

# **A46 Newark Bypass**

## **Scheme Number TR010065**

### **4.1 Statement of Reasons**

APFP Regulation 5(2)(h)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)  
Regulations 2009

Volume 4

~~April-February 2025~~4

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning  
(Applications: Prescribed Forms and  
Procedure) Regulations 2009**

**A46 Newark Bypass**

Development Consent Order 20[xx]

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**STATEMENT OF REASONS**

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<b>Regulation Number:</b>	Regulation 5(2)(h)
<b>Planning Inspectorate Scheme Reference</b>	TR010065
<b>Application Document Reference</b>	TR10065/APP/4.1
<b>Author:</b>	A46 Newark Bypass Project Team, National Highways

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
Rev 1	April 2024	DCO Application
<u>Rev2</u>	<u>February 2025</u>	<u>Deadline 5</u>

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## 1 Introduction

### 1.1 Summary

1.1.1 This Statement of Reasons (this “Statement”) relates to an application made by National Highways (the “Applicant”) to the Secretary of State for Transport via the Planning Inspectorate (the “Inspectorate”) under the Planning Act 2008 (the “2008 Act”) for a Development Consent Order (DCO). If made the DCO would grant consent for the A46 Newark Bypass (the “Scheme”).

1.1.2 This Statement has been prepared in accordance with the requirements of reg.5(2)(h) of the Infrastructure Planning (Prescribed Forms and Procedure) Regulations 2009 (the “APFP Regulations”) and the 2008 Act: *Guidance related to procedures for compulsory acquisition of land* (DCLG, September 2013) (the “CA Guidance”).

### 1.2 The Scheme

1.2.1 The Scheme is a nationally significant infrastructure project (NSIP) within section 14(1)(h) and 22(1)(b) of the 2008 Act. Under section 22(1) of the 2008 Act an NSIP must fall within one of the three categories specified, which are expressly stated to be alternatives. The Scheme is the “alteration” of a highway within the meaning of section 22(1)(b).

1.2.2 The Scheme satisfies section 22(3) in that:

- the highway is wholly located in England;
- the Applicant, as strategic highways company established under the Infrastructure Act 2015, will be the highway authority for the highway; and
- the area of development at 211 hectares is greater than the relevant threshold set out in section 22(4), which in this case is 12.5 hectares and speed limits will be in excess of 50 mph.

1.2.3 Further information regarding how the Scheme qualifies as an NSIP can be found in the Explanatory Memorandum (**TR010065/APP/3.2**).

1.2.4 As the Scheme is a NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a DCO must be made to the Secretary of State under section 37 of the 2008 Act.

1.2.5 In summary the Scheme would improve the A46 by widening the existing A46 to a dual carriageway for a distance of approximately 6.5 kilometres, to provide two traffic lanes in each direction between the Farndon and Winthorpe roundabouts near Newark-on-Trent. A new section of offline dual

carriageway is proposed between the western and eastern sides of the A1 before the new dual carriageway ties into the existing A46 to the west of Winthorpe roundabout. The widening works include earthwork widening along the existing embankments, and new structures where the route crosses the railway lines, River Trent, the A1 and local roads.

- 1.2.6 A more detailed description of the Scheme can be found in Chapter 2: (The Scheme) of the Environmental Statement (ES) (**TR010065/APP/6.1**).

### **1.3 Compulsory Acquisition**

- 1.3.1 In its DCO application for the Scheme, the Applicant seeks compulsory acquisition and temporary possession powers in respect of certain land interests. A detailed description of the extent and nature of the powers sought is set out by reference to the DCO application documents in **Chapter 3** and in **Annex A** of this Statement.

### **1.4 Land Interests**

- 1.4.1 The extent of the land interests affected by the compulsory acquisition and temporary possession powers sought by the Applicant in relation to the land as shown on the Land Plans (**TR010065/APP/2.2**) (the "Land") is described in **Chapter 4** of this Statement.
- 1.4.2 The Applicant has carried out diligent inquiry, as set out in the APFP Regulations and the CA Guidance, to identify all the persons with an interest in the Land and the persons with a potential claim for compensation as a result of the Scheme. These persons have been consulted pursuant to section 42 of the 2008 Act. The categories of persons identified, and the methods used to identify them are described in **Chapter 4** of this Statement by reference to the categories in the Book of Reference (**TR010065/APP/4.3**).
- 1.4.3 The Applicant will continue to seek to acquire all parties' interests in the Land voluntarily where possible and is progressing those discussions. The status of these negotiations is set out in **Annex B** of this Statement.
- 1.4.4 Due to the number of interests within the Land, it is necessary to seek powers in the DCO application over all of the Land to allow the Applicant to acquire the land interests by way of compulsory acquisition in the event that the on-going negotiations to acquire the interests in Land by agreement are ultimately not successful. This will ensure that the Scheme can be delivered within a reasonable time frame. The Applicant is satisfied that the acquisition of all of the land interests is necessary to enable the Scheme to proceed. Further details are set out in **Chapter 4** of this Statement.
- 1.4.5 The Applicant already owns a number of plots within the Order Limits which may be subject to the rights of others and which are incompatible with the

construction and operation of the Scheme. In order to ensure that any such rights can be removed (and the persons benefitting from them are compensated for such removal) the Applicant's own land has been included within the Land over which compulsory powers are sought. This land has been scheduled for permanent acquisition on the basis it is already owned by the Applicant.

## **1.5 The Case for Compulsory Acquisition**

- 1.5.1 This Statement sets out the reasons for the inclusion of compulsory acquisition powers within the draft DCO (**TR010065/APP/3.1**) in order to allow the Applicant to acquire interests in the Land required for the construction and operation (including maintenance) of the Scheme that is not already in its possession. It also explains why powers are necessary to enable the Applicant to use land temporarily and acquire, suspend, interfere with or extinguish rights over land and impose restrictive covenants. This is in order to construct and maintain the Scheme in a way that is both proportionate and in the public interest by reducing environmental impacts, minimising the cost to the Applicant (and hence the public purse) and mitigating the impact on affected land interests. This compelling case is set out in the Case for the Scheme (**TR010065/APP/7.1**) and evidenced further in the wider documentation that accompanies the DCO application.
- 1.5.2 The Applicant is satisfied that the powers of compulsory acquisition and temporary possession sought in the draft DCO (**TR010065/APP3.1**) are necessary, proportionate and justified. The Applicant is further satisfied that the powers sought are in accordance with all relevant statutory and policy guidance.
- 1.5.3 The Applicant is firmly of the view that there is a compelling case in the public interest for the compulsory acquisition and temporary possession powers sought as set out in **Chapter 5** of this Statement. The conclusion of this Statement is that the grant of the compulsory powers requested would be lawful under all applicable legal regimes.

## **1.6 Human Rights Act 1998 and the Equality Act 2010**

- 1.6.1 In preparing the draft DCO (**TR010065/APP/3.1**), the Applicant has had regard to the European Convention of Human Rights, the Human Rights Act 1998 and the Equality Act 2010. **Chapter 6** of this Statement considers how the Scheme complies with this legislation, notwithstanding any infringement of the private rights of those whose interests in the Land may be affected by the exercise of powers of compulsory acquisition and temporary possession in connection with the Scheme.

## **1.7 Special Considerations**

- 1.7.1 In **Chapter 7** and **Annex A** of this Statement, the Applicant has identified all special category land which is affected by the compulsory acquisition powers sought in the DCO. The Applicant has engaged with the relevant persons responsible for the special category land with a view to avoiding the need for Special Parliamentary Procedure in accordance with the relevant sections of the 2008 Act. The Applicant has further considered what other consents are required in order to enable the Scheme to proceed and set out how these will be secured.

## **1.8 Compliance with statutory requirements and policy guidance**

- 1.8.1 This Statement has been prepared in accordance with the requirements of reg.5(2)(h) of the APFP Regulations and the CA Guidance.
- 1.8.2 This Statement is required because the draft DCO (**TR010065/APP3.1**), if made, would confer upon the Applicant the compulsory acquisition powers described in this Statement, including the power to acquire land outright, the power to acquire rights over land, the power to extinguish rights over land and the power to occupy land temporarily for construction and maintenance purposes.
- 1.8.3 This Statement forms a suite of documents accompanying the application submitted in accordance with section 55 of the 2008 Act and Regulations 5 and 6 of the APFP Regulations and should be read alongside the other DCO application documents that relate to the compulsory acquisition powers sought by the Applicant, including:
- Draft DCO (**TR010065/APP/3.1**)
  - Explanatory Memorandum (**TR010065/APP3.2**)
  - Book of Reference (**TR010065/APP/4.3**)
  - Land Plans (**TR010065/APP/2.2**)
  - Works Plans (**TR010065/APP/2.3**)
  - Special Category Land Plans (**TR010065/APP/2.12**)
  - Crown Land Plans (**TR010065/APP/2.11**)
  - Funding Statement (**TR010065/APP/4.2**)
  - Case for the Scheme (**TR010065/APP/7.1**)
  - Introduction to the Application (**TR010065/APP/1.3**)
  - Consents and Agreements Position Statement (**TR010065/APP/3.3**)

- NPSNN Accordance Table (**TR010065/APP/7.2**)
- Draft NPSNN Accordance Table (**TR010065/APP/7.3**)



## **2 The Scheme**

### **2.1 Description of the Scheme**

2.1.1 The section of the A46 that is to be upgraded between Farndon and Winthorpe is approximately 6.5 kilometres in length. The Scheme comprises on-line widening for the majority of its length between Farndon roundabout and the A1. A new section of offline dual carriageway would be provided between the western and eastern sides of the A1 before the new dual carriageway ties into the existing A46 to the west of Winthorpe roundabout. The widening works include earthwork widening along the existing embankments, and new structures where the route crosses the railway lines, River Trent, the A1 and local roads.

2.1.2 The Scheme consists of the following principal elements:

- Widening of the existing A46 to a dual carriageway for a distance of approximately 6.5 kilometres to provide two traffic lanes in both directions.
- Partial signalisation of Farndon Roundabout at the southern extents of the Scheme.
- A new grade separated junction at Cattle Market junction with the A46 elevated to pass over the roundabout. A larger roundabout beneath the A46 to provide increased capacity.
- A new off-line section to bypass the existing Brownhills roundabout and Friendly Farmer roundabout.
- A new grade separated northbound off slip to a new roundabout providing local access, with a two-way link road on the southern arm to connect with the existing Brownhills roundabout.
- A two-way parallel link road from Friendly Farmer to Winthorpe roundabout to the southern side of the existing dual carriageway.
- A new bridge structure across the existing A1, located to the north of the existing bridge.
- An upgraded roundabout with partial signal controls at Winthorpe Roundabout; Improvements to Walking Cycling and Horse Riding (WCH) facilities through safer, enhanced routes.
- Three areas have been identified for floodplain compensation which are being referred to as the Kelham and Averham Floodplain Compensation Area (FCA), Farndon West FCA and Farndon East FCA. In addition, the Farndon East FCA and Farndon West FCA will

also be used as borrow pits to support the creation of embankments required for the Scheme.

- Drainage features including attenuation ponds.
- Environmental mitigation including landscape planting.
- Associated accommodation works and maintenance access tracks.
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- Environmental mitigation including landscape planting.
- Associated accommodation works and maintenance access tracks.

2.1.3 A more detailed description of the Scheme can be found in Chapter 2: (The Scheme) of the ES (**TR010065/APP/6.1**).

2.1.4 The key objectives of the Scheme and how they will be achieved are set out below:

Objective	Description	Detail of how the Scheme meets the objectives
Safety	Improving safety through Scheme design to reduce collisions for all users of the Scheme.	<p>A Cost and Benefit to Accidents – Light Touch (COBALT) assessment has been undertaken to assess the impact of the Scheme in terms of accidents over a 5-year period against a baseline of data obtained between 2015 and 2019. This shows overall that the Scheme would provide safety benefits equivalent to £29.3m over the 60-year appraisal period; translated into 8.6 fewer fatalities, 81.6 fewer serious accidents and 594.3 fewer accidents resulting in slight injuries. The overall impact is therefore positive, with a reduction in accidents and a reduction in casualties across all levels of severity.</p> <p>The results of this assessment are set out in the Transport Assessment (TA) (<b>TR010065/APP/7.4</b>) which concludes the Scheme would overall have a positive impact on road</p>

		safety and is not expected to result in any safety issues. Further details on safety are also set out in Chapter 5 of the Case for the Scheme ( <b>TR010065/APP/7.1</b> ).
Congestion	Improve journey time and journey time reliability along the A46 and its junctions between Farndon and Winthorpe, including all approaches and A1 slip roads.	<p>Chapter 4 of the Case for the Scheme (<b>TR010065/APP/7.1</b>) and the TA (<b>TR010065/APP/7.4</b>) forecast an improvement in journey times along the A46.. This is due to the grade separation of the Cattle Market roundabout, allowing the mainline traffic to bypass the roundabout and giving traffic from the minor roads a lower opposing flow on the circulatory.</p> <p>There are forecast to be significant improvements to journey times on the A46 in both directions between Lodge Lane (south of Farndon roundabout) and Brough Lane (north of Winthorpe roundabout) as result of the Scheme in both 2028 (opening year) and 2043 (15 years post opening). In 2028 the largest reductions in journey times are forecast to be in the PM peak, with journey times in the northbound direction reducing from approximately 16 minutes down to 11 minutes, a saving of almost five minutes, or approximately 29%.</p> <p>The Scheme would increase capacity and reduce congestion on the existing A46 around Newark-on-Trent, which would support future traffic growth.</p>
Connectivity	Accommodate economic growth in Newark-on-Trent and the wider area by improving its strategic and local connectivity.	The Scheme would help support the delivery of planned new housing and employment growth within Newark-On-Trent. For example, the Newark Business Park represents a

