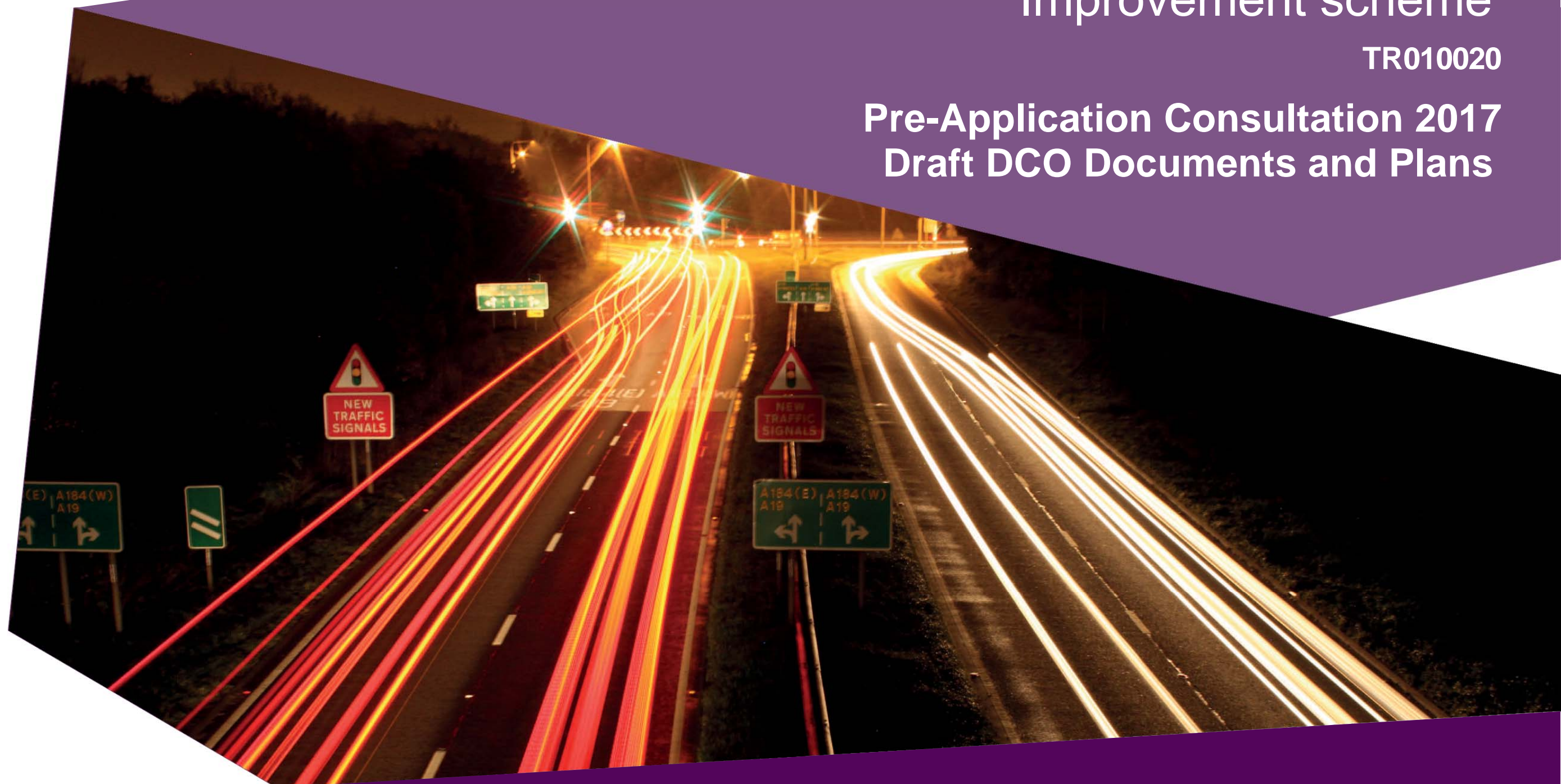


# A19/A184 Testos junction Improvement scheme

TR010020

Pre-Application Consultation 2017  
Draft DCO Documents and Plans



January 2017



# **DRAFT DEVELOPMENT CONSENT ORDER**



201[ ] No.

## INFRASTRUCTURE PLANNING

### The Testos Junction Improvement Development Consent Order 201[ ]

*Made* - - - - 201[ ]

*Coming into force* - - 201[ ]

#### CONTENTS

##### PART 1 PRELIMINARY

1. Citation and commencement
2. Interpretation

##### PART 2 PRINCIPAL POWERS

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

##### PART 3 STREETS

8. Application of the 1991 Act
9. Maintenance of new, altered or diverted streets
10. Classification of roads etc.
11. Temporary stopping up and restriction of use of streets
12. Permanent stopping up and restriction of use of streets
13. Access to works
14. Clearways
15. Traffic regulation

**DRAFT - INDICATIVE AND  
SUBJECT TO CHANGE**

**PART 4**  
**SUPPLEMENTAL POWERS**

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

**PART 5**  
**POWERS OF ACQUISITION**

- 19. Compulsory acquisition of land
- 20. Compulsory acquisition of land – incorporation of the mineral code
- 21. Time limit for exercise of authority to acquire land compulsorily
- 22. Compulsory acquisition of rights and restrictive covenants
- 23. Private rights over land
- 24. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
- 25. Acquisition of subsoil or airspace only
- 26. Acquisition of part of certain properties
- 27. Rights under or over streets
- 28. Temporary use of land for carrying out the authorised development
- 29. Temporary use of land for maintaining the authorised development
- 30. Statutory undertakers
- 31. Apparatus and rights of statutory undertakers in stopped-up streets
- 32. Recovery of costs of new connections

**PART 6**  
**OPERATIONS**

- 33. Felling or lopping of trees

**PART 7**  
**MISCELLANEOUS AND GENERAL**

- 34. Application of landlord and tenant law
- 35. Operational land for purposes of the 1990 Act
- 36. Defence to proceedings in respect of statutory nuisance
- 37. Protection of interests
- 38. Certification of plans, etc.
- 39. Service of notices
- 40. Arbitration

