded that this is an exceptional case, for the reasons mentioned above.

### Overall Conclusion

84. The Secretary State notes the ExA's view that considering the first three matters on its own would not justify refusal of the scheme given the identified benefits and the presumption in favour of development set out in paragraph 4.2 of the NNNPS (PR 6.4.19). The ExA has also set out that overall 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 (PR 6.4.20). Overall, the Secretary of State considers the substantial benefits that will arise from the scheme (including economic benefits) outweigh these four key harms. He therefore on balance disagrees with the ExA and concludes that the harms do not conflict with the NNNPS and that Development Consent **should** be granted.

85. The Secretary of State notes the ExA recommended that should development consent 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) (PR 6.4.21). As set out in paragraphs 64-66 of this letter, the Secretary of State considers the requirements of the Exception Test have been met.

### **Compulsory Acquisition and Related Matters**

86. Compulsory acquisition ("CA") powers can only be granted if the conditions set out in sections 122 and 123 of the 2008 Act, together with the relevant guidance set out in PR 7.2.1 are met. Section 122(2) of the 2008 Act requires the land to be taken for the development must be no more than is reasonably required and be proportionate (PR 7.2.2). The Secretary of State notes the ExA's assessment and the need for CA and Temporary Possession ("TP") (PR 7.6.1-7.6.6). He agrees with the ExA's conclusion that all the land for which CA and TP powers are sought is required for the development or to facilitate it, and is no more than is reasonably required and is proportionate (PR 7.6.6).

87. Section 122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. The ExA considered the need for the scheme and was satisfied that the land was needed to deliver the scheme. The Secretary of State notes the ExA's view that if the Secretary of State is minded to grant development consent that it is important to consider whether the land needs to be acquired compulsorily rather than by agreement. (PR 7.6.7-7.6.8).

88. The Secretary of State notes that the text in the Statement of Reasons has a number of references to negotiations. However, the details of the negotiations in Annex B of the Statement of Reasons do not support the general approach set out in the text (PR 7.6.10-7.6.11). Annex B is presented in the form of a table and includes a column headed 'status of objection and negotiations with land interest' and in many instances it is completed using the words 'not applicable'. The Secretary of State notes the ExA had concerns in that it is not possible to tell from this whether there is an objection, whether negotiations are taken place or how they are progressing. The ExA requested the Applicant to provide more informative answers and the Applicant changed the response in many instances to 'agreement not sought'. The Applicant explained that the Applicant is only intending to enter

into agreement where they are seeking permanent acquisition of land and the final column, headed Status of objection and negotiations with land interest, now states 'Agreement not sought' (PR 7.6.12-7.6.13).

89. This raised further concerns for the ExA, in that firstly it appears inconsistent with statements elsewhere in the Statement of Reasons and secondly, the statement that the Applicant is only intending to enter into agreement where seeking permanent acquisition of land leaves open the question whether 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 (PR 7.6.14-7.6.15). This led the ExA to conclude that agreement had not been sought in many instances where the Applicant intends to permanently acquire rights over land by agreement. The ExA therefore recommended that if the Secretary of State was minded to make the Order and include the CA and TP provisions within it then in view of the concerns raised by the ExA, a number of matters should be addressed. This included that the Applicant must engage in negotiations with all affected persons where CA is proposed, including CA relating to rights, in accordance with the 2008 Act and relevant guidance (PR 7.8.4 1<sup>st</sup> bullet point). In addition, ExA recommended the Applicant must submit revised 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 (PR 7.8.4 7<sup>th</sup> bullet point).

90. The Secretary of State, therefore consulted on these two recommendations in his consultation letter of 20 January 2020. No substantive responses were received from affected persons and the Applicant provided a revised Annex B of the Statement of Reasons which had been updated to reflect the progress of discussions with all affected persons. The Secretary of State is therefore satisfied that the Applicant has engaged in negotiations with all affected persons where CA is proposed, including CA relating to rights, in accordance with Section 122(3) of the 2008 Act and relevant guidance.

### Open Space

91. The Secretary of State notes that the proposal includes the CA of open space and of rights over open space. This brings the proposals within the remit of sections 131 and 132 of the 2008 Act, which means that an order granting development consent may be subject to special parliamentary procedure ("SPP"), to the extent that the order authorises the compulsory acquisition of, amongst other things, open space or rights over open space (PR 7.6.36). He notes the issues raised by the ExA on open space as set out in PR 7.6.36-7.6.47.

92. The Secretary of State in his consultation letter of 20 January 2020 set out that plots 3/1bd and 3/1be and other smaller plots remain within the order limits and are shown on the revised Special Category Land Plan as being "special category land – open space to be permanently acquired". He asked the Applicant to confirm if those plots remain subject to compulsory acquisition under the DCO and if so, explain why it has sought to remove article 34 (Special category land) from the draft DCO (and the relevant paragraphs in the preamble to the DCO relating to sections 131 and 132 of the Planning Act 2008) in its rule 17 response.

93. In its response the Applicant confirmed that Article 34 (and the relevant paragraphs in the preamble) were removed in error and requested that Article 34 and the paragraphs in the preamble be reinstated in the revised DCO ("rDCO"). It described which plots are open space for the purposes of section 131 and section 132 of the 2008 Act. It confirmed that all

these open space plots are owned by HCC and that replacement open space would be provided, meaning that in accordance with section 131(4) and section 132(4) of the 2008 Act, the need for SPP would be avoided.

94. In addition, the Secretary of State asked the Applicant why plots 3/1bv and 3/1by are not included as special category land, and if they were special category land, how would the Applicant justify avoiding SSP. The Applicant explained that these plots of land were not designated open space plots in HCC's local plan. However, even if these plots were to be considered open space, the amount of open space to be taken would still fall short of the amount of replacement open space to be provided, so it could still rely on s131(4) and s132(4) in relation to their acquisition to avoid the application of SPP.

95. Following a further consultation question in the Secretary of State's letter of 27<sup>th</sup> February, the Applicant corrected some of its original replies about which plots of land were open space land and which were replacement land, and provided a further draft DCO which in article 34(5) contained revised lists of plots within the definitions of "the special category land", "the special category (rights) land" and "the replacement land".

96. The Secretary of State is satisfied that section 131(4) and section 132(4) of the 2008 Act apply in relation to the special category land and the special category (rights) land respectively, as defined in the revised version of the draft DCO. The fact that the Secretary of State is so satisfied is recorded in the DCO, and therefore the DCO is not subject to SPP to the extent that it authorises the compulsory acquisition of that land or of rights over it.

### Crown Land

97. Under section 135(1) of the 2008 Act an order granting development consent may include provision authorising the CA of an interest in Crown Land only if the appropriate crown authority consents to the acquisition. Section 227 of the 2008 Act sets out Crown Land 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 Applicant identified a Crown interest in two blocks of land (PR 7.6.48).

98. Firstly, on the 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 (PR 7.6.49). The Applicant confirmed in its consultation response of 3 and 6 February 2020 that this was not crown land and this is demonstrated by reference to the revised Book of Reference, Crown Land plans and statement of reasons accompanying the response of 6 February 2020.

99. Secondly, 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 Magistrate's Court – plot 5/10a. On the 4 February 2020, the Secretary of State for Housing Communities and Local Government wrote giving consent for the TP powers sought in respect of plot 5/10a subject to conditions.

### Site-specific matters

100. The Secretary of State notes the nature of the objection from Princes Quay Development Ltd ("PQDL") in relation to Castle Buildings and the Earl de Grey public house. PQDL is the freeholder of Plot 3/11e which would be subject to CA powers, with TP powers

of other plots inferred. Although PQDL's objection was not withdrawn, its arguments were not developed further in written submissions or any appearance at Compulsory Acquisition Hearings. The Secretary of State agrees with the ExA that plot 3/11e must be acquired in order for the scheme to be built and the ExA's view that proposals relating to the land are justified as well, since they are integral to the scheme (PR 7.6.62).