		<p>significant part of Newark's planned growth but is currently limited in its development by the lack of capacity at Brownhills roundabout. The TA (<b>TR010065/APP/7.4</b>) outlines that delays at Brownhills roundabout are notably reduced in the AM and PM peaks due to the new layout of the A46 mainline which bypasses this section of the network.</p> <p>There are also a number of housing development sites identified within the Newark and Sherwood District Allocations and Development Management Development Plan Document, which rely on the Scheme to achieve their full completion as detailed within Section 3.9 of the Case for the Scheme (<b>TR010065/APP/7.1</b>). For example, Land East of Newark (as set out in Policy NAP 2B) is located between the A1, the East Coast Mainline and Beacon Hill Road. Traffic flows are, therefore, likely to be directed to the town centre and its access to the A46 and the A1 through Beacon Hill Road.</p> <p>The Scheme would also help support the delivery of planned growth within the wider Midlands area. As detailed in Section 3.9 of the Case for the Scheme, the Scheme would ease traffic flows on key junctions of the A46, thereby unlocking investment listed in Table 3.2 of the Case for the Scheme (<b>TR010065/APP/7.1</b>).</p>
Environment	Deliver better environmental outcomes by achieving a net gain in biodiversity and improve noise levels at Noise Important Areas	<p>The Applicant has submitted a Biodiversity Net Gain (BNG) Technical Report in Appendix 8.14 of the ES Appendices (<b>TR010065/APP/6.3</b>) which reports</p>

	along the A46 between Farndon and Winthorpe junctions.	<p>that the Scheme would result in a predicted net gain in biodiversity.</p> <p>Chapter 2 (The Scheme) of the ES (<b>TR010065/APP/6.1</b>) outlines the provision of embedded mitigation for the Scheme including the provision of noise bunds and barriers integrated as part of the landscape design to reduce adverse effects to noise receptors where required. The locations are shown on Figure 2.3 Environmental Masterplan of the ES Figures (<b>TR010065/APP/6.2</b>).</p> <p>Chapter 11 (Noise and Vibration) of the ES (<b>TR010065/APP/6.1</b>) outlines the operational noise effects of the Scheme following the incorporation of mitigations measures. Table 11.37 of Chapter 11 (Noise and Vibration) of the ES (<b>TR010065/APP/6.1</b>) provides a summary of the short-term noise impact at relevant Noise Important Areas, including a minor beneficial impact in 6 of the 11 relevant Noise Important Areas.</p>
Customer	Build an inclusive Scheme which improves facilities for cyclists, walkers and other vulnerable users where existing routes are affected.	<p>As set out in Section 4.6 of the Case for the Scheme (<b>TR010065/APP/7.1</b>), the Scheme seeks to provide facilities for cyclists, walkers and horse-riders (WCH) where existing routes are affected and seeks to improve facilities for all users where practical, including addressing historical severance issues.</p> <p>A Walking, Cycling and Horse Riding Assessment and Review (WCHAR) was completed in June 2023 on the basis of the preliminary design and is available at Appendix E of TA (<b>TR010065/APP/7.4</b>). A further WCHAR would follow at the detailed design stage to ensure that the</p>

		needs of WCH users continue to be considered as the design progresses.
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- 2.1.5 Subject to achieving an approved DCO, pre-commencement works are planned to start in June 2025 and main construction works in August 2025.

## 2.2 Case for the Scheme

- 2.2.1 The A46 forms part of the strategic Trans-Midlands Trade Corridor between the M5 in the southwest and the Humber Ports in the northeast. The improvements to the A46 corridor are detailed within the Department for Transport's 2020-2025 Road Investment Strategy 2 (RIS2) as a mechanism for underpinning the wider economic transformation of the country. RIS2 makes a commitment to create a continuous dual carriageway from Lincoln to Warwick.
- 2.2.2 The stretch of A46 between the Farndon Junction, to the west of Newark-on-Trent and the A1 to the east of Newark-on-Trent, is the last remaining stretch of single carriageway between the M1 and A1 and consequently queuing traffic is a regular occurrence, often impacting journey time reliability.
- 2.2.3 The Scheme covers part of the A46 corridor, which plays a critical role within the Strategic Road Network, connecting major manufacturing clusters and key ports. Stretching for 155 miles across the Midlands, the A46 corridor is home to 5.5 million people and 2.9 million jobs, with an economic output of £115 billion; 9% of the English economy as evidenced by Midlands Connect, the local Sub-National Transport Body. The importance of the A46 is reflected in the strategic freight flows that use the route and underpinning key industries and economic sectors in the wider Newark area.
- 2.2.4 The operational performance of the A46 single carriageway around Newark is at odds with other sections, where the road is a dual carriageway. This manifests itself in a bottleneck with higher levels of congestion and lower average speeds (typically between 22 and 45 mph in contrast to 60 mph elsewhere). The key issues are:
- Poor time reliability – with variances expected to increase in the future.
  - High level of low-speed shunts – which impact on turning lanes at junctions.
  - High traffic flows, which exceed the design capacity.

- Congestion on the key A1/A46 Winthorpe Junction which results in mainline queuing on the A1.
- The lack of a grade separated junction at Cattle Market Junction in Newark, which is being compounded by queuing on the main B-road because of frequent rail level crossing downtimes.
- It forms part of a major freight route, and an alternative to the M1 corridor particularly to / from the Humber ports.

2.2.5 As such, the Scheme will address the above identified issues by:

- Improving the performance of the A46 around Newark and addressing the delays and congestion. Following the completion of the Newark to Widmerpool and Newark to Lincoln schemes, the underperformance of the A46 around Newark is now even more pronounced. This includes poor journey times and reliability; lower and unpredictable speeds; lack of resilience, especially during incidents; and other adverse impacts, such as queuing on the A1 off-slip.
- Improving journey time reliability. Poor journey time reliability is a key characteristic, with the section ranked as the third least reliable in the North and East Midlands. This is essentially a consequence of this being the last remaining section of single carriageway of A46 and the presence of at-grade junctions.
- Improving safety through compliance with layout and design standards. There are concerns about current compliance with design standards and observed collision and injury rates. There are a high number of low-speed shunts and accidents which impact on the resilience of the route.
- Supporting and helping to unlock local economic aspirations. Newark is categorised as a Levelling Up Category 1 area by the Government meaning Newark is deemed to be one of the places most in need of investment through the Levelling Up Fund, with major development proposed which will create new employment and housing, with resulting social benefits. Developments within and around Newark will be aided by the progression of the Scheme.
- Boosting strategic connectivity. The Scheme will reinforce wider strategic connectivity. In particular, providing access to and from the Humber Ports to the Midlands, providing an alternative to the M1, as well as better supporting certain economic sectors, such as distribution and food which have stronger need for route reliability.
- Achieving better environmental outcomes. The Scheme will help improve the local environment in and around Newark.



- Supporting local transport networks. The Scheme will support the operation of existing local transport networks and will boost walking, cycling and horse-riding (WCH) links, with new enhanced routes.

2.2.6 **Chapter 6** of the Case for the Scheme (**TR010065/APP/7.1**) and the National Policy Statement for National Networks (**NPSNN**) Accordance Table (**TR010065/APP/7.2**) set out the case for the Scheme by reference to the NPSNN and other national and local policy and the Draft NPSNN Accordance Table (**TR010065/APP/7.3**) sets out how the Scheme accords with the new draft NPSNN.

## 2.3 Benefits of the Scheme

2.3.1 The Transport Economic Efficiency (TEE) assesses the contribution of a transport option on economic welfare through the consideration of the resultant transport costs and benefits. The benefits are assessed over a sixty year period. The travel time benefits are summarised as:

- Economic Efficiency: Consumer Users (Commuting) - £22,536,000.
- Economic Efficiency: Consumer Users (Other) - £50,366,000.
- Economic Efficiency: Business Users and Providers – £175,566,000.

2.3.2 There are also indirect taxation revenues accrued to the Government of £7,081,000.

2.3.3 Overall, the Scheme will provide safety benefits equivalent to £29,296,000 over the 60-year appraisal period; translated into 8.6 less fatalities, 81.6 less serious accidents and 594.3 less slight injuries. The overall impact is therefore positive, with a reduction in accidents and a reduction in casualties of all severities.

2.3.4 The Scheme results in journey time reliability benefits of £29,368,000 over the 60-year appraisal period.

2.3.5 In terms of wider economic benefits, the Scheme is likely to result in a £67,467,000 gain, with agglomeration improvements arising from improved connectivity.

2.3.6 A detailed summary of the benefits of Scheme is set out in Section 5 of the Case for the Scheme (**TR010065/APP/7.1**).

## 2.4 Environmental Benefits

2.4.1 The noise assessment results indicate an overall benefit of £5,106,488 as a result of the Scheme due to decreases in road traffic on a number of links that make up the existing road network. There are 1398 properties in the daytime and 550 properties in the night-time that are predicted to be



subject to increased noise in the forecast year. There are 1333 properties in the daytime and 1208 properties in the night-time that are predicted to be subject to reduced noise in the forecast year. Mitigation measures have been implemented along the alignment and within close proximity to protect nearby residential properties from adverse noise effects due to the Scheme and the figures above reflect these mitigations.

- 2.4.2 The air quality assessment results indicate there is a net worsening in air quality as a result of the Scheme in the opening year and forecast year. The worsening is primarily due to an increase in annual traffic movements due to increased capacity delivered by the Scheme, and an overall increase in vehicle kilometres travelled. The Scheme would result in the monetary disbenefit of -£1,747,031.
- 2.4.3 The Scheme would result in increased GHG emissions due to the construction and the operation of the Scheme. The sum of emissions from all sources equals 683,200tCO<sub>2</sub>e over the 60-year assessment period. This equates to a monetary disbenefit of -£56,416,000.
- 2.4.4 The initial Benefit to Cost Ratio (BCR) for the Scheme and the inclusion of the wider economic impacts and journey time reliability benefits gives an adjusted BCR of 1.20. This means that for £1 spent on the Scheme there will be a £1.20 return to society in benefits. Impacts which cannot be monetised have also been considered. These include adverse impacts on landscape, townscape, the historic environment and biodiversity, and beneficial impacts from improved journey quality, physical activity and severance.
- 2.4.5 The assessment of the Scheme's effects on the environment is set out in the **ES (Application Document: TR010065/APP/6.1)**. Further details on the environmental benefits can be found in Case for the Scheme (**TR010065/APP/7.1**)

## **2.5 The Authorised Development**

- 2.5.1 The Scheme comprises the provision of a dual carriageway between the Farndon Roundabout (located at the western extent of the Scheme where the B6166 Farndon Road joins the A46) and the Winthorpe junction (located at the eastern extent of the Scheme where the A1133 joins the A46). A full description of the works and associated development, referred to in the DCO as the 'authorised works' is set out in Schedule 1 of the draft DCO (**TR010065/APP/3.1**).
- 2.5.2 In order to facilitate the carrying out of the authorised development listed in Schedule 1 of the draft DCO (**TR010065/APP/3.1**), the powers in the draft DCO would further authorise the Applicant to carry out ancillary works as associated development within the area of land shown as a red line on the Land Plans (**TR010065/APP/2.2**) (the "Order Limits") and Works Plans

(**TR010065/APP/2.3**) comprising such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development.

- 2.5.3 These ancillary works include: alteration to the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge; works required for the strengthening, improvement, maintenance or reconstruction of any street; parking laybys and emergency laybys; refurbishment works to any existing bridge; the strengthening, alteration or demolition of any building or highway bridge or structure; ramps, means of access; non- motorised links, footpaths, cycle tracks, and crossing facilities; embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, attenuation tanks, outfalls, ditches, wing walls, highway lighting, gantries, fencing and culverts; street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place, alter, divert, relocate, protect, maintain, decommission or remove street furniture, traffic signals and apparatus in a street, or apparatus in other land, including mains, sewers, drains, tanks, pipes, cables, connections, ducts, conduits and lights, CCTV, radar and traffic detection equipment and speed camera; works to alter the course or otherwise interfere with a watercourse; landscaping, noise and visual bunds and barriers, works associated with the provision of ecological mitigation (including artificial badger setts) and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development; works for the benefit or protection of land and apparatus affected by the authorised development; site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling); remediation of contamination; felling of trees; establishment of construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads, protective works to apparatus, and other buildings, machinery, apparatus, works and conveniences; the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures, temporary roads, temporary widening of carriageways and such other works as are associated with the construction of the authorised development; temporary crossings of footpaths, bridleways, footways, cycle tracks, carriageways and watercourses with associated plant crossings or bridging structures; pumping for the purposes of dewatering

excavations (including borrow pits) and the management of surface water flows and temporary storage, settlement and treatment of surface water flows; removal of surfaces for closed or redundant carriageways, accesses or streets such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction, operation or maintenance of the authorised development.

- 2.5.4 The works described above would be subject to specific mitigation requirements, for example, landscaping and environmental mitigation. These requirements are set out in Schedule 2 to the draft DCO (**TR010065/APP/3.1**).

## **2.6 Alternatives and Flexibility**

- 2.6.1 As part of the design process, the Scheme was subject to a process of staged development and evolution between its inception and DCO application submission. Details of the alternatives considered are set out in Chapter 3 (Assessment of Alternatives) of the ES (**TR010065/APP/6.1**). In addition, the Consultation Report (**TR010065/APP/5.1**) provides further detail on how comments made by stakeholders and the public have been taken into account in the development of the Scheme.