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**SCHEDULES**

- SCHEDULE 1 — AUTHORISED DEVELOPMENT  
SCHEDULE 2 — REQUIREMENTS

- SCHEDULE 3 — CLASSIFICATION OF ROADS, ETC.  
PART 1 — TRUNK ROADS  
PART 2 — OTHER ROAD CLASSIFICATIONS  
PART 3 — CONSTRUCTION OF PUBLIC RIGHTS OF WAY  
PART 4 — PROVISION OF PRIVATE MEANS OF ACCESS  
SCHEDULE 4 — STREETS TO BE STOPPED UP PERMANENTLY  
SCHEDULE 5 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE  
ACQUIRED  
SCHEDULE 6 — MODIFICATION OF COMPENSATION AND  
COMPULSORY PURCHASE ENACTMENTS FOR  
CREATION OF NEW RIGHTS  
SCHEDULE 7 — LAND OF WHICH TEMPORARY POSSESSION MAY BE  
TAKEN  
SCHEDULE 8 — PROTECTIVE PROVISIONS  
PART 1 — FOR THE PROTECTION OF [ ]  
PART 2 — FOR THE PROTECTION OF [ ]

An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 37, 114, 115, 120 and 122 of the Planning Act 2008(b) (“the 2008 Act”).

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

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

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

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 8, 10 to 17, 24, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the A19/A184 (Testos Junction Improvement) Development Consent Order 201[ ] and comes into force on [ ] 201[ ].

#### Interpretation

2.—(1) In this Order—

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

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

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- (a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.
- (b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
- (c) S.I. 2010/103, amended by S.I. 2012/635.
- (d) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1980 Act which are not relevant to this Order.
- (e) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.



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

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

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

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

“the 1991 Act” means the New Roads and Street Works Act 1991(e);

“the 2008 Act” means the Planning Act 2008(f);

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) or any part of it, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act and includes part of a carriageway;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the Crown land plans” means the plans certified as the Crown land plans by the Secretary of State for the purposes of this Order;

“cycle track” has the same meaning as in the 1980 Act as if the words “or without” were omitted and includes part of a cycle track;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“the engineering drawings and sections” means the documents certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

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- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) to the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections J(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) to the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
  - (b) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 (c. 50) and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are others amendments to the 1981 Act which are not relevant to this Order.
  - (c) 1984 c. 27.
  - (d) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
  - (e) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (f) 2008 c. 29.

“environmental report” means the environmental assessment report submitted with the application for this Order;

“footway” and “footpath” have the same meaning as in the 1980 Act and include part of a footway or footpath;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act and “highway” includes part of a highway;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5;

“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

“the Order limits” means the limits of deviation shown on the works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates being North Tyneside Council;

“rights of way and access plans” means the plans certified as the rights of way and access plans by the Secretary of State for the purposes of this Order;

“Secretary of State” means the Secretary of State for Transport;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the traffic regulation plans” means the plans certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 or 19(1) of the 1980 Act;
- (b) an order or direction under section 10 of that Act; or
- (c) an order granting development consent; or
- (d) any other enactment;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

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(a) 1981 c. 67.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the rights of way and access plans.

(6) References in this Order to numbered works are references to works as numbered in Schedule 1.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

3. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the Secretary of State is granted development consent for the authorised development to be carried out within the Order limits.

#### **Maintenance of authorised development**

4. The Secretary of State may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

#### **Limits of deviation**

5.—(1) In carrying out linear works the Secretary of State may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 0.5 metres upwards or 1.0m downwards, provided that deviation is within the scope of authorised development assessed in the environmental report.

#### **Benefit of Order**

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order conferring powers on the Secretary of State have effect solely for the benefit of the Secretary of State.

(2) [Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.] *Note: only include if there are such works.*

#### **Consent to transfer benefit of Order**

7.—(1) The Secretary of State may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the Secretary of State and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Secretary of State and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the Secretary of State, except in paragraph (3), includes references to the transferee or the lessee, except where the reference is to a consenting function of the Secretary of State.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the Secretary of State.

## PART 3

### STREETS

#### **Application of the 1991 Act**

**8.**—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the Secretary of State.

(3) The following provisions of Part 3 the 1991 Act (street works in England and Wales) do not apply in relation to any works executed under the powers of this Order—

- Section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the promoter under the powers conferred by article 11 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

- section 54 (advance notice of certain works), subject to paragraph (6);
- section 55 (notice of starting date of works), subject to paragraph (6);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation); and
- section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 9 (maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways);
- (b) means that the Secretary of State is by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of part 3 of the 1991 Act apply.

### **Maintenance of new, altered or diverted streets**

**9.—**(1) Any street (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the street authority from its completion.

(3) In the case of a bridge constructed under this Order to carry a public right of way, the highway surface (being those elements over the waterproofing membrane) shall be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, shall be maintained by and at the expense of the Secretary of State.

(4) In any action against the Secretary of State in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the Secretary of State had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court shall in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the Secretary of State knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause dangers to users of the street; and
- (e) where the Secretary of State could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the Secretary of State had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the Secretary of State had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

### **Classification of roads etc.**

**10.**—(1) On the date on which the authorised development is completed and open for traffic the roads described in columns (1) and (2) of Part 1 of Schedule 3 (classification of roads, etc.) will become trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) On the date they are open for traffic, no person is to drive any motor vehicle at a speed exceeding the speed limits specified in Parts 3, 4 and 5 of Schedule 3 (classification of roads, etc.) for the lengths of road identified in column (2) of those Parts.

(3) Unless otherwise agreed with the relevant planning authority the public rights of way set out in column (1) of Part 6 of Schedule 3 (classification of roads, etc.) and identified on the rights of way and access plans shall be constructed by the Secretary of State in the specified locations as set out in column (2) of that Part of that Schedule and open for use on the date on which the authorised development is open for traffic.

(4) The application of paragraphs (1) and (3) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

### **Temporary stopping up and restriction of use of streets**

**11.**—(1) The Secretary of State, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the Secretary of State may use any street temporarily stopped up or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The Secretary of State must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The Secretary of State must not temporarily stop up, alter or divert any street for which it is not street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph 11(4) fails to notify the Secretary of State of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted consent.