101. As set out in paragraph 55 in relation to EPIC, a settlement agreement was signed by EPIC and the Applicant and EPIC withdrew its objection, subject to reserving its right to object further to any significant changes to the Order. Given that, the Secretary of State does not consider it necessary to alter the DCO to remove TP powers in respect of plots 3/5e, 3/5c and 3/5g as recommended by the ExA.

102. The Secretary of State notes the position of Aivilo Properties Ltd (Aivilo) whose property would have been severely affected due to the temporary possession of its car park if Option B is pursued. However, as Option B has been removed, the car park is no longer affected and falls outside the Order limits. Although Aivilo has not withdrawn its objection, it did not provide any written representations or attended any of the hearings. The Secretary of State agrees with the ExA, that given the absence of further information and given the removal of Option B from the scheme, it appears that the amended scheme addresses all relevant CA matters relating to Aivilo's site (PR 7.6.62).

### Human Rights

103. The Secretary of State notes the ExA's view that Article 1 of the First Protocol and Article 6 of the European Convention on Human Rights are engaged (PR 7.7.2). He agrees with the ExA that there is no breach of Article 6, which entitles those affected by compulsory powers to a fair and public hearing, as all Affected Persons have had the opportunity to engage in the Examination (PR 7.7.3). Article 1 of the First Protocol protects the rights to peaceful enjoyment of possessions and no one can be deprived of their possessions except in the public interest. The Secretary of State notes the ExA's views that there would be a violation of the Rights under Article 1 of the First Protocol because of the Applicant's record of engagement and negotiations in relation to CA (PR 7.7.7). However, as set out in paragraph 88, the Secretary of State is satisfied that the Applicant engaged in negotiations with all affected persons where CA is proposed, including CA relating to rights and therefore considers there is no breach of Article 1 of the First Protocol.

### Summary

104. The Secretary of State is satisfied that there are no matters under compulsory acquisition and related Orders that would prohibit him from making the DCO.

### **Draft Development Consent Order and Related Matters**

105. Having concluded that development consent should be granted for this scheme, the Secretary of State is satisfied that the form of the Order referred to in PR 9.3.1 is appropriate, subject to modifications. The main modifications which the Secretary of State has decided to make to the Order not mentioned elsewhere in this letter are as follows (references to article numbers, paragraphs and requirements in this paragraph are to the same as numbered in the DCO as made).

- The preamble incorporates two new paragraphs reflecting the special category land provisions in article 34.
- In article 2 (interpretation), the definition of “commence” is that recommended by the ExA. In addition, the reference to “commences” has also been removed as it is not used in the Order.
- The provision in article 2(7) relating to the Neighbourhood Planning Act 2017 has been included by way of a new paragraph in article 29 (temporary use of land for carrying out the authorised development) and article 30 (temporary use of land for maintaining the authorised development).
- In article 18 (protective works to buildings), the Secretary of State has accepted the new paragraph (7), recommended by the ExA, The new paragraph would only require the undertaker to seek approval for works where listed building consent would normally have been required. The Secretary of State has made further revisions to the drafting.
- In article 29 (temporary use of land for carrying out the authorised development). Paragraph (9)(a) has been amended to reflect that there is a cross over of land between Schedule 5 and Schedule 7 in relation to 2 plots of land. This will limit the acquisition of new rights over land that has been identified in Schedule 5.
- The reintroduction of article 34 (special category land), to cater for the fact that special category open space land will be subject to compulsory acquisition under the DCO. In paragraph (5), the Secretary of State noted that there was land referenced as “31/zk” which the Secretary of State believed should have referred to “3/1zk”. The latter reference has been inserted into this paragraph.
- In article 35 (felling or lopping of trees and removal of hedgerows), the ExA was concerned that its scope was too wide, giving the Applicant power to fell more trees than those identified for removal in the ES. The Secretary of State has made amendments to address that concern. The ExA also suggested removing wording from requirement 5 (landscaping), that is, “subject to necessary works that may be required under article 35 (felling or lopping of trees and removal of hedgerows)”. The Secretary of State acknowledges that some trees will need to be lost because of the proposed scheme, so the proposed change is not required
- The Secretary of State sought views from the Applicant and HCC regarding an amendment to requirement 15 (replacement green space) to reflect that the replacement open space is provided in a timely manner. The Applicant and HCC considered the amendment could pose problems. The wording of requirement 15 reflected in the original dDCO is retained.
- The Secretary of State sought views from the Applicant, HCC and HE on an amendment to requirement 16 (Beverly Gate Scheduled Monument) which had been put forward by the Applicant to meet concerns expressed by the ExA. The amendment would require any works affecting the Beverley Gate Scheduled Monument to be carried out in accordance with a methodology and appropriate archaeological strategy agreed with HE. The Applicant and HE were content with the ExA’s wording. The Secretary of State agrees with the ExA’s amendment, because

it will ensure HE's views on works affecting the Monument will need to be considered before any works start.

- The Secretary of State agrees with the ExA's suggestion for an additional requirement for the High Street underpass works to ensure the proposed underpass is upgraded to a good standard and will provide a pleasant and safe a route as possible for NMUs, particularly those with limited mobility.
- In Schedule 9 (documents to be certified), column (3) has been deleted as no details of revisions had been provided. Further, the Secretary of State has noted that there are a number of references in the Order to the "non-motorised user route plans" but these plans have not been included in Schedule 9.

106. The Secretary of State is making a number of other minor textual amendments to the rDCO set out in Appendix D to the Panel's Report in the interests of clarity, consistency and precision. He considers that none of these changes, nor the changes set out elsewhere in this letter, either individually or taken together, materially alter the effect of the DCO.

## **General Considerations**

### Equalities Act 2010

107. The Secretary of State has had regard to the public-sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not (section 149(1) of the Equality Act 2010). The Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics.

### Natural Environment and Rural Communities Act 2006

108. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Community Act 2006 ("the 2006 Act") has to have regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992 when deciding on whether to grant development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and biodiversity duty in the relevant sections of the Report. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

## **Secretary of State's overall conclusion and Decision**

109. For all the reasons set out in this letter, the Secretary of State considers that there is a clear justification for authorising the Development. The Secretary of State has therefore decided, despite the ExA's recommendation at ER 9.3, to grant development consent, subject to the changes in the Order mentioned in paragraph 105. The Secretary of State is satisfied that none of these changes constitute a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.



**Challenge to Decision**

110. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A of this letter.

**Publicity for the Decision**

111. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours faithfully,

David Milroy

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

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

The A63 (Castle Street Improvement, Hull) Development Consent Order 2020 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/a63-castle-street-improvement-hull/>