- 2.6.2 In relation to the Land required for the Scheme, the Applicant has taken into account requests for changes to the Scheme design arising as part of the statutory consultation and targeted non-statutory consultation and where possible changes have been made in response to comments received from landowners affected by the Scheme. Significant changes made include:

- Newark Lorry Park entrance relocated and improved, providing traffic signals to help future traffic flows as well as making it safer for walkers and cyclists to cross. The Newark Lorry Park land required within the Order Limits has also been reduced.
- A section of the new access track located to the east of Winthorpe Village has been removed between Hargon Lane and the A1133. The footpath element has also been relocated in this area. The laybys on the track have also been moved so they are not positioned in the fields.
- The junction at Drove Lane has been modified to be a 'left out' only at the location of the existing Newark Showground entrance. This is to reduce the impact on the surrounding road network, particularly during event days. The walking and cycling route from the Friendly Farmer Link was extended along Drove Lane to the first Showground entrance.
- The new access to Langford Hall off the A1133 has been altered within the Order Limits. A new alignment has been proposed that links to the A1133 closer to Winthorpe Roundabout and greatly reduces the loss

of existing established trees. A new location and layout of the access track to the property has been agreed and the Order Limits altered to account for this. The Order Limits have also been reduced to maintain as much useable farmland as possible for the landowner.

- Scheme design and construction strategy has changed at Windmill Viaduct to include a retaining wall on the west side of the road near the existing Farndon underpass. This has reduced the Order Limits in this location and the impact on land and vegetation. A 2 metre acoustic barrier has been provided from the existing underpass to Windmill Viaduct to reduce noise and visual impact of the Scheme
- Direct access maintained to land off the existing A46 southbound carriageway between Farndon and Cattle Market Roundabouts as requested by the landowner.
- The footpath adjacent to the new roundabout at Brownhills Junction has been realigned so that it follows a more direct route for pedestrians and cyclists.
- The right turn to access the new roundabout at Brownhills Junction when travelling from the existing Brownhills Roundabout has been modified in the design so that there is a more notable right-hand turn that aims to reduce potential driver confusion.
- Following a safety concern expressed regarding the slip road access for the Esso service station flowing directly into the car park, the end of the slip road has been narrowed and designed with a tighter radius introduced to slow vehicles down.
- A walking and cycling route has been incorporated in the design across Winthorpe Roundabout between the A1133 and Drove Lane. The access track to the south of Cattle Market has been moved to the bottom of the flood defence.
- A new temporary diversion route of Bridleway 2 during construction of the new Windmill Viaduct has been proposed in consultation with the local equestrian groups and landowners, and the Order Limits modified accordingly.
- The height of the new roundabout at Brownhills Junction has been lowered so that it is now approximately 1 metre above the existing ground level, at the same level of the adjacent A1.
- The area of land identified within the Order Limits for floodplain compensation in Kelham/Averham has been amended and reduced.

- The extent of wetlands to be provided on land to north-west of Windmill Viaduct have significantly reduced with more provided to north-east of the new dual carriageway.
- The attenuation pond to the western side of Nether Lock Viaduct near the southern abutment has been moved to the eastern side next to the river.
- A piece of land in the Brownhills flood compensation area has been removed from the Order Limits.
- The shared access facility at the Newark Showground has been removed and the current access changed to left out only (see above). Access to the bowling club would be from the new Friendly Farmer Link Road.
- The route through the centre of the Winthorpe roundabout has been realigned to avoid the trees in the middle of the existing roundabout.
- The copse alongside the existing A46 at the side of the A46 Northbound between the Esso Garage and Winthorpe Roundabout will be retained as well as the majority of the copse within the existing Winthorpe Roundabout.
- The connection to Friendly Farmer Roundabout has been amended to show three lanes at the give way line, rather than maintaining the free flow link.
- For the track south of Winthorpe the passing bays have been moved to the other side of the track following feedback from the landowner that they would prefer a straight boundary.
- The Order Limits have been amended at Bridge House Farm to better follow their land boundary following the landowners response to the statutory consultation.

2.6.3 The following changes have also been made to the Scheme design from that presented at statutory consultation due to the evolution of the Scheme design:

- Earthwork slopes have been updated along the length of the route. The changes largely involve steepening earthworks to reduce the amount of flood compensation required and to utilise the existing earthworks footprint to reduce settlement.
- The access tracks and swales have been fully modelled along the length of the Scheme. They have also been co-ordinated with the landscape design proposals and to avoid unnecessary vegetation

clearance. Overall, the length of access tracks has reduced from what was previously anticipated.

- Following completion of the Environmental Impact Assessment, the unused land has been removed between Winthorpe and the A46 to a point 5 metre offset from the back of the hedge to allow for construction access. This is because this land is no longer required to provide essential mitigation as it has been determined that sufficient mitigation can be achieved within the revised Order Limits. This land will be returned to the land owner when works are complete.
- Following completion of the Environmental Impact Assessment, it has been confirmed that land south of the A46 east of Winthorpe roundabout is no longer required to provide essential mitigation as it has been determined that sufficient mitigation can be achieved within the revised Order Limits. The unused land has been removed from the Order Limits to the south of the A46 east of Winthorpe Roundabout up to the boundary of the track that will be used for constructing the Variable Message Sign on the A46.
- The Order Limits at consultation included the location where the southern link road ties in with the A46 south of Farndon Roundabout. At this time, the final design for this connection had not been concluded, so this area was included in the Order Limits in case any additional works would be needed to improve this as part of the Scheme. The area of land within the Order Limits allocated for potential future modifications to the Newark SLR roundabout has now been removed.
- The unused land near Nottingham to Lincoln Railway Line East crossing has been removed from the Order Limits and the Order Limits reduced over the railway line to reduce interaction with Network Rail land.
- The unused land has been removed from the Order Limits adjacent to Drove Lane and the highways design trimmed to fully tie in before the bowling club access.
- The land has been removed from the Order Limits between the A46 and A617, with the Order Limits also amended to better align with field boundaries.

2.6.4 The above examples of changes have resulted in reducing the size of the land take, improved safety, and reduced noise of the Scheme on sensitive receptors. Further details of the design changes can be found in Chapter 5 of the Consultation Report (**TR010065/APP/5.1**)



- 2.6.5 Due to the nature of the design process and the timing of the consenting process, the Applicant requires a degree of flexibility as to where certain elements of the Scheme can be constructed within defined limits of deviation which are provided for in the draft DCO (**TR010065/APP3.1**) and shown on the Works Plans (**TR010065/APP/2.3**).
- 2.6.6 At this stage, all the Land in the Order Limits is considered to be necessary to deliver the Scheme. However, should it transpire that any part of the Land within the Order Limits is not required, for instance as a result of the detailed design process, the Applicant would only seek to acquire that part of the Land required, and in all events, will seek to minimise the effects on land interests.

### **3 Compulsory Acquisition**

#### **3.1 Scope of compulsory acquisition powers with reference to the draft DCO**

- 3.1.1 The purpose of the compulsory acquisition powers in the draft DCO (**TR010065/APP3.1**) is to enable the Applicant to construct, operate and maintain the Scheme. The specific compulsory acquisition powers sought by the Applicant are set out in full in Part 5 of the draft DCO
- 3.1.2 Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising compulsory acquisition of land. To the extent that this is sought, the decision maker in respect of the application (the Secretary of State) must be satisfied that certain conditions are met. The way in which the Scheme meets these conditions is considered in **Chapter 5** of this Statement.
- 3.1.3 In addition to the powers of compulsory acquisition, section 120 of the 2008 Act provides that the DCO may make provision relating to, or to matters ancillary to the development in respect of which a DCO is sought. The matters in respect of which provision may be made includes (but is not expressly limited to) matters listed in Schedule 5 of the 2008 Act, including:
- a. the acquisition of land, compulsorily, or by agreement (paragraph 1);
  - b. the creation, suspension or extinguishment of, or interference with, interests in rights over land, compulsorily, or by agreement (paragraph 2);
  - c. the abrogation or modification of agreements relating to land (paragraph 3); and
  - d. the payment of compensation (paragraph 36).

## 3.2 Main Compulsory Acquisition Powers

- 3.2.1 The main powers authorising the compulsory acquisition of land, or interests in, or rights over land, are contained in Articles 26 (compulsory acquisition of land) and 29 (compulsory acquisition of rights and imposition of restrictive covenants) of the draft DCO (**TR010065/APP/3.1**). **Table 1** of **Annex A** of this Statement provides a description of the land which is subject to powers of outright acquisition in terms of Article 26 of the draft DCO. The purpose for acquiring this land is to enable the Applicant to construct the permanent works on the land and other elements described in **Annex A** of this Statement.
- 3.2.2 Article 29 of the draft DCO (**TR010065/APP/3.1**) allows rights over land to be acquired instead of outright acquisition. This allows flexibility in approach and a reduction in the impact on the land interest. The compulsory imposition of restrictive covenants is also authorised by Article 29. **Table 2** of **Annex A** of this Statement provides a description of the land which is subject to the acquisition of rights or the imposition of restrictive covenants. These rights are necessary for the purposes of constructing the works and the maintenance of the works thereafter, ensuring that the Applicant or, where relevant, the operator of the finished Scheme is able to fulfil their functions.
- 3.2.3 Other compulsory acquisition powers are sought in the draft DCO (**TR010065/APP/3.1**) (identified in paragraph 3.3 of this Statement) and these similarly relate to land and will, or may, authorise, interference with property, rights or interests.
- 3.2.4 In addition, powers are sought in the draft DCO (**TR010065/APP/3.1**) to enable the temporary possession and use of land to carry out and maintain the Scheme.
- 3.2.5 In each case, the party having an interest in the land, or the interest or right in the land, may be entitled to compensation.

## 3.3 Other Compulsory Acquisition Powers

- 3.3.1 The other compulsory acquisition powers sought by the Applicant in the draft DCO (**TR010065/APP/3.1**) include:

### Article 30 Private Rights Over Land

- 3.3.2 Article 30 of the draft DCO (**TR010065/APP/3.1**) provides for the extinguishment of all private rights over land from the earlier of the date of acquisition of the land or the date on which the Applicant enters the land.
- 3.3.3 The Article further provides that, where new rights are being compulsorily acquired or restrictive covenants are being imposed on land then any



existing private rights or restrictive covenants which that land is subject to may be extinguished to the extent that continuing enjoyment of those private rights or restrictive covenants would be inconsistent with the new rights acquired or restrictive covenants imposed.

- 3.3.4 With regard to the land that the Applicant may take temporary possession of, Article 30 of the draft DCO (**TR010065/APP/3.1**) provides that all private rights over that land will be suspended and unenforceable for as long as the Applicant is in lawful possession of the land.
- 3.3.5 The power to extinguish existing rights is required to ensure that such rights do not interfere with the construction and operation of the Scheme.
- 3.3.6 Article 30(5) provides that any person who suffers loss caused by the extinguishment or suspension of rights (pursuant to the exercise of the power in Article 30) is entitled to reasonable compensation.

#### **Article 31: Power to override easements and other rights**

- 3.3.7 Article 31 of the draft DCO (**TR010065/APP/3.1**) provides an additional power for the Applicant to override existing easements and other rights for its statutory purposes and to allow this overriding to benefit successors in title also. This power may be used where the relevant land is not subject to compulsory acquisition because either the land is already held by the Applicant or because of agreements reached with other parties, but a power to override existing interests such as easements in land is still required to be available to the Applicant.

#### **Article 38: Acquisition of subsoil or airspace only**

- 3.3.7 Article 38 of the draft DCO (**TR010065/APP/3.1**) provides that where the Applicant has, in respect of any land, powers of compulsory acquisition under Articles 26 and 29 then it may, for the same purposes for which it is authorised to acquire the whole of the land, choose instead to acquire only the subsoil underneath, or airspace over the land with consequentially fewer impacts on affected landowners. This power is included for flexibility as it would allow the Applicant to minimise its costs and/or impact to land interests by acquiring subsoil or airspace only where it is possible to do so and still deliver the Scheme, leaving the holders of land interests in possession of the valuable part of the land. This allows the acquisition of the minimum interests required to deliver the Scheme.

#### **Article 39: Rights under or over streets**

- 3.3.8 Article 39 of the draft DCO (**TR010065/APP/3.1**) is not in a strict sense a power of compulsory acquisition. However, it is included here for completeness because it would authorise the Applicant to:

- a. enter on and appropriate so much of the subsoil underneath or the airspace over any street within the limits of the DCO as may be required to provide the Scheme; and
- b. use that subsoil or airspace for the purposes of carrying out the Scheme or any purpose ancillary to it.

3.3.9 Save in the case of subways or underground buildings, or to cellars or similar structures forming part of a building fronting the street, the Applicant may exercise its power under this Article without having to acquire any part of the street or any easement or right in the street.

### **3.4 Temporary Possession Powers**

3.4.1 The Applicant further seeks, in the draft DCO (**TR010065/APP/3.1**), powers to take temporary possession of the land to carry out and thereafter maintain the Scheme. **Table 3** of **Annex A** of this Statement provides a description of the land which may be occupied temporarily. The powers of temporary possession in the DCO are as follows:

#### **Article 40: Temporary use of land for carrying out the authorised development**

3.4.2 Article 40 of the draft DCO (**TR010065/APP/3.1**) would authorise the Applicant to take temporary possession of:

- a. the land specified in columns 1 and 2 of Schedule 7 to the draft DCO; or
- b. any other land within the Order Limits, so long as the Applicant has not served a notice of entry or executed a General Vesting Declaration (GVD) in respect of that land.