### **Permanent stopping up and restriction of use of streets**

**12.**—(1) Subject to the provisions of this article, the Secretary of State may, in connection with the carrying out of the authorised development, stop up each of the streets specified in column (1) of Schedule 4 (streets to be stopped up) to the extent specified and described in column (2) of that Schedule.

(2) No street specified in column (1) of that Schedule is to be wholly or partly stopped up under this article unless the condition specified in paragraph (3) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(3) The condition referred to in paragraph (2) is that—

- (a) the Secretary of State is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or

- (d) the owners and occupiers of the land have agreed to the stopping up.
- (4) Where a street has been stopped up under this article—
  - (a) all rights of way over or along the street so stopped up are extinguished; and
  - (b) the Secretary of State may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the Secretary of State.
- (5) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (6) This article is subject to article 31 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**13.** The Secretary of State may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the Secretary of State reasonably requires for the purposes of the authorised development.

### **Clearways**

**14.—**(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic, save as provided in paragraph (2), no person may cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

- (2) Nothing in paragraph (1) may apply—
  - (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
    - (i) the removal of any obstruction to traffic;
    - (ii) the maintenance, improvement, reconstruction or operation of the road;
    - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984<sup>(a)</sup>; or
    - (iv) any building operation or demolition;
  - (b) in relation to a vehicle being used—
    - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
    - (ii) in the service of a local authority, safety camera partnership or Vehicle and Operator Services Agency in pursuance of statutory powers or duties;
    - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991<sup>(b)</sup>; or
    - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000<sup>(c)</sup>; or
  - (c) in relation to a vehicle waiting when the person in control of it is—
    - (i) required by law to stop;
    - (ii) obliged to stop in order to avoid an accident; or
    - (iii) prevented from proceeding by circumstances outside his or her control.

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<sup>(a)</sup> 1984 c. 12.  
<sup>(b)</sup> 1991 c. 56.  
<sup>(c)</sup> 2000 c. 26.

(3) No person may cause or permit any vehicle to wait on any part of the roads described in Part 1 of Schedule 3 for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

### **Traffic regulation**

**15.**—(1) This article applies to roads in respect of which the Secretary of State is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the Secretary of State may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the Secretary of State.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The Secretary of State must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The Secretary of State must not exercise the powers conferred by paragraph (2) unless the Secretary of State has—

- (a) given not less than—
  - (i) 12 weeks' notice in writing of the Secretary of State's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of the Secretary of State's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised the Secretary of State's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the Secretary of State's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the Secretary of State's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the Secretary of State under paragraph (2)—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or



- (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces)(a) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
  - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b).
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Secretary of State from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers of paragraph (2) the Secretary of State must consult such persons as the Secretary of State considers necessary and appropriate and must take into consideration any representations made to the Secretary of State by any such person.
- (9) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.
- (10) The powers conferred on the Secretary of State by this article with respect to any road have effect subject to any agreement entered into by the Secretary of State with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the Secretary of State of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

- 16.—**(1) The Secretary of State may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.
- (2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the Secretary of State under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).
- (3) The Secretary of State must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.
- (4) The Secretary of State must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The Secretary of State must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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(a) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c. 18.

(6) The Secretary of State must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, silt or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010<sup>(a)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(b)</sup> have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the Secretary of State of a decision within 28 days of receiving an application that person shall be deemed to have granted consent or given approval, as the case may be.

### **Protective work to buildings**

**17.**—(1) Subject to the following provisions of this article, the Secretary of State may at the Secretary of State’s own expense carry out such protective works to any building which may be affected by the authorised development as the Secretary of State considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the Secretary of State may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the Secretary of State may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the Secretary of State must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

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<sup>(a)</sup> S.I. 2010/675.

<sup>(b)</sup> 1991 c. 57.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

(7) The Secretary of State must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the Secretary of State must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article will relieve the Secretary of State from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) will be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

#### **Authority to survey and investigate the land**

**18.—**(1) The Secretary of State may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation to the scope of sub-paragraph (a), make trial holes in such positions on the land as the Secretary of State thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the Secretary of State—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the surveyor investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within a highway boundary without the consent of the highway authority; or

- (b) in a private street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The Secretary of State must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the Secretary of State of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority shall be deemed to have granted consent.

## PART 5

### POWERS OF ACQUISITION AND POSSESSION

#### **Compulsory acquisition of land**

**19.**—(1) The Secretary of State may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (2) of article 22 (compulsory acquisition of rights and restrictive covenants) and paragraph (8) of article 28 (temporary use of land for carrying out the authorised development).

#### **Compulsory acquisition of land – incorporation of the mineral code**

**20.** Part 2 of Schedule 2 to the Acquisition of Land Act 1981<sup>(a)</sup> (minerals) is incorporated in this Order subject to the modification that for the acquiring authority substitute the Secretary of State.

#### **Time limit for exercise of authority to acquire land compulsorily**

**21.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 28 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the Secretary of State remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### **Compulsory acquisition of rights and restrictive covenants**

**22.**—(1) Subject to paragraph (2), the Secretary of State may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

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(a) 1981 c. 67.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the Secretary of State's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (other provisions as to divided land), as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the Secretary of State acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the Secretary of State is not required to acquire a greater interest in that land.