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

**HABITATS REGULATIONS ASSESSMENT FOR AN  
APPLICATION UNDER THE PLANNING ACT 2008**

**A63 CASTLE STREET IMPROVEMENT, HULL**

**28 MAY 2020**

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# 1. INTRODUCTION

## Background

- 1.1. This document is a record of the Habitats Regulations Assessment ("HRA") that the Secretary of State for Transport has undertaken under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") in respect of the Development Consent Order ("DCO"), for the proposed 'A63 Castle Street Improvement, Hull' project ("the Development"). This document ("the HRA Report") includes an appropriate assessment for the purposes of regulation 63 of the Habitats Regulations.
- 1.2. Highways England ("the Applicant") applied to the Secretary of State for a DCO under section 37 of the Planning Act 2008 ("PA 2008") for the Development. The Development to which the Application relates is described in more detail in Section 2 of this HRA Report.
- 1.3. The Development constitutes a Nationally Significant Infrastructure Project (NSIP) by virtue of it being highway-related development consisting of the "improvement" of a highway under sections 14(1)(h), 22(1)(c) and 22(5) of the PA2008. The application for the Development was accepted for examination by the Planning Inspectorate ("the Inspectorate") (under the delegated authority of the Secretary of State) on 18 October 2018.
- 1.4. The Secretary of State for the Ministry of Housing, Communities and Local Government appointed Peter Willows as the Examining Authority ("ExA") for the Application on 7 January 2019. The examination commenced on 26 March 2019.
- 1.5. The Applicant submitted requests to make changes to the Development to which the Application relates during the examination, as set out in Section 2.2. of the ExA's Recommendation Report. The changes can be summarised as alterations to the proposed drainage design, a temporary bentonite batching compound and to car parking proposals.
- 1.6. The Applicant requested these changes to the Application in a submission to the ExA dated 17 June 2019 (for deadline 3 of the examination). Revised / updated application documents were provided as relevant in support of these changes.
- 1.7. The ExA accepted the changes as being 'non-material' amendments and issued a Procedural Decision confirming this on 1 July 2019. The ExA was content that the effect of the amendments was to 'narrow down' design options that were already set out in the original Application Documents.
- 1.8. The examination concluded on 26 September 2019. The ExA submitted the report of the examination, including its recommendation ("the ExA's Recommendation Report") to the Secretary of State on 24 December 2019. The Secretary of State's conclusions in relation to European sites have been informed by the ExA's report and the documents submitted during the examination as described below.

## Habitats Regulations Assessment

- 1.9. Council Directives 92/43/EEC ("the Habitats Directive") and 2009/147/EC ("the Birds Directive") provide for the designation of sites for the protection of certain species and habitats. The sites designated under these Directives are collectively termed European sites and form part of a network of protected

sites across Europe, known as the Natura 2000 network. In the UK the Habitats Regulations transpose these Directives into national law and apply up to the 12 nautical mile limit of territorial waters.

- 1.10. The UK Government is also a signatory to the Convention on Wetlands of International Importance 1972 ("the Ramsar Convention"). The Ramsar Convention provides for the listing of wetlands of international importance. UK Government policy is to give sites listed under this convention ("Ramsar sites") the same protection as European sites.
- 1.11. For the purposes of this HRA Report, in line with the Habitats Regulations and relevant Government policy, the term European sites includes Special Areas of Conservation (SAC), Special Protection Areas (SPA), candidate SACs (SAC), potential SPAs (pSPA), possible SACs (pSAC), Sites of Community Importance (SCI), listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.
- 1.12. Regulation 63 of the Habitats Regulations requires that:

*"(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which-*

*(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and*

*(b) is not directly connected with or necessary to the management of that site,*

*must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives..."*
- 1.13. The Development is not connected with or necessary to the management of any European sites. Accordingly, the Secretary of State for Transport, as the competent authority for the purposes of Transport NSIPs under the PA2008, has undertaken an assessment in line with the requirements of the Habitats Regulations. This HRA Report is the record of the appropriate assessment for the purposes of regulation 63 of the Habitats Regulations.

### **The Report on the Implications for European Sites and Consultation with the Appropriate Nature Conservation Body**

- 1.14. The ExA, with support from the Inspectorate's Environmental Services Team, produced a Report on the Implications for European Sites ("the RIES"). The purpose of the RIES was to compile, document and signpost information submitted by the Applicant and Interested Parties ("IPs") during the examination up to and including deadline 4 of the examination. It was issued to ensure that IPs, including Natural England ("NE") as the appropriate nature conservation body in respect of the Application for the Development, had been formally consulted on Habitats Regulations matters during the examination. The consultation period ran between 11 July 2019 and 5 August 2019.
- 1.15. Regulation 63(3) of the Habitats Regulations requires competent authorities (in this case the Secretary of State), if they undertake an appropriate assessment, to consult the appropriate nature conservation body and have regard to any representations made by that body.
- 1.16. NE made no direct submissions to the examination and did not comment on the RIES. However, a draft Statement of Common Ground ("SoCG") between

the Applicant and NE was submitted at deadline 1 of the examination on 23 April 2019, and an updated and signed version received at deadline 5. Subsequent references of this SoCG in this HRA Report are to the signed version. The SoCG confirmed that all matters relating to HRA were agreed between the two parties (Table 3.3 of the SoCG), and that there were no matters outstanding between them in relation to this or any other aspect of the Development.

- 1.17. The Secretary of State is satisfied that NE have been consulted and has been given suitable opportunities to make representations in accordance with regulation 63(3) of the Habitats Regulations.

### **Changes to the Application during Examination**

- 1.18. In respect of the non-material amendments to the Application described above and at Section 2.2 of the ExA's Recommendation Report, the Secretary of State is satisfied that the changes constituted non-material amendments that did not have any bearing on HRA matters. The Applicant provided addenda to the ES in respect of the revisions to the Application, which concluded that there were no significant implications to the findings of the ES (and that the Development, as amended, would not result in effects beyond those assessed by the ES). No specific updates were made to the Applicant's HRA documentation (as set out in the following section).
- 1.19. The Secretary of State is satisfied that the non-material amendments related to refinement of 'options', all of which were considered as part of the Application as made (and assessed as part of the HRA documentation). The Secretary of State concludes that the findings in the Applicant's HRA Report (as described below) are unaffected by the non-material amendments.

### **Documents Referred to in this HRA Report**

- 1.20. This HRA Report has taken account of and should be read in conjunction with the documents produced as part of the application and examination as listed in Annex 1 to this HRA Report.
- 1.21. The Applicant submitted a report entitled 'Assessment of the Implications on European Sites (Habitat Regulations Assessment) Screening Report - No Significant Effects' ("the AIES") as part of their DCO application. This is the principal document prepared by the Applicant in support of HRA matters. The AIES was accompanied by the following appendices:
- Appendix A: Characteristics of European Sites
  - Appendix B: Location of European Sites in Relation to the Scheme
  - Appendix C: PINS Advice Note 10 Appendix 1 Screening Matrices
  - Appendix D: Ecology Baseline
  - Appendix E: Hydrology and water technical note
  - Appendix F: Noise and Vibration Technical Note
  - Appendix G: Air Quality Modelled Receptor Locations

### **Structure of this HRA Report**

- 1.22. The remainder of this HRA Report is presented as follows
- Section 2 provides a general description of the Development.

- Section 3 describes the location of the Development and its relationship with European sites.
- Section 4 identifies the European sites and qualifying features subject to likely significant effects, alone or in-combination with other plans or project.
- Section 5 considers adverse effects on the integrity of European sites, alone or in-combination with other plans or projects.
- Section 6 summarises the Secretary of State's appropriate assessment and HRA conclusions.



## 2. DEVELOPMENT DESCRIPTION

- 2.1. The Development comprises the following improvements to approximately 1.5km of the A63 and connecting side roads in Hull city centre between Ropery Street (at the eastern extent) and the Market Place/Queen Street junction (at the western extent):
- Creation of an underpass and grade separated junction at the Mytongate Junction;
  - Widening the eastbound A63 carriageway between Princes Dock Street and Market Place;
  - Removal of all existing signal controlled and uncontrolled pedestrian crossings and provision of new bridges for pedestrians, cycles and disabled users at Porter Street and Princes Quay shopping centre;
  - Upgrading existing provisions for pedestrians, cycles and disabled users to cross underneath the A63;
  - Closure of junctions and restricting movements on some side roads on the A63 to improve safety;
  - Vegetation clearance, exhumation and reburial works within Trinity Burial Ground (and demolition of the Myton Centre to enable creation of replacement public open space);
  - Demolition and rebuilding of the Grade II listed Earl de Grey Public House;
  - Localised diversion of statutory utilities beneath the existing A63; and
  - Water storage and pumping station structures.
- 2.2. A detailed description of the Development is provided in Chapter 2 of the ES (Document 6.1, Section 2.6) and in Chapter 2 of the Planning Statement (Document 7.1). The design of the Development is also presented in the General Arrangement plans (Document 2.2) and the Environmental Masterplan, Figure 2.10 of the ES (Document 6.2).
- 2.3. Paragraph 1.1.3 of the AIES explains that the construction of the 'Princes Quay Bridge' may be commenced prior to the DCO being made. This bridge would provide a crossing over the A63 for pedestrians, cyclists and disabled users near to Princes Dock Street and Humber Dock Street. The Applicant has obtained separate planning permission for these works under the Town and Country Planning Act 1990, although these works also remain part of the DCO application for the Development. The Applicant adopted this approach so as to avoid any delay in implementation of their existing consent threatening the construction timetable for completion of the 'greater A63 Scheme'. This is also set out in Paragraph 2.3.1 of the ExA's Recommendation Report.
- 2.4. The Applicant explains that a separate report relating to HRA matters for the 'Princes Quay Bridge application' was prepared (referred to as the '2018 HRA Screening Report'), and that the AIES "*extends and refines the findings of the 2018 HRA Screening Report to the entire Scheme which is the subject of the DCO*".
- 2.5. In making this HRA the Secretary of State has taken into account the entirety of the Development and the relationship with other relevant consents including those to which the DCO relates. This is considered further in the following sections of this report as relevant.