3.4.3 In addition to taking possession of the land, the Article would authorise the Applicant to:

- a. remove any electric line, electrical plant, structures, apparatus, buildings and vegetation from the land;
- b. construct temporary works (including accesses) and buildings or structures on the land; and
- c. construct any works specified in Schedule 1 to the draft DCO.

3.4.4 The power to take temporary possession of land would be subject to the time limits set out in Article 28 of the draft DCO (**TR010065/APP/3.1**). The Applicant cannot remain in possession, unless the owner of the land agrees:

a. as regards to any land specified in columns 1 and 2 of Schedule 7 to the draft DCO (**TR010065/APP/3.1**), for more than a year after completing that part of the Scheme specified in relation to that land in column 4 of Schedule 7; and

b. as regards to any other Land, for more than a year after completing the work for which temporary possession was taken (unless before the end of that period the Applicant has made a GVD or served notice of entry in relation to that land).

- 3.4.5 Article 40 of the draft DCO (**TR010065/APP/3.1**) provides that before giving up possession of any land the Applicant is obliged to remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

**Article 41: Temporary use of land for maintaining the authorised development**

- 3.4.6 Article 41 of the draft DCO (**TR010065/APP/3.1**) would empower the Applicant to take temporary possession of any land within the Order Limits, if reasonably required for the purpose of maintaining the Scheme, at any time during the maintenance period (i.e. five years from the date on which that part of the Scheme is first open for use).
- 3.4.7 This Article would allow the Applicant to construct temporary works and buildings on the land, so far as is reasonably necessary for the purpose of carrying out maintenance of the Scheme. The Applicant would not be able to take temporary possession of a house, or a garden belonging to a house, or any other occupied building under this Article.
- 3.4.8 The Applicant may only remain in possession of land under this Article for so long as may be reasonably necessary to carry out the maintenance of the part of the Scheme for which possession was taken. Before giving up possession of land under this article, the Applicant would be required to remove all temporary works and restore the land to the owner's reasonable satisfaction.
- 3.4.9 The powers to use land temporarily for carrying out the Scheme ensures that appropriate work sites, working space and means of access are available for use during the construction and maintenance period and provides space for mitigation and other permanent works. This temporary power minimises the impact on land interests by ensuring that the Applicant does not have to acquire land it only requires temporarily.
- 3.4.10 The powers to use land temporarily for maintaining the Scheme ensure that the land is available for maintenance works during a five-year period from when that part of the Scheme is first opened for use. This is in the public interest as it ensures that it is possible to maintain the Scheme and the

public benefits it will deliver. Temporary powers are sought for this purpose as permanent powers would entail an excessive impact on land interests.

### **3.5 Other Rights and Powers**

3.5.1 In addition to powers of compulsory acquisition, the DCO, if made, would also confer other rights and powers on the Applicant that may interfere with property rights and private interests. These additional powers (which are explained in more detail in the Explanatory Memorandum) (TR010065/APP/3.2) are:

- a) Article 18: Temporary alteration, diversion, prohibition and restriction of the use of streets;

This article allows for the temporary alteration, diversion, prohibition or restriction of streets for the purposes of the Scheme, whilst ensuring that essential pedestrian access to and from premises along that street is maintained if necessary (paragraph (3)). Paragraph (5) provides a right to compensation to any person suffering loss due to the suspension of a private right of way under this article.

- b) Article 19: Permanent stopping up and restriction of use of streets and private means of access;

- c) This article allows the streets and private means of access identified in Schedule 4 to be stopped up (i.e. the legal right of right of way along them to be extinguished). Since the definition of a 'street' in section 48 of the New Roads and Street Works Act 1991 includes highway footways and footpaths, such ways can be stopped up under this article as well as vehicular accesses. Paragraph (8) provides a right to compensation for any person suffering loss due to the suspension or extinguishment of a private right of way under this article. Article 25: Authority to survey and investigate the land;

This article gives the Applicant the power to enter land for the purpose of surveying and investigating. It provides that the Applicant must give 14 days' notice before exercising the powers of entry. Compensation is payable for any loss or damage caused.

- d) Article 24: Protective works to buildings;

This article gives the Applicant the power to undertake protective works to buildings affected by the Scheme such as underpinning, subject to a requirement to give 14 days' notice of access except in an emergency. Compensation is payable for any loss or damage caused.

- e) Article 45: Felling or lopping of trees and removal of hedgerows

This article gives the Applicant power to allow any tree or shrub that is near the project to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the Scheme or endanger anyone using it. Compensation is payable for any loss or damage caused.

- f) Article 58: Temporary suspension of navigation in connection with the authorised development

This article gives the Applicant the power to suspend the public right of navigation over the River Trent within the Order Limits where necessary to construct, inspect or maintain the Scheme.

- 3.5.2 In each case (for both the principal powers and other powers) the parties having interests in the land, or rights in the land which are interfered with, may be entitled to compensation. Any dispute in respect of the compensation payable is to be determined by the Lands Chamber of the Upper Tribunal.

## 4 Land Interests

### 4.1 The extent of the Land subject to powers

- 4.1.1 The full extent of the Land subject to compulsory acquisition and temporary possession powers and required in order to enable the Applicant to construct the Scheme is described in **Chapter 2** of this Statement and is shown on the Land Plans (**TR010065/APP/2.2**) and the Works Plans (**TR010065/APP/2.3**). Each plot is then described in the Book of Reference (**TR010065/APP/4.3**).
- 4.1.2 The Land subject to the powers comprises approximately 211 hectares. Of this approximately 182 hectares will be acquired permanently, 20 hectares will be subject to temporary possession with use of land, 9 hectares will be permanent acquisition of rights over land and 0 hectares will be permanent acquisition of airspace and/or subsoil rights over land
- 4.1.3 There are several plots that are required for the construction of new bridges and in respect of existing highway bridges which oversail land owned by statutory undertakers including the Canal and River Trust and Network Rail. These plots have been scheduled for permanent acquisition in the Book of Reference (**TR010065/APP/4.3**) and the Land Plans (**TR010065/APP/2.2**), however the Applicant is only seeking the airspace and rights specified below. In relation to the following bridge plots the Applicant is seeking acquisition of airspace for the construction of a bridge and permanent acquisition of rights over the land below: 1/5r, 2/2q, 4/5m, 4/7c. The Applicant is also seeking the acquisition of airspace rights to be permanently acquired and the temporary use of the land below the bridge for the following bridge plots: 1/5j, 1/5n, 1/5o, 1/18b, 1/18c, 2/2e, 2/2g, 3/1r, 3/1s, 3/2w, 3/2cc, 3/2ee, 3/2mm, 3/16d, 4/2i, 4/2j, 4/2l, 4/12b, 4/12c, 4/12d, 4/12e, 4/12f, 4/12i.
- 4.1.4 The Applicant has sought powers of compulsory acquisition (or rights of use) in respect of all plots of land required for the Scheme even where it already holds an interest or presumes it holds an interest in the Land. This approach has been taken to ensure that the Applicant has the right to acquire the interest it needs in all of the Land, even where an unknown or unregistered interest later asserts an interest in land which the Applicant believes it owns and clearing the title would be necessary.
- 4.1.5 The purpose for which each plot of land is required is described in **Annex A** of this Statement.

### 4.2 Location

- 4.2.1 The A46 forms part of the strategic Trans-Midlands Trade Corridor between the M5 in the southwest and the Humber Ports in the northeast. The Scheme is located within the county boundary of Nottinghamshire



County Council and within the administrative boundary of Newark and Sherwood District Council.

- 4.2.2 The Farndon roundabout is located at the western extent of the Scheme where the B6166 Farndon Road joins the A46. The Winthorpe junction is located at the eastern extent where the A1133 joins the A46. Along its route, it crosses A617 and B6326, at the Cattle Market junction, and the A1 between the Friendly Farmer and Brownhills roundabouts.
- 4.2.3 The Scheme location is provided on the Location Plan (**TR010065/APP/2.1**).

### **4.3 Existing Land use and character**

- 4.3.1 The stretch of A46 between the Farndon Junction, to the west of Newark-on-Trent and the A1 to the east of Newark-on-Trent, is the last remaining stretch of single carriageway between the M1 and A1.
- 4.3.2 The existing A46, currently single carriageway, is generally elevated on embankments due to the low-lying floodplain of the River Trent. This floodplain is located to the west of the A46 for much of the affected length, along with a section at the southern end on the eastern side of the A46. Several roundabouts form key junctions along the route, linking with several local A roads. Road infrastructure is softened by roadside vegetation in places and the River Trent is a strong natural influence within an otherwise manmade landscape. To the north of the A46, the land is mainly agricultural, interspersed with small-scale settlements. To the south of the road, the town of Newark-on-Trent forms a notable urban settlement.
- 4.3.3 All of the environmental designations located within 2 kilometres of the Scheme extent are shown on Figure 2.2 (Environmental Constraints Plan) of the ES Figures (**TR010065/APP/6.2**).

### **4.4 Identifying persons with an interest in the Land**

- 4.4.1 In preparing the DCO application, the Applicant has carried out diligent inquiry in order to identify all persons with an interest in the Land as defined by section 44 and section 57 of the 2008 Act.
- 4.4.2 Those persons who were identified by the Applicant are listed in the Book of Reference (**TR010065/APP/4.3**) and have been consulted about the DCO application in accordance with section 42 of the 2008 Act as described in the Consultation Report (**TR010065/APP/5.1**).
- 4.4.3 Diligent inquiry to identify affected landowners and occupiers, those with interests in land and those with a potential relevant claim was undertaken by the Applicant's expert land referencing supplier. The categories of persons identified and the methods used to identify the persons with an

interest in the Land are described below with reference to the categories in the Book of Reference (**TR010065/APP/4.3**).

4.4.4 Land referencing has been undertaken throughout the pre-application period to ensure any changes in interest or new interests have been identified, consulted and subject to engagement. This has been supplemented by ongoing one-to-one engagement with the affected land interests by the Applicant's appointed land agent who is also responsible for the land referencing. HM Land Registry updates have also been checked periodically (generally at six monthly intervals or at key project milestones that would require an update). Land referencing will continue to be undertaken throughout the DCO process to ensure that any changes in interest are identified and to ensure any new interests will be consulted and subject to engagement. Any changes will also be recorded and updated in the Book of Reference (**TR010065/APP/4.3**)

4.4.5 The categories of persons that are required to be identified for the purposes of consultation and notification under section 42 and section 56 of the 2008 Act are prescribed in section 44 and section 57 as Categories 1, 2 and 3. Under the 2008 Act, diligent inquiry must be undertaken to identify persons who, by virtue of the nature of the interest they have in land, and the location of that land in relation to the land to which the application relates, come within Categories 1, 2 and 3.

#### **4.5 Category 1 and 2 persons as defined in section 44 of the 2008 Act**

4.5.1 Category 1 comprises owners, lessees, tenants (whatever the tenancy period) and occupiers of the land and Category 2 comprises persons who are interested in the land or have the power to sell and convey, or to release, the land.

4.5.2 Identification of Category 1 and 2 persons was undertaken at the early stages of development of the Scheme in order to inform the design of the Scheme and the preparation of the application.

#### **4.6 Category 3 persons as defined in section 44 of the 2008 Act**

4.6.1 Category 3 comprises persons who the Applicant thinks would or might be entitled to make a "relevant claim" for compensation, if the order sought by the application were to be made and fully implemented. A "relevant claim" is defined in 2008 Act as meaning a claim under s.10 of the CPA 1965, or under Part 1 of the Land Compensation Act 1973 (LCA 1973), or under s.152(3) of the 2008 act. they mainly relate to those whose land may be injuriously affected (i.e. its value would be diminished) as a result of interference with a right or interest as a result of the construction or use of the Scheme, although the land in question is not acquired outright.



4.6.2 A shapefile of the search area, being the anticipated land requirements (before the Order Limits shown on the Land Plans was defined), was submitted to the Land Registry. Land Registry data was received in the form of a digital shapefile (a GIS layer) and digital copies of the Official Copy Registers and Title Deeds. All relevant freehold, leasehold, mortgagee, beneficiary, other charges and restrictive covenants information was extracted and stored in a land referencing database. Further Land Registry searches have been used to ensure that any changes in title in respect of Land potentially required for or affected by the Scheme were identified.

4.6.3 On completion of the initial desk-based exercise described above, the extent of unregistered land interests became known. In order to establish interests in relevant areas of unregistered land public sources of information were used including site visits, posting of sites notices, Companies House website, the relevant Highway Authority, records held by Statutory Undertakers and other online resources. A land charge search was also undertaken.

4.6.4 The information obtained from the above exercises was used to populate Part 1, Part 2 and Part 3 of the Book of Reference (TR010065/APP/4.3).

#### **4.7 Assessment of Category 3 persons who may fall under section 10 of the Compulsory Purchase Act 1965 (CPA 1965) and/or section 152(3) of the 2008 Act**

4.7.1 Identification of Category 3 persons was undertaken at an early stage of development of the Scheme, in order to inform the design of the Scheme and preparation of the application.

4.7.2 In order to identify potential Category 3 persons who may be entitled to make a claim under section 10 of the CPA 1965, a desk-based assessment was carried out to identify properties with a potential claim. In addition, site visits were carried out in order to assess properties for potential claims that were not identify from the initial desk-based exercise.

#### **4.8 Assessment of Category 3 persons which fall under Part I of the Land Compensation Act 1973 (LCA 1973)**

4.8.1 In assessing potential claimants under Part I of the LCA 1973, physical factors and the impacts of the Scheme were considered, including:

- a. properties closest to the highway and within the Order Limits; and
- b. properties identified as a receptor as a consequence of the property being located outside of the Order Limits but adjacent to the highway.