(4) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

### **Private rights over land**

**23.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the Secretary of State, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Secretary of State under section 11 (1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of the rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right by the Secretary of State, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Secretary of State under section 11 (1) of the 1965 Act (power of entry),

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the Secretary of State which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the Secretary of State takes temporary possession under this Order are suspended and unenforceable for as long as the Secretary of State remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 30 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the Secretary of State before—
  - (i) the completion of the acquisition of the land or the acquisition of the rights over or affecting the land;
  - (ii) the Secretary of State's appropriation of it;
  - (iii) the Secretary of State's entry onto it; or

- (iv) the Secretary of State's taking temporary possession of it,  
that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the Secretary of State and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
  - (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

- 24.**—(1) The 1981 Act shall apply as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied, shall have effect with the modifications set out in this article.
- (3) In section 1 (application of act) for subsection 2 there shall be substituted—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) In section 3 (preliminary notices) for subsection (1) there shall be substituted—
- “(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—
- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
  - (b) published in a local newspaper circulating in the area in which the land is situated.”.
- (5) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.
- (6) In that section, for subsections (5) and (6) there shall be substituted—
- “(5) For the purposes of this section, a person has a relevant interest in land if—
- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
  - (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.
- (7) In section 5 (earliest date for execution of declaration)—
- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
  - (b) subsection (2) shall be omitted.
- (8) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.
- (9) References to the 1965 Act in the 1981 Act shall be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil or airspace only**

**25.**—(1) The Secretary of State may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Secretary of State acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the Secretary of State is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 26 (acquisition of part of certain properties) from applying where the Secretary of State acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Acquisition of part of certain properties**

**26.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Secretary of State a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner must sell only the land subject to the notice to treat is, unless the Secretary of State agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Secretary of State is authorised to acquire compulsorily under this Order.

(8) If the Secretary of State agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Secretary of State is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the Secretary of State may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and in that event must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the Secretary of State must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Rights under or over streets**

**27.**—(1) The Secretary of State may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the Secretary of State may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Secretary of State acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

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

**28.**—(1) The Secretary of State may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that



Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

- (ii) any other Order land in respect of which no notice of entry has been served under section II of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (2) of Schedule 7, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the Secretary of State must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The Secretary of State may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7, or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the Secretary of State has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Secretary of State must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Secretary of State is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The Secretary of State must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The Secretary of State may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the Secretary of State is not to be precluded from—

- (a) acquiring new rights over any part of that land under article 22 (compulsory acquisition of rights and restrictive covenants); or
- (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 25 (acquisition of subsoil or airspace only).

(9) Where the Secretary of State takes possession of land under this article, the Secretary of State is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

### **Temporary use of land for maintaining the authorised development**

**29.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the Secretary of State may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the Secretary of State to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Secretary of State must serve notice of the intended entry on the owners and occupiers of the land.

(4) The Secretary of State may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the Secretary of State must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Secretary of State must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the Secretary of State takes possession of land under this article, the Secretary of State is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

### **Statutory undertakers**

**30.**—(1) Subject to the provisions of Schedule 8 (protective provisions) and article 22 (compulsory acquisition of rights and restrictive covenants), the Secretary of State may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired or used permanently or temporarily and described in the book of reference;

- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over the Order land.
- (2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—
  - (a) Part 3 of the 1991 Act; and
  - (b) article 31 of this Order (apparatus and rights of statutory undertakers in stopped-up streets).

### **Apparatus and rights of statutory undertakers in stopped-up streets**

**31.**—(1) Where a street is stopped up under article 12 (permanent stopping up and restriction of use of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 12 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the Secretary of State must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the Secretary of State must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Secretary of State, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by

deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the Secretary of State and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

### **Recovery of costs of new connections**

**32.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Secretary of State compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the Secretary of State compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 31 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

## **PART 6**

### **OPERATIONS**

#### **Felling or lopping of trees**

**33.**—(1) The Secretary of State may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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(a) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
  - (b) from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1), the Secretary of State must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.
- (3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

## PART 7

### MISCELLANEOUS AND GENERAL

#### **Application of landlord and tenant law**

- 34.**—(1) This article applies to—
- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
  - (b) any agreement entered into by the Secretary of State with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.
- (2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.
- (3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—
- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
  - (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
  - (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Operational land for purposes of the 1990 Act**

**35.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

#### **Defence to proceedings in respect of statutory nuisance**

**36.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—

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(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

- (i) relates to premises used by the Secretary of State for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(a)</sup>; or
- (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), does not apply where the consent relates to the use of premises by the Secretary of State for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protection of interests**

37. Schedule 8 (protective provisions) to the Order has effect.

### **Certification of plans, etc.**

38.—(1) As soon as practicable after the making of this Order, copies of—

- (a) the book of reference;
- (b) the Crown land plans;
- (c) the engineering drawings and sections;
- (d) the land plans;
- (e) the rights of way and access plans;
- (f) the traffic regulation plans;
- (g) the works plans; and
- (h) any other plans or documents referred to in this Order,

must be submitted to the Secretary of State for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

39.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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(a) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

## **Arbitration**

**40.** Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference

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<sup>(a)</sup> 1978 c. 30.

which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

*Martin Woods*

Head of the Transport and Works Act Orders Unit  
Department for Transport

Date 201[ ]

DRAFT



# SCHEDULES

## SCHEDULE 1

Article 2

### AUTHORISED DEVELOPMENT

#### **In the administrative area of South Tyneside**

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, comprising:

**Work No.1** – the construction of a new private means of access to the east of Make-Me-Rich Farm.

**Work No.2** – the construction of a new grade-separated A19 dual carriageway running from Downhill Lane junction and tying into the existing A19 north of Testos roundabout.

**Work No.3** – the construction of a new southbound A19 on-slip that originates at Testos roundabout (Work No.20) and ties into the new A19 dual carriageway (Work No.2).

**Work No.4** – the construction of a new cycle track between bridleway B46 and Downhill Lane junction.

**Work No.5** – the construction of a new northbound single carriageway link road, originating at the existing Downhill Lane northbound on-slip and tying into Testos roundabout (Work No.20).

**Work No.6** – the construction of a new southbound single carriageway link road that diverges from the new A19 southbound on-slip (Work No.3) and ties into the existing A19 southbound off-slip at Downhill Lane junction.

**Work No.7** – the construction of a new A19 northbound off-slip that diverges from the A19 dual carriageway (Work No.2) and merges with the northbound link road (Work No.5).

**Work No.8** – the diversion of 5 no. electric cables and associated auxiliary cables and apparatus, located to the southwest of Testos roundabout.

**Work No.9 (Parts a & b)** – the construction of 2 no. drainage attenuation ponds and associated accesses. Note that the southern pond (Part a) includes a pipe outfall into the River Don.

**Work No.10** – the construction of a new private means of access linking Elliscope Farm to existing access at the west of the A19.