- 2.6. The phased construction of the Development is expected to take approximately five years. Phase 0 primarily delivers the site preparation and enabling works. Construction phases 1-7 are set out in Table 2.5 of ES Chapter 2 (Document 6.1) and are not replicated in detail here.
- 2.7. Alongside 'typical' construction activities associated with roadwork schemes, the Development would include initial archaeological investigation works and would also involve piling, diaphragm wall installation and jet grouting for the underpass, slip roads, the pedestrian, cycle and disabled user bridges and within Trinity Burial Ground.
- 2.8. Following completion of the Development, ongoing maintenance would follow Highways England's Routine and Winter Service Code (RWSC) and Network Management Manual (NMM) which set out mandatory requirements for the delivery of routine maintenance and operational service. Maintenance operations would include routine activities required on a cyclical or regular basis (with potential for infrequent, non-routine activities with less predictable access requirements).
- 2.9. Decommissioning and / or demolition works at the end of the Development's operational life are yet to be determined. The Applicant has advised that the design life for the operation of the Development is 60 years (and that any decommissioning of the Development would be subject to its own environmental assessment and consenting process at that time).
- 2.10. The potential effects on European sites associated with the construction, and operation of the Development are addressed in Section 4 of this HRA Report.

### **3. LOCATION OF THE DEVELOPMENT AND RELATIONSHIP WITH EUROPEAN SITES**

#### **Location and Existing Land Use**

- 3.1. The Development is located within the administrative boundary of Hull City Council (HCC) is on the north bank of the Humber Estuary. 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 River Humber is located approximately 500m to the south of the Development, beyond the Hull Dock Marina.
- 3.2. 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.
- 3.3. The area surrounding the Development is made up of a variety of land uses, consistent with the urban location and adjacent waterfront, and includes:
- Residential properties of varying types (semi-detached, terraced, flats, residential tower blocks 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;
  - Leisure facilities including hotels, Hull Arena, cinema, restaurants and bars;
  - Public open space at Trinity Burial Ground and various small parks
  - Grade II Listed buildings at Humber Dock Earl De Grey Public House and "Warehouse No. 6";
  - Various Public Rights of Way (PRoW) including footways and cycleways;
  - Marinas at Humber Dock and Railway Dock; and
  - The Humber Estuary.
- 3.4. The Humber Estuary is a designated Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site, and all of these designations share the same boundary close to the A63. Although there are various figures quoted in the Applicant's AIES, the Development lies within 70m of the Humber Estuary at its closest point (as shown in Figure 1 of this HRA Report)<sup>1</sup>.
- 3.5. Figures 2.1 and 2.4 of the ES depict the Development in relation the surrounding urban environment, the Humber Estuary and other environmental constraints. Figure 2.10 of the ES presents an '*Environmental Masterplan*' for the Development.

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<sup>1</sup> The AIES also quotes "Distance to NSIP: 90m (nearest point of Wider Scheme) 295m (Princes Quay Bridge piling footprint)"

## **European Sites Potentially Affected by the Development**

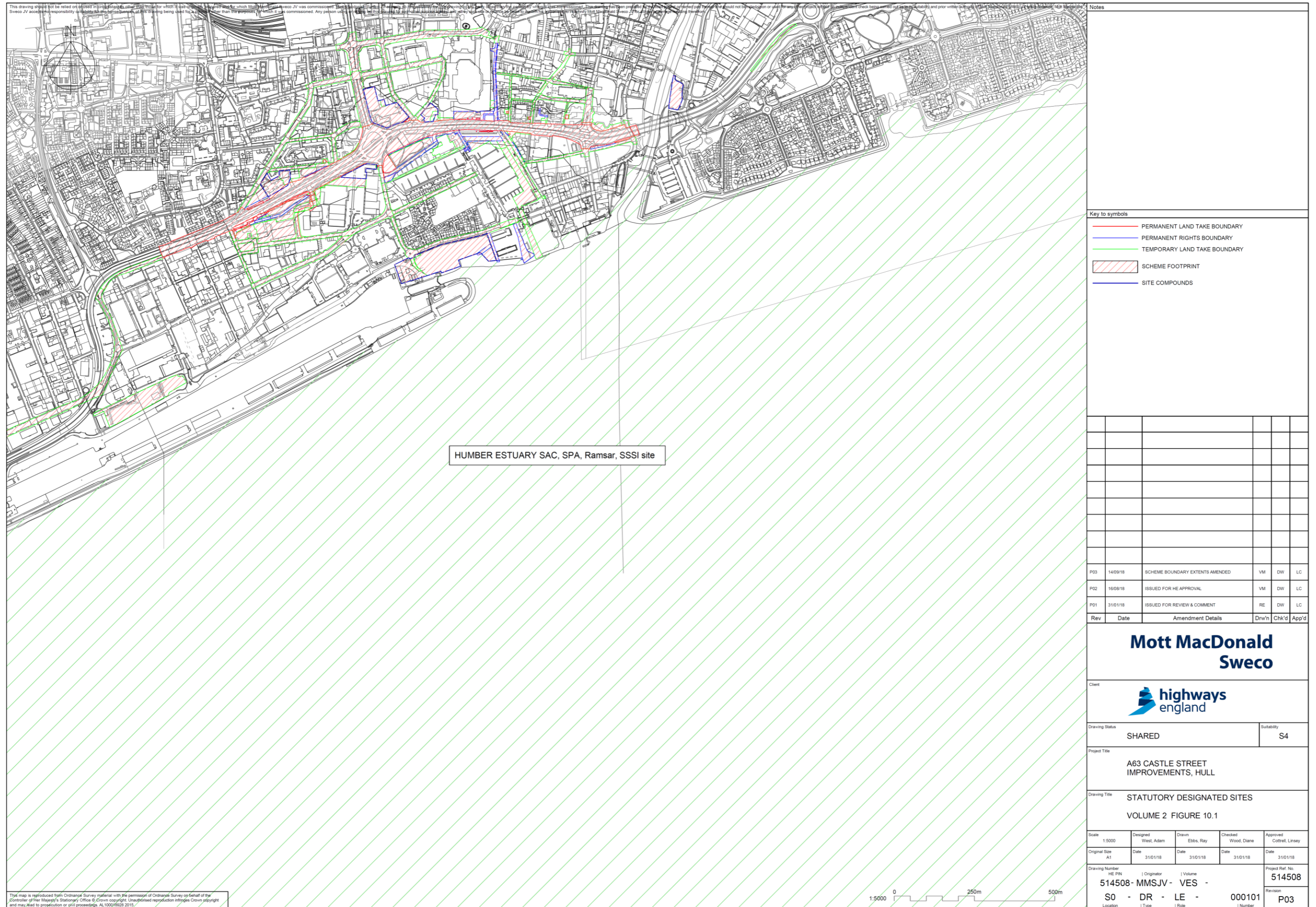
- 3.6. The Order limits of the Development do not overlap with the boundaries of any European sites (although they are in proximity as set out above). The Applicant's AIES identifies three European sites<sup>2</sup> for which there could be pathways of effect from the Development. These are the Humber Estuary SAC, SPA and Ramsar sites, and as set out in Paragraph 1.2.3 of the AIES Report, all three designations share the same boundary.
- 3.7. These three European sites were identified, in accordance with the Design Manual for Roads and Bridges (DMRB) HD 44/09<sup>3</sup>, because they are located within 2km of the Development. The Applicant also confirms that there are no other European sites within 2km and no European sites for which bats are one of the qualifying interests within 30km of the Development.
- 3.8. The location of the Development in relation to the three identified European sites is shown in Figure 1 below (provided by the Applicant as Appendix B of the AIES). The distances to the identified European sites and relevant pathways of effect are considered further in Section 4 and Table 1 of this HRA Report.
- 3.9. No evidence was presented during the examination to suggest that effects from the Development could occur on any other European site.
- 3.10. The Secretary of State is therefore satisfied that no other European site needs to be addressed in this HRA Report.
- 3.11. The Secretary of State is also satisfied that the Development is not directly connected with or necessary to the management of any European site as stated in Paragraph 2.1.1 of the ExA's RIES.