- 4.8.2 The Applicant's land referencing team were provided with guidance from environmental specialists involved in the compilation of the ES (**TR010065/APP/6.1**) to identify those receptors potentially impacted by physical factors (noise, vibration, smell, fumes, smoke, artificial lighting and discharge of solid/liquid substance onto land). This guidance was based on the topography of the land and the likely significant effects arising from the Scheme. For example, the noise assessments had regard to information available at the time regarding:
- a. background noise levels; and
  - b. distance to receptors.
- 4.8.3 Based on the above information, professional judgement was used to ascertain whether a person may be able to make a relevant claim for compensation under section 57(4) of the 2008 Act, based on a worse-case assessment. Following guidance from environmental and compensation specialists, a precautionary approach was adopted to include all those properties identified as potentially affected by a 3 dB or greater increase in noise as a result of the Scheme as potential Category 3 parties. This process was undertaken for all of the physical factors set out in Part 1 of the LCA 1973, and in each case the parties and properties assessed in terms of potential relevant claims for that factor. No further potential relevant claims for other factors were identified outside of the proposed land requirements or area identified as affected by a 3dB noise increase.
- 4.8.4 The findings were reviewed as further assessments and information became available as the Scheme progressed until a final position was identified to inform the Book of Reference (**TR010065/APP/4.3**).
- 4.8.5 Further details about the noise assessments and other environmental assessments undertaken can be found in Chapter 11, (Noise and Vibration), of the ES (**TR010065/APP/6.1**).

## **4.9 Contact Referencing**

- 4.9.1 Following the initial non-contact methods described above, persons identified as having an interest in the Land or a potential claim were issued a letter with a plan describing the extents of the Scheme. A questionnaire was also sent to persons initially identified as having an interest in the Land requesting return of information about their interests in the Land.
- 4.9.2 This was followed up by telephone and letters confirming that the Scheme was in development and because there could be impact on their land interest the Applicant needed to ensure the correct information was held. The identified parties were also offered a site visit. A total of 96 parties were visited.

#### 4.10 Negotiation to acquire by agreement

- 4.10.1 As well as consulting all persons with an interest in the Land about the Scheme proposals in accordance with section 42 of the 2008 Act, the Applicant is aware of the requirement (paragraph 25 of the CA Guidance) to seek to acquire land by negotiation wherever practicable. The power to acquire land compulsorily should only be sought if attempts to acquire by agreement fail.
- 4.10.2 At the same time, the Applicant notes that the CA Guidance also recognises that where proposals would entail the compulsory acquisition of many separate plots of land, it may not always be practicable to acquire each plot of land by negotiation. As the CA Guidance states *“Where this is the case, it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset”*.
- 4.10.3 The Applicant has engaged with all landowners and leaseholders with a view to acquiring their land interest by agreement by writing to them to inform them of the Applicant’s willingness to negotiate to acquire the Land by agreement, and to invite dialogue at that point. As a result, the Applicant is in the process of engaging with all land interests with regard to the acquisition of land by agreement; and negotiations with this objective will be ongoing throughout the DCO process. The current status of such negotiations is set out in **Annex B** of this Statement.
- 4.10.4 Whilst negotiations are ongoing, the Applicant is mindful that it is under a duty to acquire land at best value and that it is required to deliver the Scheme within a specified timescale. It has concluded that it may not be possible to acquire all land interests necessary to deliver the Scheme by agreement within this timescale.
- 4.10.5 Land already owned by the Applicant is also included in the draft DCO (**TR010065/APP/3.1**) in that it is shown on the Land Plans (**TR010065/APP/2.2**) as being subject to compulsory acquisition, in order to ensure that no known or unknown third-party rights, which might impede delivery of the Scheme, remain over the Land.

#### 4.11 Land in unknown ownership

- 4.11.1 There are further parcels of land in unknown ownership which, despite diligent inquiry, the Applicant has been unable to identify the ownership of. As a result, these parcels of land cannot be acquired by agreement. These are set out in **Table 4-1** below:

**Table 4-1 – Unknown Land Interests within the Order Limits relevant to Permanent Acquisition**

Nature of Interest	Description of the Land	Affected Land Plot Numbers
Freehold	Approximately 318 square metres of land and highway known as Farndon Road, Farndon, Newark	1/2c
Freehold	Approximately 1585 square metres of land, verge and highway known as Fosse Road, Newark.	1/5a
Freehold	Approximately 3346 square metres of land, highways including overhead electricity cable and roundabout known as Farndon Roundabout A46, Fosse Road, Farndon, Newark.	1/5b
Freehold	Approximately 49 square metres of land and Bridleway (Newark BW2) situated to the south of the River Trent, Newark.	1/5g
Freehold	Approximately 148 square metres of land and Bridleway (Newark BW2) situated to the south of the River Trent, Newark.	1/5i
Freehold	Approximately 426 square metres of land to the west of bridge and land beneath and including bridge carrying highway known as A46 and Bridleway (Newark BW2) situated to the south of the River Trent, Newark.	1/5j
Freehold	Approximately 284 square metres of river known as the River Trent and bridge above carrying highway known as A46, Newark	1/5n

Freehold	Approximately 255 square metres of river known as the River Trent and bridge above carrying highway known as A46, Newark	1/5o
Freehold	Approximately 65 square metres of land to the west of bridge and land beneath and including bridge carrying highway known as A46 and Bridleway (Newark BW2) situated to the south of the River Trent, Newark.	1/5r
Freehold	Approximately 132 square metres of land and highway known as A46 and waterway known as Old Trent Dyke beneath A46, Newark.	2/2b
Freehold	Approximately 190 square metres of land and highway known as A46 and waterway known as Old Trent Dyke beneath A46, Newark.	2/2c
Freehold	Approximately 29 square metres of land and highway known as A46 and waterway known as Old Trent Dyke beneath A46, Newark.	2/2d
Freehold	Approximately 130 square metres of land and access track situated to the west of the A46, Newark	2/2h
Freehold	Approximately 633 square metres of woodland situated to the west of highway known as A46 and north of railway line known as Nottingham to Lincoln line, Newark	2/2l
Freehold	Approximately 772 square metres of land and access	2/2o

	track situated to the west of the A46, Newark	
Freehold	Approximately 738 square metres of woodland and access track beneath bridge carrying highway and highway known as A46 situated to the west of Old Trent Dyke and north of railway line known as Nottingham to Lincoln line, Newark.	2/2q
Freehold	approximately 17945 square metres of land and highway known as A46, Newark	2/6a
Freehold	Approximately 602 square metres of agricultural land situated to the west of Old Trent Dyke, Newark	3/2a
Freehold	Approximately 80 square metres of land and highway known as Kelham Road, Newark.	3/2b
Freehold	Approximately 1342 square metres of land and highway known as Great North Road situated to the west of the Cattle Market, Newark.	3/2g1
Freehold	Approximately 128 square metres of land and highway known as Great North Road situated to the west of the Cattle Market, Newark.	3/2g2
Freehold	Approximately 171 square metres of land and highway known as Great North Road situated to the west of the Cattle Market, Newark.	3/2g3
Freehold	Approximately 0.06 square metres of land and highway	3/2g5

	known as Great North Road situated to the west of the Cattle Market, Newark.	
Freehold	Approximately 301 square metres of land and highway known as Great North Road situated to the west of the Cattle Market, Newark.	3/2g7
Freehold	Approximately 11 square metres of land and highway known as Great North Road situated to the west of the Cattle Market, Newark.	3/2g9
Freehold	Approximately 88 square metres of land and highway known as Great North Road.	3/2i
Freehold	Approximately 12 square metres of land and highway known as Great North Road.	3/2j1
Freehold	Approximately 85 square metres of land and highway known as Great North Road.	3/2j2
Freehold	Approximately 263 square metres of land and woodland situated to the north of the A46, Newark.	3/2k
Freehold	Approximately 75 square metres of land and highway known as A46, Newark.	3/2l
Freehold	Approximately 86 square metres of land and private access road (unnamed road), Newark.	3/2n
Freehold	Approximately 206 square metres of land and railway situated to the west of Kings Waterside Marina the River Trent, Newark.	3/2u



Freehold	Approximately 8 square metres of land situated to the west of Kings Waterside Marina the River Trent, Newark	3/2w
Freehold	Approximately 3 square metres of woodland situated to the west of Kings Waterside Marina the River Trent, Newark.	3/2bb
Freehold	Approximately 835 square metres of land situated to the west of Kings Waterside Marina the River Trent, Newark.	3/2ii
Freehold	Approximately 58 square metres of land and railway situated to the west of Kings Waterside Marina the River Trent, Newark.	3/2jj
Freehold	Approximately 18 square metres of land and railway situated to the west of Quibells Lane, Newark.	4/12a
Freehold	Approximately 40 square metres of land and railway situated to the west of Quibells Lane, Newark.	4/12b
Freehold	Approximately 314 square metres of land and bridge carrying A46 situated to the west of Quibells Lane, Newark and railway line that is excluded from land acquisition.	4/12c
Freehold	Approximately 27 square metres of land and railway line that is excluded from land acquisition situated to the	4/12d



	west of Quibells Lane, Newark.	
Freehold	Approximately 78 square metres of Land, railway and bridge carrying highway known as A46 situated to the north south of Newark Crossing, Newark.	4/12f
Freehold	Approximately 30 square metres of land and railway situated to the west of Quibells Lane, Newark.	4/12h
Freehold	Approximately 515 square metres of land and railway situated to the north of Newark Crossing west of Quibells Lane, Newark.	4/12i
Freehold	Approximately 1194 square metres of land and coppice situated to the west of Winthorpe Road and south of the A1, Newark.	5/3b
Freehold	Approximately 1422 square metres of land and hedgerow situated to the west of Winthorpe Road, Newark	5/3c
Freehold	Approximately 319 square metres of land and hedgerow situated to the west of Winthorpe Road, Newark	5/3e
Freehold	Approximately 20761 square metres of land and highway known as the A46, Newark	5/3f
Freehold	Approximately 335 square metres of land and highway known as the A46, Newark	5/3g
Freehold	Approximately 52 square metres of land and hedgerow situated to the northwest of	5/3k

	Fosse Way (A46), Winthorpe, Newark Fosse Way	
Freehold	Approximately 75196 square metres of land and highway known as the A46 and public footpath (Winthorpe FP2), Newark	5/3l
Freehold	Approximately 23 square metres of land and hedgerow situated to the northwest of Fosse Way (A46), Winthorpe, Newark Fosse Way	5/3m
Freehold	Approximately 292 square metres of land and hedgerow, and brook situated to the northwest of Fosse Way (A46), Winthorpe, Newark	5/3n
Freehold	Approximately 527 square metres of land and highway known as Hargon Lane, Newark	5/3o
Freehold	Approximately 2101 square metres of land, verge and highway known as A1133, Newark, Langford.	6/4c
Freehold	Approximately 179 square metres land, highway known as A46, Newark	6/4d
Freehold	Approximately 13895 square metres of land, highway known as Fosse Road (A46), and drains, Newark.	6/4e
Freehold	Approximately 1311 square metres of land and highway known as Drove Lane, Newark	6/4f
Freehold	Approximately 256 square metres of land and ditch	7/2d

	situated to the west of the River Trent, Newark	
Freehold	Approximately 131 square metres of land and highway known as Main Road, A617, Newark.	7/2e
Freehold	Approximately 66 square metres of land and highway known as Main Road, A617, Newark.	7/2f
Freehold	Approximately 6 square metres of land, highway and access road known as Main Road, A617, Newark.	7/2g
Freehold	Approximately 7 square metres of land, highway and access road known as Main Road, A617, Newark.	7/2h

4.11.2 Diligent inquiry included review of Land Registry records, physical inspection and posting of site notices requesting information from the landowner of the relevant land.

4.11.3 Therefore, the Applicant has concluded that the Scheme is unlikely to be capable of being delivered without compulsory acquisition powers.

## **4.12 Utility Diversions**

4.12.1 A number of existing utility services are located in the surrounding area that would be affected by the Scheme. The relevant major utility diversions are summarised below and have been defined as specific works within the development, listed in Schedule 1 of the draft DCO (**TR010065/APP/3.1**). These works are also shown on the Utilities Works Plans (**TR010065/APP/2.8**).

**Work No U1-** As shown on sheet 1 of the utilities works plans, the diversion of low voltage electric cables of approximately 22 metres in length north of the Farndon Underpass.

**Work No U2-** As shown on sheet 2 of the utilities works plans, the diversion of electricity overhead 33kV distribution cables.

**Work No U3-** As shown on sheet 2 of the utilities works plans, the diversion of overhead 11kV electricity distribution cables to underground buried cable to the south of the Nottingham to Lincoln Railway.

**Work No U4-** As shown on sheet 2 of the utilities works plans, the diversion of electronic communications equipment.

**Work No U5-** As shown on sheet 3 of the utilities works plans, the diversion of a medium pressure gas main north of Newark Cricket Ground.

**Work No U6-** As shown on sheet 3 of the utilities works plans, the diversion of water pipes north of Newark Cricket Ground.

**Work No U7-** As shown on sheet 3 of the utilities works plans, the diversion of low voltage cables and electronic communications equipment North of Newark Cricket Ground and at Cattle Market Junction.

**Work No U8-** As shown on sheet 3 of the utilities works plans, the diversion of low voltage cables and electronic communications equipment at Cattle Market Junction.

**Work No U9-** As shown on sheet 3 of the utilities works plans, the diversion of utilities and electronic communications equipment at Cattle Market Junction.

**Work No U10-** As shown on sheet 3 of the utilities works plans, the diversion of low voltage cables and 11kV electricity distribution cables at Cattle Market Junction.