**Work No.11** – the construction and upgrade of the eastern element of footpath B27 to a bridleway, originating at the tie-in to bridleway B46 and tying into the new bridleway facility (Work No.15) to the southwest of Boldon substation.

**Work No.12** – the construction of a new footpath, originating at the western element of footpath B27 and tying into the new bridleway facility at the southwest of Testos roundabout (Work No.15).

**Work No.13** – the construction of a new footway to serve as a bus access point, originating at the bridleway/crossing facilities to the south-west of Testos roundabout (Work No.15) and tying into the existing footway approximately 140m west of Testos roundabout.

**Work No.14** – the construction of 2 no. bridges to form the southern and northern crossings of the new A19 dual carriageway over Testos roundabout.

**Work No.15** – the construction of a new bridleway that links the bridleway to the south of Boldon substation (Work No.11) with West Pastures access track. Crossing facilities are provided on the south side of Testos roundabout.

**Work No.16** – the construction of a new footway on the south side of the A184 Newcastle road that ties into the new bridleway/crossing facilities on the south-east side of Testos roundabout (Work No. 15).

**Work No.17** – the construction of an improved section of shared use cycle track/footway on the north side of the A184 (T) that ties into the improved facilities (Work No.17) to the east of Testos roundabout. Crossing facilities are provided on the north side of Testos roundabout.

**Work No.18** – the construction of a pedestrian crossing facility that links the bridleway on the south side of the A184 (T) (Work No.15) with the cycle track/footway on the north side of the A184 (T) (Work No.17).

**Work No.19** – the construction of an improved segregated footway/cycle track on the north side of the A184 Newcastle Road that originates from the crossing facilities to the north of Testos roundabout (Work No.17) and ties into existing facilities at Abingdon Way.

**Work No.20** – the construction and repositioning of Testos roundabout slightly to the west of its current position.

**Work No.21** – the construction of an environmental mitigation bund.

**Work No.22** – the stopping up of bridleway B28, including the demolition of the bridleway bridge.

**Work No.23** – the construction of a new northbound A19 on-slip that originates at Testos roundabout (Work No. 20) and ties into the new A19 dual carriageway (Work No.2).

**Work No.24** – the construction of a new southbound A19 off-slip that diverges from the A19 dual carriageway (Work No.2) and ties into Testos roundabout (Work No.20).

**Work No.25** – environmental mitigation works at Boldon Lake.

**Work No.26** – the diversion of a Northumbrian Water Group pipeline.

**Work No.27** – the diversion of a Northern Gas Networks pipeline.

In respect to the above works, the following works are considered to be associated development, i.e. works associated with the principal works:

- Work No.1;
- Work No.8;
- Work No.10;
- Work No.25;
- Work No.26; and
- Work No.27.

In connection with the construction of any of those works, further development within the Order limits consisting of –

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;

- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, footways, cycle tracks and crossing facilities,
- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (f) works to alter the course of, or otherwise interfere with a watercourse;
- (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (h) works for the benefit or protection of land affected by the authorised development;
- (i) works required for the strengthening, improvement, maintenance, or reconstruction of any streets;
- (j) works to alter or remove road furniture;
- (k) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping and storage, site levelling);
- (l) establishment of site construction compounds, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting and haulage roads; and
- (m) such other works, working sites storage areas and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

## SCHEDULE 2

Article 3

### REQUIREMENTS

#### *Interpretation*

41. In this Schedule—

“CEMP” means construction environmental management plan;

“EAP” means the environmental action plan set out in the environmental statement; and

“stage” means a defined section (if any) of the authorised development, the extent of which has been submitted to an approved in writing by the relevant planning authority under requirement 4.

#### *Time limits*

42. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

#### *Detailed design*

43. The authorised development must be carried out in accordance with the scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions.

#### *Stages of authorised development*

44. Where the authorised development is to be implemented in stages, none of the authorised development is to commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved in writing by the relevant planning authority. The authorised development must be carried out in accordance with the approved scheme.

#### *Environmental action plan*

45. The authorised development must be constructed in accordance with the EAP.

#### *Construction environmental management plan*

46.—(1) No stage of the authorised development must commence until a CEMP for that stage has been submitted to and approved in writing by the Secretary of State, in consultation with the relevant planning authority to the extent that it relates to the control of nuisances and pollution.

(2) The CEMP must reflect the mitigation measures set out in the environmental statement.

(3) The construction of the authorised development must be carried out in accordance with the CEMP.

(4) The CEMP may be modified with the written consent of the Secretary of State at any time after the authorised development has commenced.

#### *Landscaping*

47.—(1) The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been

submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The landscaping scheme must reflect the mitigation measures set out in the environmental statement.

#### *Contaminated land and groundwater*

**48.**—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported immediately to the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination.

(2) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

#### *Protected species*

**49.**—(1) No stage of the authorised development is to commence until for that stage final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected by the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Where a protected species is shown to be present, or where there is a reasonable likelihood of it being present, the relevant parts of the relevant works must not begin until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State after consultation with Natural England.

(3) The relevant works must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation with Natural England.

(4) In the event that any protected species are found at any time when carrying out the authorised development which were not previously identified in the environmental statement—

- (a) the find must be reported immediately to Natural England; and
- (b) no activities requiring a protected species licence are to continue until a scheme of protection and mitigation measures for the protected species has been submitted to and approved in writing by the Secretary of State after consultation with Natural England.

#### *Surface water drainage*

**50.**—(1) No stage of the authorised development is to commence until for that stage written details of the surface and foul water drainage system, reflecting the mitigation measures in the environmental statement and including means of pollution control, have been submitted and approved in writing by the Secretary of State.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details

#### *Archaeological remains*

**51.**—(1) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be investigated and recorded and reported to the Secretary of State by means of a technical report identifying the location for the housing of any finds.

(2) No construction operations are to take place within 10 metres of such remains for a period of 14 days from the date of such notification unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority.

(3) If the Secretary of State is of the view that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details first submitted in writing to, and approved in writing by, the Secretary of State.

*Traffic management*

**52.**—(1) No stage of the authorised development is to commence until a traffic management plan for that stage has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The authorised development must be constructed in accordance with the approved details referred to in sub-paragraph (1).