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<sup>2</sup> The term European sites in this context includes Special Areas of Conservation (SAC), Sites of Community Importance (SCI), candidate SACs (cSAC), possible SACs (pSAC), Special Protection Areas (SPAs), potential SPAs (pSPA), Ramsar sites and proposed Ramsar sites

<sup>3</sup> DMRB Volume 11 Section 4 Part 1 (HD 44/09) Environmental assessment. Assessment of implications on European Sites. Assessment of implications (of highways and/or roads projects) on European Sites (including appropriate assessment)

**Figure 1 Location of the Development in relation to European sites potentially affected**



## 4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

### Potential Effects from the Development

- 4.1. Section 3 of the AIES outlines the Applicant's approach to screening for LSE. Paragraphs 1.1.5 and 1.16 of the AIES set out that that Applicant had had regard to the judgement of the European Court of Justice (ECJ) in respect of *People Over Wind, Peter Sweetman v Coillte Teoranta*<sup>4</sup> around taking account of any measures intended to avoid or reduce the harmful effects at the LSE screening stage.
- 4.2. Sections 3.2 – 3.9 of the AIES and Paragraph 5.4.1 of the ExA's Recommendation Report set out the following potential effects which could occur as a result of construction and operational activities necessary for the Development:
- Changes to surface water run-off, deposition of dust, silt and sediments and pollution spills (construction and operation)
  - Re-siting of the Spurn Lightship – sedimentation (construction)
  - Noise and vibration (construction and operation)
    - Piling works in the marina for Princes Quay Bridge potentially resulting in disturbance to sediment and aquatic fauna
  - Emissions to air (construction and operation); and
  - Groundwater contamination.
- 4.3. Section 3.9 of the AIES also considers potential effects from the proposed site compound locations in respect of the Mean High Water Spring tide (MHWS) level. All of the compound locations are stated as being above the MHWS level.
- 4.4. The Applicant's assessment follows a source-pathway-receptor model and no other impact pathways are identified as part of the AIES
- 4.5. No evidence was presented during the examination that the Development was likely to give rise to any other effects on European sites than had been considered by the Applicant as set out above.

### Sites and Features which could be Affected

- 4.6. The Applicant's AIES screened the sites and qualifying features listed in Table 1 to establish if significant effects were likely. The Secretary of State is content that this list includes all of the sites and qualifying features which require consideration given the nature, scale and location of the Development.

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<sup>4</sup> <http://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN>

**Table 1 Sites screened into Applicant's AIES**

Name of European site and location in relation to the Development	Qualifying features	Pathways of effect
<p><b>Humber Estuary SAC</b> c. 70 - 90m from the Development at the closest point (c.295m from Princes Quay Bridge piling works)</p>	<p><b><u>Annex I habitats</u></b></p> <ul style="list-style-type: none"> <li>• Estuaries</li> <li>• Mudflats and sandflats not covered by seawater at low tide</li> <li>• Sandbanks which are slightly covered by sea water all the time</li> <li>• Coastal lagoons</li> <li>• <i>Salicornia</i> and other annuals colonizing mud and sand</li> <li>• Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>)</li> <li>• Embryonic shifting dunes</li> <li>• Shifting dunes along the shoreline with <i>Ammophila arenaria</i></li> <li>• Fixed coastal dunes with herbaceous vegetation</li> <li>• Dunes with <i>Hippophae rhamnoides</i></li> </ul> <p><b><u>Annex II species</u></b></p> <ul style="list-style-type: none"> <li>• Sea lamprey <i>Petromyzon marinus</i></li> <li>• River lamprey <i>Lampetra fluviatilis</i></li> <li>• Grey seal <i>Halichoerus grypus</i></li> </ul>	<ul style="list-style-type: none"> <li>• Pollution and scour of estuarine habitats via surface water discharge</li> <li>• Contamination during construction of bridge, and dry dock</li> <li>• Noise and vibration during construction of the bridge and dry dock</li> <li>• Emissions to air during construction and traffic during operation</li> <li>• Contamination of groundwater</li> <li>• In combination effects of all the above between the Development and separate consent for Princes Quay Bridge</li> </ul>
<p><b>Humber Estuary SPA</b> (distance to the Development as set out for the Humber Estuary SAC, above)</p>	<p><b><u>Article 4.1 Qualification (79/409/EEC)</u></b> During breeding season the area regularly supports:</p>	<p>As per those identified for the Humber Estuary SAC above</p>

Name of European site and location in relation to the Development	Qualifying features	Pathways of effect
	<ul style="list-style-type: none"> <li>• Bittern</li> <li>• Marsh Harrier</li> <li>• Avocet</li> <li>• Little Tern</li> </ul> <p>Over winter the area regularly supports:</p> <ul style="list-style-type: none"> <li>• Bittern</li> <li>• Hen Harrier</li> <li>• Bar-tailed Godwit</li> <li>• Golden Plover</li> <li>• Avocet</li> </ul> <p>On passage the area regularly supports:</p> <ul style="list-style-type: none"> <li>• Ruff</li> </ul> <p><b><u>Article 4.2 Qualification (79/409/EEC)</u></b></p> <p>Over winter the area regularly supports:</p> <ul style="list-style-type: none"> <li>• Dunlin</li> <li>• Knot</li> <li>• Black-Tailed Godwit</li> <li>• Common Shelduck</li> <li>• Redshank</li> </ul> <p>On passage the area regularly supports:</p> <ul style="list-style-type: none"> <li>• Dunlin</li> <li>• Knot</li> <li>• Black-tailed Godwit</li> <li>• Redshank</li> </ul>	



Name of European site and location in relation to the Development	Qualifying features	Pathways of effect
	<p>In the non-breeding season the area regularly supports:</p> <ul style="list-style-type: none"> <li>• Waterfowl</li> </ul>	
<p><b>Humber Estuary Ramsar</b> (distance to the Development as set out for the Humber Estuary SAC, above)</p>	<p><b><u>Ramsar criterion 1</u></b> The site is a representative example of a near-natural estuary with the following component habitats:</p> <ul style="list-style-type: none"> <li>• dune systems and humid dune slacks</li> <li>• estuarine waters</li> <li>• intertidal mud and sand flats</li> <li>• saltmarshes</li> <li>• coastal brackish/saline lagoons.</li> </ul> <p><b><u>Ramsar criterion 3</u></b> Supports a breeding colony of grey seals <i>Halichoerus grypus</i>. Dune slacks are the most north-easterly breeding site in Great Britain of the natterjack toad <i>Bufo calamita</i></p> <p><b><u>Ramsar criterion 5</u></b> Assemblages of international importance:</p> <ul style="list-style-type: none"> <li>• Waterfowl, non-breeding season</li> </ul> <p><b><u>Ramsar criterion 6</u></b> Species/populations occurring at levels of international importance:</p> <ul style="list-style-type: none"> <li>• Common shelduck, <i>Tadorna tadoma</i></li> </ul>	<p>As per those identified for the Humber Estuary SAC above</p>