**Work No U11-** As shown on inset A of sheet 4 of the utilities works plans, the diversion of electronic communications equipment under the Nether Lock Viaduct.

**Work No U12-** As shown on sheet 4 of the utilities works plans, the diversion of 11kV electricity cables under the Nether Lock Viaduct.

**Work No U13-** As shown on sheet 4 of the utilities works plans, the diversion of high voltage electricity distribution cables under the Nether Lock Viaduct.

**Work No U14-** As shown on sheet 4 of the utilities works plans, the diversion of electronic communications equipment at the Sewage Treatment Works Underpass.

**Work No U15-** As shown on sheet 4 of the utilities works plans, the potential protection or diversion of electricity distribution cables north east of the Sewage Treatment Works Underpass.

**Work No U16-** As shown on sheets 4 and 5 of the utilities works plans, the potential protection or diversion of a sewer north and west of Pipe Culvert No 16 (sheet 4).

**Work No U17-** As shown on inset A of sheet 5 of the utilities works plans, the diversion of a water pipe at Winthorpe Road.

**Work No U18-** As shown on sheet 5 of the utilities works plans, the diversion of medium pressure gas main at Winthorpe Road and Brownhills Underbridge.

**Work No U19-** As shown on inset A of sheet 5 of the utilities works plans, the diversion of electricity cables at Winthorpe Road and Brownhills Underbridge.

**Work No U20-** As shown on sheet 5 of the utilities works plans, the diversion of electronic communications equipment at Winthorpe Road and Brownhills Underbridge.

**Work No U21-** As shown on sheets 5 and 6 of the utilities works plans, the diversion of electronic communications equipment between Friendly Farmer Roundabout (sheet 5) and the new Winthorpe Roundabout (sheet 6).

**Work No U22-** As shown on inset B of sheet 5 of the utilities works plans, the diversion of water pipe north of the Friendly Farmer Roundabout.

**Work No U23-** As shown on sheets 5 and 6 of the utilities works plans, the diversion of electronic communications equipment between the Friendly Farmer Roundabout (sheet 5) and the new Winthorpe Roundabout (sheet 6).

**Work No U24-** As shown on sheets 5 and 6 of the utilities works plans, the diversion of 11kV overhead electricity distribution cables between the Friendly Farmer Roundabout (sheet 5) and the new Winthorpe Roundabout (sheet 6).

**Work No U25-** As shown on sheet 6 of the utilities works plans, the diversion of electronic communications equipment at the new Winthorpe Roundabout.

**Work No U26-** As shown on sheet 6 of the utilities works plans, the diversion of electronic communications equipment at the new Winthorpe Roundabout starting at the A1133.

**Work No U27-** As shown on sheet 6 of the utilities works plans, the diversion of apparatus for utilities and electronic communications equipment north of the new Winthorpe Roundabout.

**Work No U28-** As shown on inset A of sheet 6 of the utilities works plans, the diversion of electricity cables at the new Winthorpe Roundabout.

**Work No U29-** As shown on sheet 7 of the utilities works plans, the diversion of electricity cables in the A617 northeast of Averham.

**Work No U30-** As shown on sheet 7 of the utilities works plans, the diversion of overhead electricity distribution cables north of Averham.

**Work No U31-** As shown on Inset A of sheet 7 of the utilities works plans, the diversion of electronic communications equipment in the A617 northeast of Averham.

**Work No U32-** As shown on Inset B of sheet 7 of the utilities works plans, the diversion of a medium pressure gas main in the A617 northeast of Averham.

**Work No U33-** As shown on Inset C of sheet 7 of the utilities works plans, the diversion of water pipe in the A617 northeast of Averham

- 4.12.2 Utilities existing in the Order Limits that would require diversion include potable water mains foul water sewers, overhead and buried electricity cables (low to medium voltage), overhead and buried communication cables and gas pipes of a medium pressure rating.
- 4.12.3 Where utility diversions are required within existing highway, the Applicant will seek to keep service interruptions to a minimum with diverted routes being constructed first, followed by a short shut down period during off-peak traffic hours to tie-in the new asset and reinstate the service. This would not be possible in all scenarios and short disruption of service may be experienced if space and logistical constraints prevent the former option from being carried out. Any disruptions to supplies would be communicated to all affected parties in advance of the works taking place. A number of diversions are located outside of the existing highway boundary, so the Applicant will seek for these works to be undertaken during off-peak usage and in accordance with the statutory undertaker's requirements.
- 4.12.4 The location of diverted utilities is currently being explored with the relevant statutory undertakers. The solutions will range from being included within the adopted highway boundary to being located in private land, depending on the existing location of the service and its long-term maintenance requirement.
- 4.12.5 The following classification of works are to be undertaken on the existing utility assets within the Order Limits:
- Protection Works. The existing asset is retained in its current state but with either an exclusion zone or bridging slab installed to protect the

asset during construction and from the loading from the elements of the Scheme. Several of the existing service corridors pass under the existing A46 embankment and will have pre-existing protection measures in place. In this instance the Scheme's solution is to design and construct new protection slabs over the assets to protect them from the temporary loadings associated with the construction traffic and the permanent loadings from the embankment widening.

- Single diversion. The asset is diverted onto a new permanent alignment prior to construction activities commencing.
- Multiple phased diversion. Where there are land or logistic constraints it may be necessary to divert the service into a temporary alignment, to allow construction to take place, and upon completion of the works the service is diverted into a new, permanent, alignment. This may be required where the proposed permanent alignment for the asset is within the construction area and a single phased diversion would result in either excessively deep alignment or would create a hazard during the construction operation.

4.12.6 All service shut downs would be communicated to those affected via the statutory undertaker conducting the works. If access to properties would be affected during diversionary works, this would be communicated to the relevant landowners.



## 5 The Case for Compulsory Acquisition

### 5.1 Introduction

- 5.1.1 In seeking compulsory acquisition and temporary possession powers in the draft DCO (TR010065/APP/3.1), the Applicant has had regard to the conditions in section 122 of the 2008 Act and to the tests set out in the CA Guidance.

### 5.2 The statutory conditions and CA Guidance

- 5.2.1 Section 122 of the 2008 Act states that:

*“An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met”.*

- 5.2.2 The conditions are:

- In subsection (2), that the land is:
  - a) *“required for the development to which the development consent relates;*
  - b) *required to facilitate or is incidental to that development;*  
*or*
  - c) *replacement land which is to be given in exchange for the order land under sections 131 and 132 of the 2008 Act;” and*
- In subsection (3) *“that there is a compelling case in the public interest for the land to be acquired compulsorily”.*

- 5.2.3 The CA Guidance (paragraph 11) sets out the considerations which the SoS will take into account in deciding whether the condition in subsection (2) has been met. It states:

- a) *“In respect of whether land is required for the development, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.*
- b) *In respect of whether the land is required to facilitate or is incidental to the proposed development, the Secretary of State will need to be satisfied that the development could only be carried out to a satisfactory standard if the land in question were to be compulsorily acquired and*

*that the land to be taken is no more than is reasonably necessary for that purpose and that it is proportionate.*

*c) In respect of whether the land is replacement land, the Secretary of State will need to be satisfied that the compulsory acquisition is needed for replacement land, that no more land is being taken than is reasonably necessary for that purpose and that it is proportionate”*

5.2.4 In respect of the section 122(3) condition, the CA Guidance states (at paragraphs 12 and 13) that the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

5.2.5 Paragraphs 8 to 10 of the CA Guidance are also relevant, setting out a number of general considerations to be taken into account by the applicant in seeking compulsory acquisition powers:

- a) “That all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored;*
- b) That the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate;*
- c) That the applicant has a clear idea of how they intend to use the land which is to be acquired;*
- d) That there is a reasonable prospect of the necessary funds for the acquisition becoming available; and*
- e) That the purposes for which compulsory acquisition powers are included in the application are legitimate and sufficiently justify interfering with the human rights of those with an interest in the affected land”.*

5.2.6 Finally as noted above, paragraph 25 of the CA Guidance states that applicants should seek to acquire land by negotiations wherever practicable.

### **5.3 Need for the Land and the purposes for which compulsory acquisition powers are sought**

5.3.1 The Applicant is satisfied that the condition in section 122(2) of the 2008 Act is met. It considers that the Land subject to compulsory acquisition powers is either needed for the development (the Scheme), or is needed to facilitate the development, or is incidental to the development.

5.3.2 Together with this Statement, the Land Plans (**TR010065/APP/2.2**) and the Book of Reference (**TR010065/APP/4.3**) show how and why the Land is

required and how it would be used. In the case of each plot of land, the powers sought by the Applicant are necessary to deliver the Scheme and are proportionate to the degree of interference with any private rights.

- 5.3.3 At **Annex A** of this Statement, the Applicant sets out why compulsory powers are necessary in relation to each individual parcel of the Land, with reference to the relevant DCO works numbers (comprising the authorised development) as set out in Schedule 1 of the draft DCO (**TR010065/APP3.1**). The proposed use of this land and the benefits this will bring to the Scheme are set out in general summary in **Chapter 2** of this Statement. **Annex A** of this Statement sets out in detail the purpose of acquisition / use of each plot.
- 5.3.4 The Applicant has sought to achieve a balance between minimising land-take and securing sufficient land to deliver the Scheme, noting that the detailed design is yet to be developed. Land is required for the permanent works which includes new highway infrastructure and environmental mitigation. Land is also required to enable the installation, operation and maintenance of utilities, and to create the temporary working space to construct the Scheme.
- 5.3.5 Where utilities need diversion or protection as a result of the permanent works or temporary works (such as haul routes running over their existing alignment) then the route of any diversion has been assessed, together with the appropriate safe working space as well as access arrangements, both during construction and operation. Consideration has been given to working method, particularly where obstructions such as watercourses, ditches, hedgerows, veteran trees or archaeological finds cannot be avoided through re-routing and need to be crossed and the need or otherwise for trenchless crossing techniques to be used. Wherever practicable, land required for permanent works has also been used for utility diversion routes, working space or access.
- 5.3.6 Temporary land-take is required to create a safe construction environment to provide temporary facilities for the workforce and to allow the storage of plant and materials. In particular, to support earthworks operations (and other vehicle movements) a network of haul routes is required, which facilitate safe and efficient construction, but also reduces the need for construction vehicles to use the public road network, reducing both disruption and hazard to the local communities. These routes have been assessed to avoid, where practicable, nearby residential or ecologically sensitive receptors, including careful selection of access points. In addition, where possible the Applicant has sought to reuse existing features, such as existing access points from the A46 which would be modified to form temporary construction access points.
- 5.3.7 The Applicant considers that the Land is the minimum land-take required to construct, operate, maintain and mitigate the Scheme and is necessary to

achieve the objectives of the Scheme. The limits of deviation have been drawn as tightly as possible so as to avoid unnecessary land-take. In the event that less land proves to be required in a particular area following the detailed design stage, the Applicant would only seek to acquire that part of the land that is required and, in all events, will seek to minimise effects on land interests.

- 5.3.8 The compulsory acquisition powers are also required to override any existing rights and interests in the Land as well as grant the right to take temporary possession of land for construction and maintenance purposes. Again, without these rights over the Land, the Scheme cannot be delivered.
- 5.3.9 The Applicant is accordingly satisfied that the Land to be taken is reasonable and proportionate.

#### **5.4 Compelling case in the public interest**

- 5.4.1 This Statement sets out the reasons for the inclusion of compulsory acquisition powers in the draft DCO (**TR010065/APP/3.1**). It also explains it is necessary to include compulsory powers in the draft DCO so that the Applicant can acquire the land required for the construction of the Scheme that is not already in its possession. It also explains why powers of compulsory acquisition are necessary to enable the Applicant to use land temporarily, and acquire or extinguish rights over land in order to construct the Scheme in a way that is both proportionate and in the public interest by reducing environmental impacts, minimising costs to the Applicant (and hence the public purse) and mitigating the impact on land interests. This compelling case is evidenced further in the wider documentation that accompanies the DCO application.
- 5.4.2 The Applicant is satisfied that the condition set out in section 122(3) of the 2008 Act is met and that there is a compelling case in the public interest for compulsory acquisition.
- 5.4.3 For this condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition of land and interests in land for the Scheme will outweigh the private loss that would be suffered by those whose interests in land and / or rights over land are to be acquired. The need for and the benefits of the Scheme are set out in **Chapter 2** of this Statement and in other application documents, including in particular the Case for the Scheme (**TR010065/APP/7.1**). Together they demonstrate that there is a compelling case in the public interest for the Scheme to be delivered.
- 5.4.4 In particular, as set out in Chapter 6 of the Case for the Scheme (**TR010065/APP/7.1**), paragraph 2.2 of the NPSNN identifies a “critical need” to improve the national networks to address road congestion and

crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. It goes on to state that improvements may also be required to address the impacts of the national networks on quality of life and environmental factors.

- 5.4.5 The way in which the strategic objectives of the Scheme are aligned with the NPSNN are set out in detail in Chapter 6 of the Case for the Scheme (**TR010065/APP/7.1**) General compliance with the NPSNN and draft NPSNN is set out in the National Policy Statement for National Networks (NPSNN) Accordance Table (**TR010065/APP/7.2**) and draft National Policy Statement for National Networks (NPSNN) Accordance Table (**TR010065/APP/7.3**)
- 5.4.6 The Road Investment Strategy 2015-2020 (RIS1) acknowledged the need for improvement of the A46 north of Newark to dual carriageway standard, thereby raising the last section of the A46 between the A1 and M1 to a standard in line with the wider route corridor. The Scheme was announced as a project to be developed for the next “Road Period” in RIS1.
- 5.4.7 In March 2020, the Government published RIS2 covering the period 2020-2025. RIS2 outlines the long-term strategic vision for the Strategic Road Network, and the Scheme is included as a committed scheme to improve the single carriageway and junctions of the A46 at Newark and to provide better links to the A1.
- 5.4.8 RIS2 also recognised that *“Midlands Connect has highlighted the role of the A46 in connecting the Midlands, running from Lincoln to Gloucestershire via Leicester and Coventry. Much of this road is already high -quality dual carriageway, and by filling in key sections it would be possible to create a coast-to- coast highway without the need for major new road-building across open countryside. The single greatest gap in this route is the A46 at Newark”*.