*Amendments to approved details*

**53.** With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved in writing.

## SCHEDULE 3

Articles 10 and 14

### CLASSIFICATION OF ROADS, ETC.

#### PART 1

#### TRUNK ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
A19	Between points 1/1 and 3/5 as shown on Sheets 1, 2 and 3 of the Streets, Rights of Way and Access Plans
Northbound Link Road	Between points 1/3 and 2/31 as shown on Sheets 1 and 2 of the Streets, Rights of Way and Access Plans (Note that the Northbound Link Road merges with the Northbound Diverge Off-slip).
Northbound Diverge Off-slip	Between points 1/8 and 2/31 as shown on Sheets 1 and 2 of the Streets, Rights of Way and Access Plans (Note that the Northbound Diverge Off-slip merges with the Northbound Link Road at point 2/31)
Southbound Link Road	Between points 2/5 and 1/7 as shown on Sheets 1 and 2 of the Streets, Rights of Way and Access Plans (Note that the Southbound Link Road diverges from the Southbound Merge On-slip at point 2/5)
Southbound Merge On-slip	Between point 2/9 and 1/6 as shown on Sheets 2 and 2 of the Streets, Rights of Way and Access Plans
A184 circulatory carriageway at Testos roundabout	Entire circulatory carriageway between point 2/10 and point 2/10 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
A184(T) westbound	Between points 2/12 and 2/16 as shown in Sheet 2 of the Streets, Rights of Way and Access Plans (Note that the A184 ties into the existing road at point 2/15)
A184 (T) eastbound	Between points 2/20 and 2/22 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans (Note that the A184 ties into the existing road at point 2/20)
Northbound Merge On-slip	Between points 2/23 and 3/4 as shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans
Northbound Diverge Off-slip	Between points 2/27 and 3/3 as shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans

## PART 2

### OTHER ROAD CLASSIFICATIONS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Old classification</i>	<i>(4)</i> <i>New classification</i>
A184 eastbound	Between points 2/28 and 2/29 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	A184	A184
A184 westbound	Between points 2/29 and 2/11 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	A184	A184

## PART 3

### PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
Cycle track	Between points 1/4 and 1/9 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Bridleway (including crossing facilities on the south side of the A184 circulatory carriageway)	Between points 2/2 and 2/7 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans; crossing facilities are located between points 2/7 and 2/8
Footpath	Between points 2/4 and 2/8 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Footway	Between points 2/7 and 2/18 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Shared-use footway/cycle track (including crossing facilities on the north side of the A184 circulatory carriageway)	Between points 2/19 and 2/26 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans; crossing facilities are located between points 2/24 and 2/26
Segregated footway/cycle track	Between points 2/26 and 2/30 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Footway (including crossing facilities over the A184(T))	Between points 2/13 and 2/15 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Footway	Between points 2/8 and 2/14 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans



**PART 4**  
**PRIVATE MEANS OF ACCESS**

(1) <i>Private means of access</i>	(2) <i>Extent</i>
Private means of access to Northern Powergrid pylon and adjacent land	Between points 1/2 and 1/5 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access to new attenuation pond south of Testos roundabout	Between points 1/10 and 1/11 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access to land to the south of Testos roundabout	Between points 1/12 and 2/1 as shown on Sheets 1 and 2 of the Streets, Rights of Way and Access Plans
Private means of access to new attenuation pond near north of Testos roundabout	Between points 3/1 and 3/2 as shown on Sheet 3 of the Streets, Rights of Way and Access Plans

## SCHEDULE 4

Article 12

### STREETS TO BE STOPPED UP PERMANENTLY

(1) <i>Street to be stopped up</i>	(2) <i>Extent of stopping up</i>
The stopping up of public right of way [ ]	From point 2/3 to 2/4 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
The stopping up of public right of way [ ]	From point 2/21 to 2/25 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans

DRAFT

## SCHEDULE 5

Article 22(2)

### LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot reference number shown on the land plans</i>	(2) <i>Purpose for which rights over the land may be acquired</i>
<b>Land Plans — Sheet 1</b>	
1/2d, 1/3e, 1/8b, 1/9b, 1/9f	To construct, operate, access and maintain an Northern Powergrid electrical cable diversions
1/3a, 1/3c	To construct, operate, access and maintain a private means of access to a National Grid electrical pylon.
1/4c, 1/11	To construct, operate, access and maintain a pipe outfall into the River Don.
1/9d	To construct, operate, access and maintain a private means of access.
<b>Land Plans — Sheet 2</b>	
2/1a	To construct, operate, access and maintain a private means of access.
2/1c, 2/2a, 2/4d, 2/5b, 2/2i, 2/2n	To construct, operate, access and maintain the Northern Powergrid electrical cable diversions.
2/2i, 2/5b	To construct, operate, access and maintain a Northumbrian Water Group pipeline diversion.
2/8c	To construct, operate, access and maintain a Northern Gas Networks pipeline diversion.

**MODIFICATION OF COMPENSATION AND COMPULSORY  
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**

*Compensation enactments*

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply in the case of a compulsory acquisition under this Order of a right by the creation of a new right [or the imposition of a restrictive covenant] as they apply in respect of compensation on the compulsory purchase of land and interests in land, subject to the modifications set out in this Schedule.