Name of European site and location in relation to the Development	Qualifying features	Pathways of effect
	<ul style="list-style-type: none"> <li>• Eurasian golden plover, <i>Pluvialis apricaria</i></li> <li>• Red knot, <i>Calidris canutus</i></li> <li>• Dunlin, <i>Calidris alpina</i></li> <li>• Black-tailed godwit, <i>Limosa</i></li> <li>• Bar-tailed godwit, <i>Limosa lapponica</i></li> <li>• Common redshank, <i>Tringa tetanus</i></li> </ul> <p><b><u>Ramsar criterion 8</u></b></p> <p>Important migration route for both river lamprey <i>Lampetra fluviatilis</i> and sea lamprey <i>Petromyzon marinus</i> between coastal waters and their spawning areas.</p>	

## **Conservation Objectives**

- 4.7. The conservation objectives for European sites define the desired state for a European site when it will contribute to favourable conservation status for the designated features. The conservation objectives, as published by NE and the Joint Nature Conservation Committee (JNCC) are provided in Annex 2 of this HRA Report.
- 4.8. There are no conservation objectives published for Ramsar sites, but the Secretary of State is satisfied that the criterion of the Humber Estuary Ramsar site are reflected by the qualifying features for the SAC and SPA. These conservation objectives have therefore been considered as a suitable proxy for the Ramsar site.

## **Assessment of In-combination Effects**

- 4.9. Section 3.11 of the Applicant's AIES describes that the only other plans and project which was considered for its potential in-combination effects with the Development on European sites was the construction of the Princes Quay Bridge along the A63 Castle Street. As set out in Paragraphs 2.3 and 2.4 of this HRA Report, the Applicant has a planning consent to construct the Princes Quay Bridge separately to the DCO (subject to land agreements, discharge of planning conditions and the grant of a marine licence<sup>5</sup>).
- 4.10. Although not set out in the AIES, Chapter 16 of the ES outlines the approach for each assessment topic in the ES and the relevant 'other developments' identified in terms of their potential for cumulative effects (as listed in Appendix 16.2 of Document 6.3). Paragraph 16.7.9 of ES Chapter 16 explains that the traffic model for the Development (during construction and operation) has addressed future committed developments and therefore the cumulative environmental impacts of traffic changes are incorporated within the main construction and operational modelled traffic scenarios.
- 4.11. Having considered the list presented in the ES Chapter 16 and its supporting appendices, the Secretary of State is content that all plans and projects with the potential to have in-combination effects with the Development in terms of the HRA have been identified. The Secretary of State is also satisfied that the approach to the assessment of in-combination effects was not the subject of any dispute during the examination, a point further evidenced through NE's agreement with the Applicant's conclusions in Table 3.3 of their SoCG (signed version submitted at deadline 5 of the Examination).

## **LSE Screening Conclusions**

- 4.12. The AIES concluded that the Development would have no likely significant effect, either alone or in-combination with other plans or projects, on any of the qualifying features of the Humber Estuary SAC / SPA / Ramsar sites from any of the impact pathways identified. Information to support these conclusions is set out in Sections 3.2 – 3.9 of the AIES.

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<sup>5</sup> Paragraph 1.1.3 of the AIES states that the content is subject to grant of a marine license. The Secretary of State is aware that from submissions by the Marine Management Organisation (MMO) at Deadlines 1 and 2 of the Examination that the MMO has already granted a licence for the marine aspects of the new bridge Princes Quay Bridge (application reference: MLA/2018/00358; licence number: L/2018/00390/1)

4.13. The conclusions reached in the AIES are summarised for each of the impact pathways as follows:

- **Silt and sediments and pollution spills (construction)**
  - Sediment disturbance and contamination are unlikely to have a significant impact on the European sites due to the 'high degree of dilution' that would occur rapidly within the marina (supported by AIES Appendix E);
- **Sedimentation during the re-siting of the Spurn Lightship (construction)**
  - Manual movement (by rope) of the floating Lightship will result in minimal / no disturbance to the bed of the marina (therefore no LSE are anticipated).
- **Noise and vibration (construction)**
  - The nearest habitats that could support qualifying bird species in any significant number are at a distance where airborne construction noise and vibration would have no LSE;
  - Vibration from piling works for Princes Quay Bridge could affect lamprey or grey seals (although it is considered 'unlikely' that they would enter the marina through the lock gates). If they were to enter it would be as individuals or in very small numbers so no LSE are anticipated
- **Emissions to air (construction and operation) <sup>6</sup>**
  - Construction traffic effects and effects of construction dust generation are not considered to have the potential for LSE on the European sites because of the magnitude of impact, sensitivity of qualifying features to dust and the dynamic nature of the Estuary ("flushing action" of tides);
  - Table 6.19 of ES Chapter 6 (Document ref 6.1) anticipates a change in NO<sub>x</sub> emissions at levels greater than 0.4ug/m<sup>3</sup> resulting from increased traffic from the Development. This is anticipated to occur at one reference point in the modelled transects and where total NO<sub>x</sub> concentrations are above the 30ug/m<sup>3</sup>critical level (under both 'do minimum' and 'do something' scenarios). This increase occurs at transect 1 at a distance of approximately 3m from the A63. However at greater distances (approx. 13m), the degree of anticipated change is smaller and the total concentration level is predicted to be below 30ug/m<sup>3</sup>. The habitat type in transect 1 is coastal saltmarsh and has a critical load for nutrient nitrogen deposition of 20-30kgN ha<sup>-1</sup>yr<sup>-1</sup>. The anticipated changes in total nitrogen deposition at this transect as a result of the Development are less than 1% of the critical load (with the total deposition remaining below the critical load). The Applicant concludes that there would be no LSE on any of the qualifying features based on the anticipated level of increase and having regard to the "flushing action" of tides reduce the input of atmospheric nitrogen to the saltmarsh.

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<sup>6</sup> Sections 3.7 and 3.8 of the AIES does not present a 'source pathway receptor' linkage for air emissions or groundwater contamination, so the particular European site qualifying features (receptors) are not specifically identified

- **Groundwater contamination (construction)<sup>6</sup>**

- The assessment concluded that there is limited connectivity between the construction works area in the docks and the identified European sites. These conclusions are set out in Paragraphs 6.1.3 – 6.1.6 of ES Appendix 11.4 (Document ref. 6.3).