## **5.5 Consideration of Alternatives to compulsory acquisition**

- 5.5.1 As explained in Chapter 2 of the Consultation Report (**TR010065/APP/5.1**); Chapter 3 (Assessment of Alternatives) of the ES (**TR010065/APP/6.1**) and Chapter 2 of the Case for the Scheme (**TR010065/APP/7.1**) the Applicant has explored alternatives options for the Scheme.
- 5.5.2 In designing the Scheme and determining the Land subject to compulsory acquisition and temporary possession powers, the Applicant has considered alternatives and modifications to the Scheme to minimise the potential land-take. These alternatives and modifications were consulted on and the preferred route has been chosen based on a thorough consideration of relevant issues. This process is described in detail in



Chapter 3 (Assessment of Alternatives) of the ES (TR010065/APP/6.1) and Chapter 2 of the Case for the Scheme (TR010065/APP/7.1).

- 5.5.3 The initial corridor sifting exercise identified a total of three potential areas (referred to as corridors) of interest. At the Options Identification stage for the Scheme, a further two corridor options were identified. Therefore, five potential corridor options were identified to ensure a wide range of possibilities were considered. From that exercise Corridor C, the most direct route, using the existing A46 corridor, scored highest for economic growth, movement, accessibility, journey time, resilience, customer groups. Corridor C was the best performing corridor in terms of user benefits, providing the greatest reductions in journey times, delays and incidents, and improvement in reliability. In addition, Corridor C performed better in environmental terms in achieving improvements in terms of carbon, noise and the local water environment. It was also more preferential in terms of impact on key environmental constraints. Further options were then evaluated to ensure mitigation of potential impacts.
- 5.5.4 Two options for the Scheme were taken forward to public consultation. Following Options consultation, the Applicant selected the most appropriate option which was also the preferred option in the public consultation. Further details about this consultation can be found in Chapter 2 of the Consultation Report (TR010065/APP/5.1). This selection took into account a number of factors, including safety, improved journey time reliability, and the level of overall support from the local community.
- 5.5.5 None of the alternatives or modifications considered would obviate the need for the compulsory acquisition and temporary possession of the Land.
- 5.5.6 The Applicant has sought to acquire by agreement land and rights in land for the purposes of the Scheme and will continue to do so. The Applicant has engaged in extensive consultation and negotiations with all persons with an interest in the Land in order to try to avoid the need for compulsory acquisition wherever possible. These negotiations are described in **Annex B** of this Statement.

## **5.6 Reasonable prospect of funding**

- 5.6.1 The Applicant is content that there is reasonable prospect of the necessary funds for acquisition and payment of compensation being available for the reasons set out in the Funding Statement (TR010065/APP/4.2).
- 5.6.2 The Applicant therefore considers that the Secretary of State can be satisfied that the requisite funds for payment of compensation will be available at the appropriate time.

## **5.7 Acquisition by Agreement**

- 5.7.1 The Applicant recognises that the authority to acquire land compulsorily should only be sought if attempts to acquire by agreement fail. However, the Applicant notes that the CA Guidance recognises that, in some cases, it may not always be practicable to acquire each plot of land by agreement. Where this is the case the CA Guidance confirms that it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset. It also recognises that in some cases it may preferable, or necessary, to acquire land compulsorily rather than by agreement.
- 5.7.2 The Applicant sets out **Chapter 4** and **Annex B** of this Statement the discussions it has had with land interests to acquire the Land by agreement. It is satisfied that compulsory acquisition and temporary possession powers are required to ensure that the Scheme can be delivered in a reasonable timescale and in the event that it does not prove possible to acquire all of the Land by agreement.

## **5.8 Conclusions**

- 5.8.1 The Applicant is satisfied that the conditions in section 122 of the 2008 Act are met and that the tests in the CA Guidance are satisfied.
- 5.8.2 All of the land subject to compulsory acquisition and temporary possession powers is necessary to construct, operate, maintain and mitigate the Scheme; and necessary to achieve the objectives of the Scheme. The extent of the Land sought is reasonable and proportionate.
- 5.8.3 There is a compelling case in the public interest to include the compulsory acquisition powers sought by the Applicant in the draft DCO (**TR010065/APP/3.1**). The exercise of the compulsory acquisition powers that are sought is shown throughout this Statement to be necessary and proportionate to the extent that interference with private land and rights is required. In the absence of compulsory powers, the Applicant considers that it would not be possible to proceed with the Scheme, and benefits of the Scheme would not be realised.



## 6 Human Rights Act 1998 and the Equality Act 2010

6.1.1 No currently used or occupied residential properties are to be acquired for the Scheme. The Applicant has recently been made aware that there is a residential unit forming part of the closed, boarded up and derelict former Mint Leaf restaurant (Plot 5/13a). It is also unoccupied. The Applicant's investigations with the owners of the Property confirmed that the whole of the building is unoccupied. It is thought that the unit was a flat tied to the use of the commercial premises. On further investigation of the council tax records, the council tax banding for the 'Flat above Mint Leaf Indian Restaurant' was 'Deleted' with effect from 16th November 2023. Accordingly for the purpose of this assessment the Applicant has proceeded on the basis that there are no residential properties to be acquired for the Scheme.

### 6.2 The protected rights

6.2.1 The Human Rights Act 1998 incorporated into UK law the provisions of the European Convention on Human Rights (the Convention). The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual.

6.2.2 The following Articles of the Convention are relevant to the Secretary of State's decision as to whether the DCO should be made so as to include powers of compulsory acquisition:

- Article 1 of The First Protocol to the Convention– this protects the rights of everyone to peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles;
- Article 6 – this entitles those affected by compulsory powers sought in the DCO to a fair and public hearing of any relevant objections they may have to the granting of those powers. This includes property rights and can include opportunities to be heard in the decision making process;
- Article 8 – this protects private and family life, home and correspondence. No public authority can interfere with these rights except such as in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.

6.2.3 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the Convention.

6.2.4 Paragraph 10 of the CA Guidance sets out how applicants should take into account Human Rights:

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

- 6.2.5 The Secretary of State, as the decision maker, is under a duty to consider whether the exercise of powers interacts with the rights protected by the Convention.
- 6.2.6 The draft DCO (**TR010065/APP/3.1**), if made, has the potential to infringe the human rights of persons with an interest in the Land under Art. 1 of the First Protocol to the Convention. Such an infringement is authorised by law provided that:
- the statutory procedures for making the DCO are followed and there is a compelling case in the public interest for the compulsory acquisition powers included within the draft DCO; and
  - the interference with the Convention right is proportionate and otherwise justified.

### **6.3 Compliance with the convention**

- 6.3.1 The Applicant recognises that the Scheme may have an impact on individuals but considers that the significant public benefits that will arise from the Scheme, as outlined in this Statement (and set out in greater detail in the Case for the Scheme) (**TR010065/APP/7.1**) outweigh any harm to those individuals.
- 6.3.2 The Applicant is of the view that the powers sought in the draft DCO (**TR010065/APP/3.1**) strike a fair balance between the public interest in seeing the Scheme proceed (which is unlikely to happen in the absence of the compulsory acquisition powers being included in the draft DCO) and the private rights which will be affected by the compulsory acquisition.
- 6.3.3 In relation to both Articles 1 and 8, the compelling case in the public interest for the compulsory acquisition powers included within the DCO has been demonstrated in **Chapter 5** of this Statement and in the Case for the Scheme (**TR010065/APP/7.1**). The Land included over which compulsory acquisition powers are sought as set out in the draft DCO (**TR010065/APP/3.1**) is the minimum necessary to ensure the delivery of the Scheme. The Scheme has been designed to minimise harm whilst achieving its publicly stated objectives. In this respect the interference with human rights is both proportionate and justified.

- 6.3.4 In relation to Article 6 the Applicant is content that proper procedures have been followed for both the consultation on the Scheme and in determining the need for compulsory acquisition powers included in the draft DCO (**TR010065/APP/3.1**). Throughout the development of the Scheme, the Applicant has given persons with an interest in the Land a full opportunity to comment on the proposals, both in a statutory and non-statutory capacity, and the Applicant has endeavoured to engage with land interests. The Applicant has had regard to land interest feedback in both the initial design of the Scheme and in iterative design changes throughout the life of the Scheme. Examples of design changes are provided within the Chapter 5 (section 5.7) of the Consultation Report (**TR010065/APP/5.1**).
- 6.3.5 Furthermore, any individuals affected by the draft DCO (Application Document: **TR010065/APP/3.1**) may submit representations by way of an objection to the application in response to any notice given under section 56 of the 2008 Act, the examination of the application by the Examining Authority, any written representations procedures which the Examining Authority decides to hold and in particular, any compulsory acquisition hearing held under section 92 of the 2008 Act, at which each affected person is entitled to make oral representations about the compulsory acquisition request.
- 6.3.6 If the DCO is made, a person aggrieved may challenge the DCO by judicial review in the High Court if they consider that the grounds for doing so are made out pursuant to section 118 of the 2008 Act.

## **6.4 Fair compensation**

- 6.4.1 Any person affected by the exercise of compulsory acquisition powers or by the exercise of temporary possession, may be entitled to compensation. This entitlement to compensation is provided for by the existing compensation code and relevant article provisions of the draft DCO (**TR010065/APP/3.1**). The Applicant has the resources to pay such compensation and has demonstrated in the Funding Statement (**TR010065/APP/4.2**) that these resources will be available.
- 6.4.2 Any dispute in respect of the compensation payable may be referred to the Upper Tribunal (Lands Chamber), an independent tribunal, for determination.

## **6.5 Consideration of duties under the Equality Act 2010**

- 6.5.1 The Applicant has complied with its duties under section 149 of the Equality Act 2010 and has had due regard to the need to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by or under the Equality Act 2010; (ii) advance equality of opportunity between persons who share a protected characteristic and persons who do not share

it; and (iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.5.2 The Applicant has conducted an Equality Impact Assessment (EqIA) (**TR010065/APP/7.6**) to consider how the Scheme may have direct and indirect impacts and contribute to equality effects for equality groups. The Assessment concludes that the mitigation measures embedded into the Scheme, in combination with the ongoing actions outlined in the EqIA should minimise any adverse impacts of the Scheme and provide benefits for a number of equality groups.

6.5.3 The EqIA (**TR010065/APP/7.6**) will continue to be developed throughout the remaining design and construction stages of the Scheme. It will ensure that due regard is made towards the needs of people with protected characteristics under the Equality Act 2010. It will also help identify opportunities for enhancing equality of opportunity and fostering good relations between those who have protected characteristics and those who do not. The EqIA concludes that the Scheme is likely to have some temporary negative effects generated by the construction phase of the Scheme, however minimised through the mitigation measures embedded, and to provide long term benefits that can be shared by equality groups. This includes direct benefits such as improved road safety, and new and improved walking and cycling routes. The Scheme is also likely to improve access to community facilities and education, as well as improving access to recreational facilities and green space.

6.5.4 This leads to the conclusion that no considerable impediment was identified to the Scheme and monitoring will be ongoing to ensure that remains the case.

## **6.6 Conclusions**

6.6.1 For the reasons set out above, the Applicant considers that any infringement of the Convention rights of those whose interests in the Land might be affected by the exercise of powers of compulsory acquisition would be proportionate and legitimate, would be in the public interest and would be in accordance with national and European law. The Applicant therefore considers that it would be appropriate and proportionate for the Secretary of State to make the DCO including the grant of compulsory acquisition powers.

## 7 Special considerations

### 7.1 Crown Land

- 7.1.1 As shown in Part 4 of the Book of Reference (**TR010065/APP/4.3**) and on the Crown Land Plans (**TR010065/APP/2.11**), the draft DCO (**TR010065/APP/3.1**), at Article 52 (Crown Rights), includes provision for the acquisition of those interests in Crown Land listed in **Table 7-1** below. In accordance with section 135 of the 2008 Act, the consent of the Crown (in this case the Secretary of State) to the compulsory acquisition of these land interests is required. Following liquidation and dissolution of the existing registered owner, which was a limited company, it is presumed that the interest in land now vests in the Crown as bona vacantia land. Accordingly, this land is included within the Crown Land designation. The Secretary of State for Transport is included as it is the beneficiary of a historical agreement dated 16 April 1991 which is still subsisting on the title.

**Table 7-1 Crown land required for the Scheme**

Interest	Nature of Interest	Plot
The Secretary of State for Transport	Category 2	2/6a
Government Legal Department (BVD)	Category 2	2/6a

- 7.1.2 The Applicant has not yet been able to secure the necessary consents to the compulsory acquisition, but will continue to endeavour to secure this before the making of the draft DCO (**TR010065/APP/3.1**). The Applicant is undertaking the process to seek the necessary approvals.