**2.—(1)**

DRAFT

## SCHEDULE 7

Article 28

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot reference number shown on the land plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
<b>Land Plans — Sheet 1</b>		
1/2c, 1/3b, 1/3d, 1/8a, 1/9c, 1/9g, 1/10b	Required to provide an area for topsoil and other construction material storage.	All works
1/10c	Required to provide access for site traffic.	All works
<b>Land Plans — Sheet 2</b>		
2/2m, 2/7e, 2/8e	Required for the stopping up of bridleway B28 and demolition of the bridleway bridge.	Work No.22
2/8b	Required to carry out environmental mitigation works at Boldon Lake.	Work No.25
2/2b, 2/2f, 2/3k, 2/3n, 2/4b, 2/6, 2/8d	Required to provide access for site traffic.	All works
2/2k	Required for the provision of the main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials and the treatment of site generated waste.	All works
2/5c	Required for a construction working area.	Work No.16
2/2o, 2/2p	Required for the provision of an environmental mitigation bund.	Work No.21
2/1b, 2/1e, 2/1f, 2/2c, 2/2d, 2/2e, 2/2g, 2/2j, 2/2o, 2/2p, 2/4c	Required to provide an area for topsoil and other construction material storage.	All works
<b>Land Plans — Sheet 3</b>		
3/2b, 3/2d	Required to provide an area for topsoil and other construction material storage.	All works
3/2c	Required to provide a construction working area and access for site traffic.	All works

**SCHEDULE 8**  
**PROTECTIVE PROVISIONS**

Articles 30 and 36

**PART 1**  
**FOR THE PROTECTION OF [                      ]**

**1.** In this Part of this Schedule—

**PART 2**  
**FOR THE PROTECTION OF [                      ]**

**2.** In this Part of this Schedule—

DRAFT

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises

A copy of the Order plans and book of reference mentioned in this Order and certified in accordance with article 38 (certificate of plans, etc.) may be inspected free of charge during normal working hours at [ ].

DRAFT

**201[ ] No.**

**INFRASTRUCTURE PLANNING**

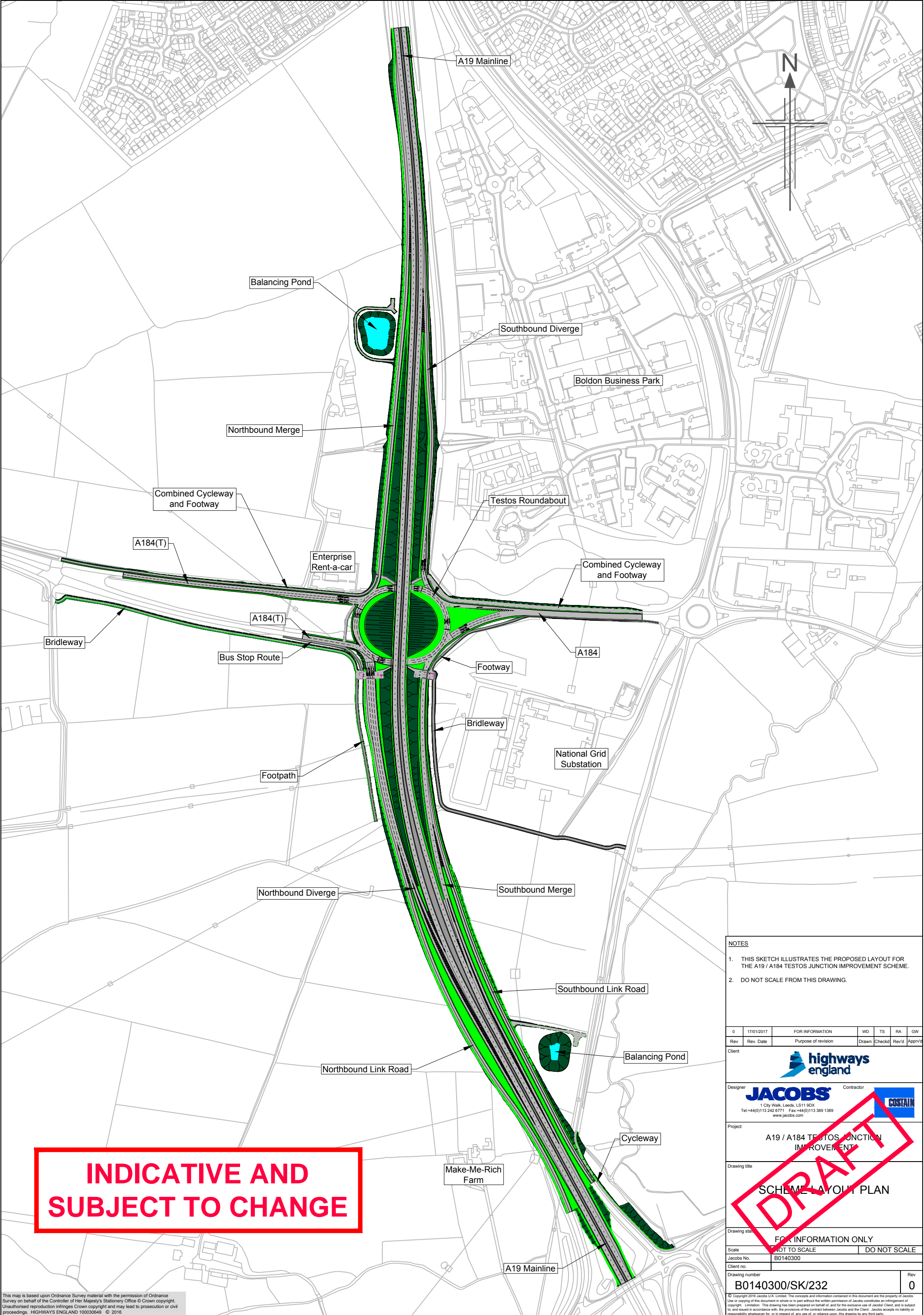
**The Testos Junction Improvement Development Consent Order  
201[ ]**

DRAFT



# **SCHEME LAYOUT PLAN**





**NOTES**

1. THIS SKETCH ILLUSTRATES THE PROPOSED LAYOUT FOR THE A19 / A184 TESTOS JUNCTION IMPROVEMENT SCHEME.

2. DO NOT SCALE FROM THIS DRAWING.

0	17/01/2017	FOR INFORMATION	WD	TS	RA	GW
Rev	Rev. Date	Purpose of revision	Drawn	Checked	Rev'd	Apprv'd

Client

Designer Contractor

Project

A19 / A184 TESTOS JUNCTION IMPROVEMENT

Drawing title

SCHEME LAYOUT PLAN

Drawing status

FOR INFORMATION ONLY

Scale

NOT TO SCALE | DO NOT SCALE

Jacobs No.

B0140300

Client no.