4.14. The signed SoCG between the Applicant and NE submitted at deadline 5 records NE's agreement (in respect of the AIES) that:

*"...based on the justification set out in Section 3 of the report, Natural England agrees with the conclusion of no likely significant effect."*

- 4.15. As set out in Paragraphs 5.4.2 – 5.4.5 of the ExA's Recommendation Report, the examination focussed on establishing the Applicant's approach with regard to mitigation including when and how this has been taken into account in relation to the HRA process. In particular, how the Applicant has had full regard to the implications of the ECJ ruling in *People Over Wind, Peter Sweetman v Coillte Teoranta*.
- 4.16. This was the specific subject of the ExA's first written question 1.0.1 noting that the Applicant has referred to mitigation measures linked to the Humber Estuary in the application documents, particularly those set out in the Applicant's Register / Record of Environmental Actions and Commitments (REAC) (Document ref. 6.11). This document lists a series of measures to prevent airborne dust, vehicle emissions, 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 as qualifying features of the Humber Estuary SAC / Ramsar). The ExA appeared to be satisfied in terms of effects on flora and on all qualifying features of the SPA.
- 4.17. In respect of piling activities at the Humber Dock Marina, Paragraph 10.7.12 of ES Chapter 10 (and item E1 of the REAC) list a series of 'measures' that should be followed to mitigate impacts to fauna in the estuary prior to the commencement of piling.
- 4.18. The Applicant's response stated that the AIES conclusions were reached 'without mitigation' being relied upon and that due regard had been given to the ECJ ruling in concluding no LSE for all sites and features. The ExA also posed questions around the perceived "reduced survey effort" at the construction compound locations for birds insofar as they could support qualifying bird species connected to the Humber Estuary SPA and Ramsar (i.e. be considered as 'functionally linked' land). Breeding bird survey efforts at the compounds to support the HRA conclusions were concentrated between May and June 2016, and the proposed site compound<sup>7</sup> at Neptune Street was not captured as part of those surveys.
- 4.19. This was explored as question 1.2.3 of the ExA's first written questions. The Applicant's response at deadline 2 explained this reduced level of survey effort at the Neptune Street compound:
- The compound was first identified as a potential site compound in July 2016. However, access to complete the survey was not granted until

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<sup>7</sup> The locations of the construction compound options are shown in Figure 2.12 of ES Chapter 2 (Document ref. 6.2)

August 2016 and after surveys at other construction compounds had been undertaken and beyond the optimal survey season;

- The compound was 'removed' as a construction compound option in January 2018 but reinstated in May 2018 due to a change in circumstances around the availability of alternative sites;
- The 'culmination of these events' prevented breeding bird surveys being undertaken but that the potential for significant effects had been correctly identified using data from the other compounds surveyed (the Neptune Street was also surveyed for wintering birds which did not show the presence of feeding wintering birds which are qualifying features of the Humber Estuary SPA and Ramsar);
- The habitat type of the Humber Estuary adjacent to the Development and the compound is not mudflat or saltmarsh and the substrate is not exposed during low tides. As such, the Applicant maintains there is no functional link between the Neptune Street site compound and the Humber Estuary SPA and Ramsar in relation to wintering birds; and
- In respect of breeding birds, the Applicant cannot be definitive as to a functional link between Neptune Street from the Humber Estuary SPA and Ramsar. However, 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 European site bird assemblages. In their response, the Applicant also referred to measures implemented to avoid or reduce impacts to birds during clearance of the compound area (in the Outline Environmental Management Plan (OEMP) (Document ref. 7.3) and REAC item E5 (Document ref. 6.11).

- 4.20. NE as the Statutory Nature Conservation Body (SNCB) did not express a view in response to the ExA's question although the Secretary of State recognises their clearly expressed view as set out in 4.14 above, that LSE can be excluded for all features. No other parties expressed contrary views in this regard during the examination.
- 4.21. The Secretary of State notes the Applicant's findings, in Section 3.7 of the AIES, that air quality impacts would be limited in extent and unlikely to result in LSE on the identified European sites, during construction and / or operation. Paragraph 6.7.1 of ES Chapter 6 outlines that construction works would be carried out in accordance with 'Best Practicable Means' included within the Outline Environmental Management Plan OEMP and which would be implemented by the Contractor through a Construction Environment Management Plan (CEMP).
- 4.22. Taking into account the nature and proximity of the works and the potential source-pathway-receptor links to the European sites, the Secretary of State considers that it is not possible to entirely exclude LSE from air quality impacts during construction, and that therefore an appropriate assessment is required. This conclusion is notwithstanding the measures included within the Applicant's REAC and OEMP, proposed, at least to some extent, to reduce the effects of construction dust and emissions on sensitive receptors including the Humber Estuary European sites. These are considered further in Section 5 of this HRA Report.
- 4.23. In terms of operational air quality, the Secretary of State considers the potential for LSE as follows:

- The magnitude of changes in NO<sub>x</sub> concentrations are above the critical load under the 'do something' scenario at only one point of the modelled transects (3m from the A63 edge at 'transect 1'). This exceedance is also predicted under the 'do minimum scenario' (ie in the absence of the Development). Beyond 13m from the roadside, the magnitude of change between 'do minimum' and 'do something' scenarios falls to being 'imperceptible' and the overall concentration falls below the critical load (and decreasing further with distance from the road). Any effects are therefore experienced on an extremely small fraction of coastal saltmarsh habitat within the wider, large and dynamic estuarine environment;
  - The habitat present at transect 1 is coastal saltmarsh and the total nitrogen deposition at this transect as a result of the Development is less than 0.2% of the critical load. The baseline, 'do minimum' and 'do something' scenarios are all below the lower end of the 20-30kgN ha<sup>-1</sup>yr<sup>-1</sup> critical load for this habitat type at 3m from the roadside, decreasing further with distance from the road; and
  - The 'flushing action' of tides in the Humber Estuary is likely to reduce the input of atmospheric nitrogen to the saltmarsh ecosystem.
- 4.24. The Secretary of State therefore concludes that there would be no LSE on any of the qualifying features from air quality impacts during the operation of the Development.
- 4.25. Groundwater contamination effects during construction have been considered and the Secretary of State notes that the evidence provided by the Applicant demonstrates that hydraulic connectivity between groundwater receptors in the Development area and the Humber Estuary is likely to be very limited. The Applicant's modelling demonstrates that the zone of influence from the Development on groundwater receptors does not extend to the Humber Estuary. This is summarised in Section 2.7 and Chapter 6 of ES Appendix 11.4 (Groundwater report).
- 4.26. However, the evidence in the Applicant's ES Appendix 11.4 also demonstrates that "*...the hydraulic connection between the Humber Estuary and the underlying Chalk is not well understood...*". The uncertainty in this regard is in part addressed by reliance on a programme of groundwater monitoring and sampling to be agreed with the EA and delivered as part of a 'Groundwater Management, Dewatering and Discharge Control Plan' (as set out in the OEMP).
- 4.27. The Secretary of State is therefore of the view that in absence of these measures LSE to the European sites from groundwater cannot be excluded, and that an appropriate assessment is necessary.
- 4.28. The Secretary of State is satisfied that during operation of the Development, there would be no LSE on any European sites in terms of groundwater impacts.
- 4.29. The Secretary of State agrees with the findings of the ExA's recommendation report at Paragraph 5.4.13. It is apparent that the conclusions of no LSE in relation to certain qualifying features are, to an extent, reliant on the implementation of measures intended to avoid or reduce the harmful effects at the LSE screening stage. Those measures are primarily set out in the OEMP and REAC.
- 4.30. Therefore, an appropriate assessment to consider the potential for adverse effects on the integrity of the European sites is required.

- 4.31. The pathways of impact to be considered as part of the appropriate assessment in Section 4 of this HRA Report are as follows:
- Silt, sediments and pollution spills (construction);
  - Air quality impacts (construction);
  - Noise and vibration (construction);
    - Piling works at Princes Quay Bridge;
    - Potential effects of bird disturbance on functionally linked land
  - Groundwater contamination (construction)
- 4.32. Applying the precautionary principle, the Secretary of State makes an appropriate assessment in light of all qualifying features of all of the identified European sites.
- 4.33. The Secretary of State has considered the Applicant's conclusions and the ExA's Recommendation Report for all other features and pathways of effect that are not set out above and concludes that there would be no LSE on any of the qualifying features from other impact pathways.
- 4.34. These issues are considered further in the following section of this HRA Report.