### 7.2 Special category land – land forming part of a common, open space, or fuel or field garden allotment – including any exchange land arrangements

- 7.2.1 As shown in Part 5 of the **Book of Reference (TR010065/APP/4.3)** and the **Special Category Land Plans (TR010065/APP/2.12)**, the **draft DCO (TR010065/APP/3.1)** makes provision for the acquisition of special category land, comprising open space (or presumed open space) namely:

The land that is open space is within plots 1/5h, 1/5i, 1/5j, 1/5k, 1/5q, 1/5r, 1/9b, 1/9c, 1/10b, 1/12a, 1/13a, 1/14c, 1/17a, 4/2a, 4/2b, 4/2c, 4/2d, 4/2f, 42f1, 42f2, 4/3a, 4/4a, 4/5a, 4/5e and 4/6a comprises 2.3 hectares of land to be permanently acquired; 0.6 hectares required temporarily; and 0.7

hectares of land where permanent rights are required for access/maintenance etc.

7.2.2 Section 131 of the 2008 Act applies to compulsory acquisition of any land forming part of a common, open space, fuel or field garden allotment.

7.2.3 Section 132 of the 2008 Act applies to the compulsory acquisition of any rights over land forming part of a common, open space, fuel or field garden allotment. These make provision for Special Parliamentary Procedure (**SPP**) to apply where a DCO authorises the compulsory acquisition of land or of rights over such land. The means the DCO will be subject to SPP unless the SoS is satisfied that one of the following circumstances applies:

- That the open space, when burdened with the right, will be no less advantageous than it was before to its owners; any other persons entitled to rights of common or other rights, and the public; or
- Replacement land will be given in exchange for the land to be compulsorily acquired with the same rights, trusts and incidents; or
- The land to be acquired does not exceed 200 square metres or is required for the widening or drainage of an existing highway and the giving of land in exchange is unnecessary; or
- For open space land only, replacement land in exchange is not available or would only be available at a prohibitive cost, but it is strongly in the public interest for a scheme to proceed sooner than SPP would allow; or
- For open space land only, the land is only being compulsorily acquired for a temporary purpose.

7.2.4 The area of land measuring 6464 square metres at plots 1/5q, 1/10b, 1/12a, 1/13a 1/14c and 1/17a is required for works to facilitate the temporary diversion of Newark Bridleway No 2 of approximately 520 metres in length, including resurfacing and the installation of temporary signage and gates. As the open space at plots 1/5q, 1/10b, 1/12a, 1/13a 1/14c and 1/17a is only required for a temporary purpose and the land is only to be subject to temporary possession, the Applicant considers that the exception in Section 131(4B) of the 2008 Act applies and that development consent can be granted in respect of these plots without reference to SPP.

7.2.5 The area of land measuring 1091 square metres at plots 1/5h, 1/5k, 1/9b and 1/9c is required for works to construct a new access track (including provision of a footpath and bridleway) and a temporary works area. Permanent new rights are being acquired over these plots, so Section 132 of the 2008 Act is engaged. As the Open Space at plots 1/5h, 1/5k, 1/9b and 1/9c will only be used by the Applicant temporarily and the rights sought are to secure its use as public right of way, the public will be able to continue



to use the land as recreational space in the same way as before the acquisition. Therefore, when burdened with the new rights, the land will be no less advantageous than it was before it was acquired. The Applicant therefore considers that the exception in Section 132(3) of the 2008 Act applies and that development consent can be granted in respect of these plots without reference to SPP.

7.2.6 The area of land measuring 574 square metres at plots 1/5j, 1/5r and 1/5i is required for the construction of the new Windmill Viaduct, a temporary works area and the construction of the access track referred to at paragraph 7.2.5 above. Plots 1/5i, 1/5j and 1/5r are being permanently acquired and therefore Section 131 of the 2008 Act is engaged.

- Plot 1/5i is required for the permanent footing of the new bridge which will occupy an area of approximately 22 square metres, which will facilitate the widening of the A46 over the River Trent. The new footing will replicate what currently exists for the existing bridge. Once constructed, the new footing will occupy an extremely limited area, the surrounding land on the river bank will remain accessible by the public and the proposed works will not interfere with the rights of the public to access the land. Therefore the giving of replacement land is deemed unnecessary.
- As set out at paragraph 4.1.3 above, the Applicant only requires permanent acquisition of the airspace in plot 1/5j for the construction of a new highway bridge together with temporary use of the land beneath the bridge during construction. The airspace is required for the widening of the existing highway. On the basis that the permanent acquisition only relates to the airspace above the land, no land is being acquired permanently, the open space will remain accessible by the public and therefore no replacement land is required.
- As set out at paragraph 4.1.3 above, the Applicant requires permanent acquisition of the airspace in plot 1/5r for the construction of a new highway bridge together with permanent acquisition of rights over the land below the bridge. As the Open Space at plot 1/5r will only be used by the Applicant temporarily and the rights sought are to secure its use as public right of way, the public will be able to continue to use the land as recreational space in the same way as before the acquisition. On the basis that the permanent acquisition only relates to the airspace above the land, and to permanent rights over the land below the bridge, the open space will remain accessible by the public and therefore no replacement land is required.

For the reasons set out above the Applicant considers that in relation to plots 1/5i 1/5j and 1/5r, the exemption at Section 131(5) of the 2008 Act therefore applies and development consent can be granted in respect of these plots without reference to SPP.



- 7.2.7 The area of land measuring 5887 square metres at plots 4/2a, 4/2b, 4/2c, 4/2d, 4/3a, 4/4a and 4/5a is required for access during construction with permanent rights being acquired for the purposes of inspecting and maintaining structures on adjoining land. The public will be able to continue to use the land as recreational space in the same way as before the acquisition. Therefore, when burdened with the new rights, the land will be no less advantageous than it was before it was acquired. The Applicant therefore considers that the exception in Section 132(3) of the 2008 Act applies and that development consent can be granted in respect of these plots without reference to SPP.
- 7.2.8 The area of land measuring 18455 square metres at plots 4/5e, 4/6a 4/2f, 4/2f1 and 4/2f2 is required permanently for the construction of a new bridge over the River Trent to carry the A46 dual carriageway, two access tracks, attenuation basins and associated drainage; and for environmental mitigation, maintenance and monitoring commitments. The Applicant understands that public use of this land is prohibited by the landowner and there are signs to this effect, nevertheless the land is occasionally used by the public for recreation. The Applicant has therefore taken a precautionary approach in determining that these plots are open space for the purposes of Section 131 of the 2008 Act.
- 7.2.9 Plots 4/5e, 4/2f1, 4/2f2 and 4/6a are required for the widening of the existing highway, whilst plot 4/2f is required for the drainage of an existing highway. The works being carried out in these plots, which are situated underneath the existing bridge along the bank of the River Trent, consist of mitigation planting, a new track and an attenuation pond. Once complete the works as constructed will not interfere with any rights of the public to operate on this land that may exist, although the attenuation pond will be inaccessible to the public for safety reasons. The character of the land will also be greatly improved by the proposed works. For these reasons, the Applicant considers that the giving of replacement land is unnecessary. Therefore the exemption in section 131(5) of the 2008 Act applies and development consent can be granted in respect of these plots without reference to SPP.
- 7.2.10 **Table 7-3** below sets out the special category land plots within the Order Limits and which of the five circumstances apply. The application should not be subject to SPP as at least one or more of the four circumstances, as set out above, applies.

Five Circumstances	Plot Number/s
That the open space, when burdened with the right, will be no less advantageous than it was before to its owners; any other persons entitled to rights of	1/5h, 1/5k, 1/9b, 1/9c, 4/2a, 4/2b, 4/2c, 4/2d, 4/3a, 4/4a and 4/5a.

common or other rights, and the public	
Replacement land will be given in exchange for the land to be compulsorily acquired with the same rights, trusts and incidents	N/A
Land to be acquired does not exceed 200 metres or is required for the widening or drainage of an existing highway and the giving of land in exchange is unnecessary	1/5i, 1/5j, 1/5r, 4/2f, 4/2f1, 4/2f2, 4/5e and 4/6a
For open space land only, replacement land in exchange is not available or would only be available at a prohibitive cost	N/A
For open space land only, the land is only being compulsorily acquired for a temporary purpose	1/5q, 1/10b, 1/12a, 1/14c, 1/13a, 1/17a.

### 7.3 National Trust “inalienable” land

None of the Land to be acquired for the Scheme is National Trust “inalienable” land for the purposes of sections 130 of the 2008 Act.

### 7.4 Statutory Undertaker land

- 7.4.1 The draft DCO (**TR010065/APP/3.1**), if made, will authorise the permanent compulsory acquisition of land held by and rights over statutory undertaker's land which are identified in **Table 7-2** below and described in the Book of Reference (**TR010065/APP/4.3**), and land to be temporarily used which is also identified in **Table 7-2** below and described in the Book of Reference.

**Table 7-2 Statutory Undertaker plots required for the Scheme**

	<b>Permanent acquisition</b>	<b>Temporarily used</b>
<b>Plots</b>	1/18a1, 1/18b, 1/18c, 2/2e, 2/2f, 2/2g, 2/2n, 2/4c, 2/4d, 3/1r, 3/1s, 3/1t, 3/2u, 3/2y, 3/2z,	1/18a, 1/18d, 2/2j, 2/2k, 2/2m, 2/2p, 3/1u, 3/2x, 3/2ff, 3/2gg, 4/2e, 4/2g,

	3/2aa, 3/2cc, 3/2dd, 3/2ee, 3/2hh, 3/2ii, 3/2jj, 3/2kk, 3/2ll, 3/2mm, 4/2a, 4/2b, 4/2c, 4/2d, 4/2f, 4/2h, 4/2i, 4/2j, 4/2l, 4/2m, 4/2n, 4/4a, 4/5a, 4/5c, 4/5e, 4/5f, 4/5g, 4/12a, 4/12b, 4/12c, 4/12d, 4/12e, 4/12f, 4/12g, 4/12h, 4/12i, 5/16a.	4/2k, 4/2o, 4/2p, 4/2q, 4/5h.
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7.4.2 Plots 1/18a, 1/18a1, 1/18b, 1/18c, 1/18d, 4/2a, 4/2b, 4/2c, 4/2d, 4/2e, 4/2f, 4/2g, 4/2h, 4/2i, 4/2j, 4/2k, 4/2l, 4/2m, 4/2n, 4/2o, 4/2p, 4/2q, 4/4a and 4/5a are held by Canal and Rivers Trust, plots 2/2e, 2/2f, 2/2g, 2/2j, 2/2k, 2/2m, 2/2n, 2/2p, 2/4c, 2/4d, 3/1r, 3/1s, 3/1t, 3/1u, 3/2u 3/2x, 3/2y, 3/2z, 3/2aa, 3/2cc, 3/2dd, 3/2ee, 3/2ff, 3/2gg, 3/2hh, 3/2ii, 3/2jj, 3/2kk, 3/2ll, 3/2mm, are held by Network Rail Infrastructure Limited and plot 5/16a is held by National Grid Electricity Distribution (East Midlands) plc.

7.4.3 Section 127(3) of the 2008 Act provides that a DCO may only authorise the compulsory acquisition of statutory undertakers' land where a representation has been made by a statutory undertaker objecting to the acquisition if the Secretary of State is satisfied that:

- a. The land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- b. If purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.

7.4.4 Section 127(5) of the 2008 Act provides that a DCO may only authorise the compulsory acquisition of rights over statutory undertakers' land where a representation has been made by a statutory undertaker objecting to the acquisition if the Secretary of State is satisfied that:

- a. The rights can be acquired without any serious detriment to the carrying on of the undertaking; or
- b. Any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by the use of the land belonging to or available for acquisition by the undertaker.

7.4.5 The Applicant has, during the preparation of the DCO application, engaged in discussions with the statutory undertakers listed in the Book of Reference

regarding the impacts of the Scheme on the interests and/or apparatus of those parties within the Order Limits.

## **7.5 Other consents**

- 7.5.1 The Consents and Agreements Position Statement (**TR010065/APP/3.3**) sets out the additional consents outside of the draft DCO (**TR010065/APP/3.1**) and the current position as to the status of securing those consents. The Consents and Agreements Position Statement will continue to be updated as necessary during examination.
- 7.5.2 The Applicant is satisfied that all necessary consents to enable the Scheme to proceed have been identified and that there is no reason why such consents should not be secured or granted pursuant to the DCO.

## 8 Conclusions

- 8.1.1 This Statement sets out why compulsory acquisition and temporary possession powers have been sought in the DCO application and explains why the Applicant considers such powers they are necessary, proportionate, and justified.
- 8.1.2 In determining the extent of compulsory acquisition and temporary possession powers proposed in the draft DCO (**TR010065/APP/3.1**) the Applicant has had regard to the legislative tests set out in the 2008 Act and to the advice in the CA Guidance. The Applicant is content that the scope of powers sought and the extent of the interests in the Land to be acquired by compulsory acquisition are required for the Scheme and are the minimum necessary that will allow the Applicant to construct, operate and maintain the Scheme. The purpose for which each part of the Land is required is set out in **Annex A** of this Statement.
- 8.1.3 The Applicant has consulted all persons affected by the compulsory acquisition and temporary possession powers and persons who may have a claim for compensation arising from the Scheme. The Applicant has consulted such persons during preparation of the DCO application and in the design of the Scheme to address their concerns and to ensure that any impacts are reduced or removed. The Applicant has further sought to acquire any interests in the Land by agreement wherever practicable. The status of negotiations with affected land interests for the acquisition of their interest is set out in **Annex B** of this Statement.
- 8.1.4 The Applicant has considered the human rights of the individuals affected by the compulsory acquisition and temporary possession powers. The Applicant is satisfied that there is a compelling public interest case for compulsory acquisition and that the significant public benefits arising from the Scheme will outweigh the harm to those individuals.
- 8.1.5 Without the grant of compulsory acquisition and temporary possession powers the Applicant considers that it will not be possible to construct the Scheme, or realise the public benefits arising from it.