## 5. APPROPRIATE ASSESSMENT

- 5.1. As LSE cannot be excluded, the Secretary of State, as the competent authority is required to undertake an appropriate assessment to determine the implications for the conservation objectives of the affected European sites. In line with the requirements of regulation 63 of the Habitats Regulations, the competent authority:

*'...may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site...In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given'.*

- 5.2. As noted in Section 1 of this HRA Report, the competent authority is obliged to consult the appropriate nature conservation body and have regard to any representations made by that body. For this purpose, the ExA prepared a RIES as set out in Paragraphs 1.14 - 1.17 of this HRA Report, and the Secretary of State is satisfied that NE have been consulted in line with regulation 63 of the Habitats Regulations.
- 5.3. If the competent authority cannot exclude adverse effects on the integrity of the affected European sites on the basis of objective scientific evidence, then it can only consent a plan or project if it complies with the requirements of regulation 64 of the Habitats Regulations. This means that there must be no alternative solutions to the delivery of the plan or project that would have lesser effects on the European sites, the plan or project must be delivered for imperative reasons of overriding public interest. In addition, regulation 68 requires compensatory measures to be secured which maintain the overall coherence of the Natura 2000 network.

### **Adverse Effects on the Integrity of the European sites**

- 5.4. For the purposes of the following sections, the Humber Estuary SAC, SPA and Ramsar sites will be considered concurrently having regard to the relevant impact pathways identified above.
- 5.5. Construction activities at Princes Quay Bridge, particularly piling but also the management and storage of pollutants and air quality impacts, have the potential to affect the qualifying features of the European sites. The impacts identified include disturbance to sediments and mobilisation of contaminants. This also includes the potential impacts to groundwater receptors which may be in hydraulic connectivity with the European sites.
- 5.6. Construction piling activities also present impacts from increased underwater noise. These impacts have the potential to affect certain fish and marine mammal features of the Humber Estuary SAC and Ramsar.
- 5.7. The Applicant has proposed a variety of measures intended to avoid or reduce the effects that may occur as a result of these impacts. Items AQ1, G6, E1 and E3 in the REAC (Document ref. 6.11 and Annex B to the OEMP (Document ref 7.3)), place duties on the Principal Contractor to deliver the following as part of a CEMP:
- 'Best practice methodologies' and industry standard pollution prevention and control measures to be used in the site compounds and work areas

to control pollutants (e.g. silt curtains) and generation of dust and vehicle / plant emissions (including dust suppression);

- Closure of dock gates during piling to control and contain silt and sediment and absorb noise and vibration;
- Trained marine fauna ecologists as observers to check that the dock (and up to 500m beyond) are clear of marine animals prior to piling;
- 'Soft start-up' of piling machinery to disperse any potential fish, birds or mammals present in the dock;
- Concrete mixing and washing areas would be located more than 10m from waterbodies (and wash water would be compounded and disposed of appropriately, ie not to the water environment); and
- Disposal of excavated material and excess pile / wall material would be characterised and disposed of in accordance with relevant statutory instrument and guidance (with supporting chemical analysis undertaken where appropriate).

5.8. Under Requirement 4 of the DCO, a CEMP (for each part of the Development) must be prepared and submitted for the approval of the Secretary of State, and that CEMP must:

- Be substantially in accordance with the OEMP (a certified document under Schedule 9 of the DCO);
- Reflect the mitigation measures set out in the REAC; and
- Include management plans as listed in Requirement 4(d)(i – xvii). These plans include (but are not limited to) the following measures relevant to the findings of this appropriate assessment:
  - Marine Mammal Mitigation Plan (MMMP);
  - Groundwater Monitoring Plan (GMP);
  - Erosion Prevention and Sediment Control Plan (EPSCP);
  - Noise and Vibration Management Plan (NWMP)'
  - Materials Management Plan (MMP);
  - Site Waste Management Plan (SWMP); and
  - Foundation Works Risk Assessment (FWRA).

5.9. The Secretary of State is satisfied that these measures are sufficiently secured through the provisions in the DCO and that, they would serve to avoid or reduce impacts to the qualifying features of the European sites.

5.10. The Applicant acknowledged that limitations to breeding bird survey information present a degree of uncertainty with regards to the ecological value of land affected by the Development. The Secretary of State accepts the view of the ExA that, having had regard to the available information, the ecological value of the construction compound land is unlikely to be particularly high in relation to relevant breeding bird populations at the SPA and Ramsar. The Secretary of State is also satisfied that the relatively small scale of any impact (taking into account the availability of functionally linked land in and around the estuarine environment) is such that any indirect impacts from displacement are unlikely and would be of small scale even if they were to occur.

- 5.11. The Secretary of State is also content with the inclusion of measures in the REAC (Annex B to the OEMP). Notably item E5 of the REAC which restricts the Applicant's ability to clear any area with potential nesting habitat to periods outside of the breeding bird season. An Ecological Clerk of Works (ECoW) is also required to be present prior to vegetation clearance to search the area and move any fauna to safety, and any lighting would be directed away from the Humber Estuary.
- 5.12. These measures are in the OEMP and are secured by DCO Requirement 4, as set out in Paragraphs 5.8 and 5.9 above.

## **6. HRA CONCLUSIONS**

- 6.1. As the competent authority for Transport NSIPs as defined under the PA2008, the Secretary of State for Transport has undertaken an appropriate assessment under Regulation 63 of the Habitats Regulations in relation to the following European sites:
  - Humber Estuary SAC;
  - Humber Estuary SPA; and
  - Humber Estuary Ramsar.
- 6.2. The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of these European sites and where relevant, the mitigation measures in place to avoid and reduce the potential harmful effects, there would not be any implications for the achievement of the conservation objectives for those European sites. Those conservation objectives are set out in Annex 2 of this HRA Report. The Secretary of State also recognises the nature of the Development in the context of the existing urbanised environment next to the large open expanse of the dynamic Humber Estuary.
- 6.3. Based on the submissions to the examination as summarised in the ExA's RIES and Recommendation Report, the Secretary of State is satisfied that the views of NE as the appropriate nature conservation body have been considered and that they are in agreement with the scope and conclusions of the Applicant's AIES.
- 6.4. The Secretary of State concludes that the Development would not result in any adverse effects on integrity of any of the qualifying features for which the Humber Estuary SAC, SPA and Ramsar sites are designated (alone or in combination with other plans and projects).

# **Annex 1 Documents used to inform this HRA Report**

## Application Documents

- A63 Castle Street Improvement, Hull Environmental Statement (including supporting Figures, Appendices and Addenda 1 and 2) (Documents 6.1, 6.2 and 6.3)
- A63 Castle Street Improvement, Hull Assessment of Implications on Europeans Sites (Habitat Regulations Assessment) Screening Report – No Significant Effects (Document 6.13)
- Record of Environmental Actions and Commitments (Rev 1) (Document 6.11)
- Outline Environmental Management Plan (Rev 1) (Document 7.3)

## Examination Documents produced by Applicant

- Statement of Common Ground between Highways England and Natural England (Signed version at Deadline 5)
- Response to the ExA's Written Questions

## ExA Procedural Decisions

- Report on the Implications for European Sites Proposed A63 Castle Street Improvement Scheme- Hull (July 2019)
- ExA's First Written Questions

## **Annex 2 Conservation Objectives**

Available from:

<http://publications.naturalengland.org.uk/category/6490068894089216>

Nb. In the case of all European sites identified below, the conservation objectives are to be read in conjunction with the accompanying Supplementary Advice documents, which provides more detailed advice and information to enable the application and achievement of the Objectives set out.

### **Humber Estuary Special Protection Area (UK9006111)**

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

### **Humber Estuary Special Area of Conservation (UK0030170)**

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats and habitats of qualifying species
- The structure and function (including typical species) of qualifying natural habitats
- The structure and function of the habitats of qualifying species
- The supporting processes on which qualifying natural habitats and habitats of qualifying species rely
- The populations of qualifying species, and,
- The distribution of qualifying species within the site.

### **Humber Estuary Ramsar Site (Site Number: 663)**

Information Sheet on Ramsar Wetlands (RIS) for the Humber Estuary Ramsar Site available from: <https://rsis.ramsar.org/ris/663>