Drawing number

B0140300/SK/232

Rev

0

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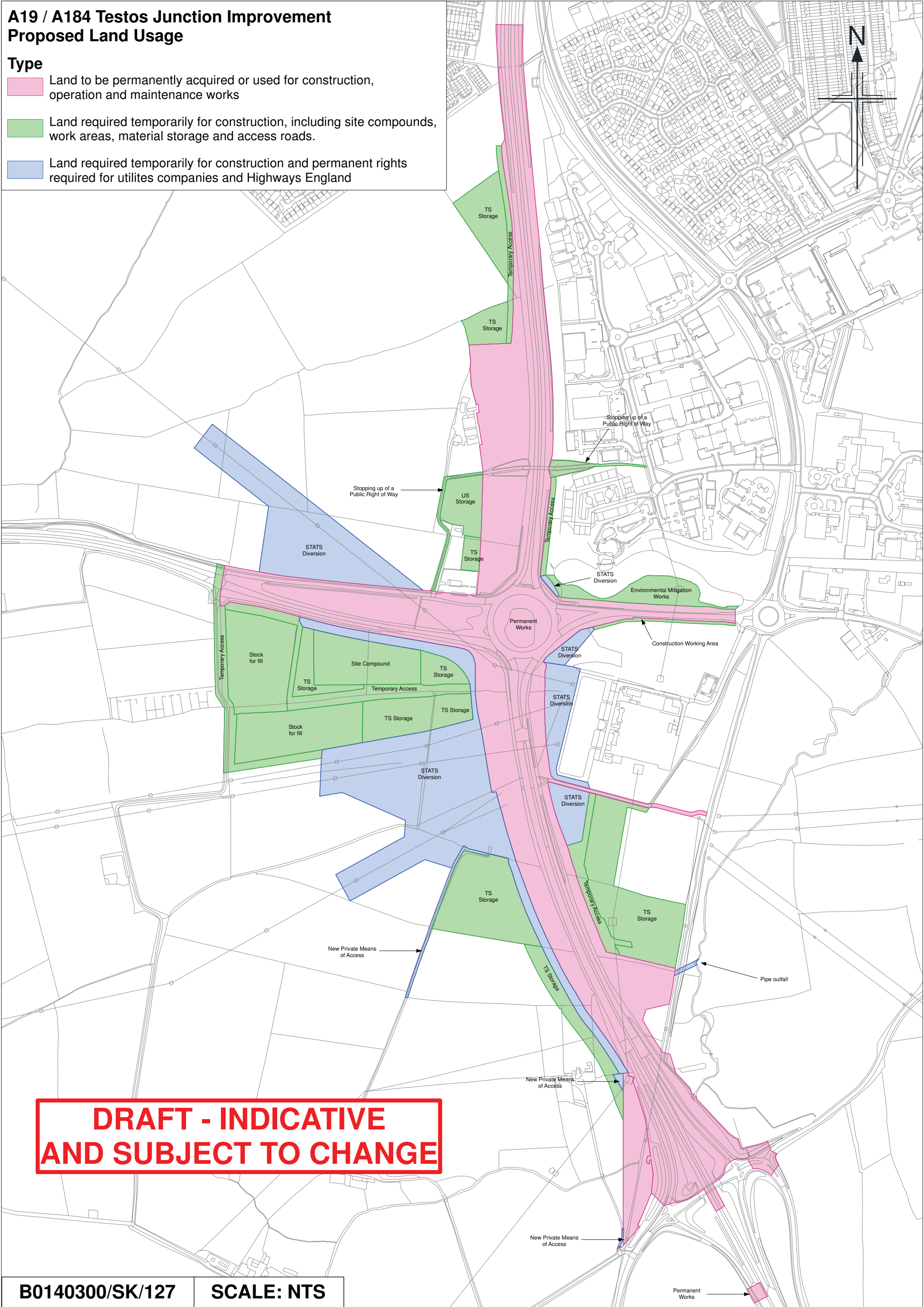
# **LAND USAGE PLAN**





A19 / A184 Testos Junction Improvement  
Proposed Land Usage

- Type
- Land to be permanently acquired or used for construction, operation and maintenance works
  - Land required temporarily for construction, including site compounds, work areas, material storage and access roads.
  - Land required temporarily for construction and permanent rights required for utilites companies and Highways England







# LAND PLANS





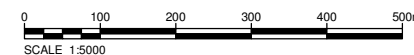
INDICATIVE AND  
SUBJECT TO CHANGE

NOTES:

1. All dimensions in metres unless stated otherwise.
2. These Land Plans should be read in conjunction with other plans and documents in the Development Consent Order, in particular the Book of Reference.
3. The labels refer to plot numbers. Refer to the Book of Reference for more information about these plots including the area of each plot.
4. All easements, servitudes and private rights are proposed to be extinguished on land that is to be acquired unless stated otherwise in the Book of Reference.

KEY:

- Development Consent Order (DCO) Boundary/  
Limits of land to be acquired or used  
permanently or temporarily
- Local Authority Boundary
- Land to be Acquired
- Land to be Used Temporarily
- Land to be Used Temporarily and  
Rights to be Acquired Permanently



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3	JUN 15	DCO SUBMISSION	TS	JH	JH	GW
Rev	Revision date	Purpose of revision	Drawn	Check	Review	App'd

Client



Designer

Project

A19 / A184 TESTOS JUNCTION IMPROVEMENT

Drawing Title

LAND PLANS  
REGULATION 5(2)(i)  
KEY PLAN

Drawing Status

Scale

JACOBS No.

Client No.

Drawing number

TRO10020/APP/11(A)

Rev

3

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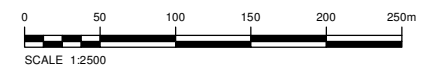
INDICATIVE AND  
SUBJECT TO CHANGE

NOTES:

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KEY:

- Development Consent Order (DCO) Boundary/  
Limits of land to be acquired or used permanently  
or temporarily
- Local Authority Boundary
- Land to be Acquired
- Land to be Used Temporarily
- Land to be Used Temporarily and  
Rights to be Acquired Permanently



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3	JUN 15	DCO SUBMISSION	TS	JH	JH	GW
Rev	Revision date	Purpose of revision	Drawn	Check	Review	App'd

Client

highways  
england

Designer  
**JACOBS**  
1 City Walk, Leeds, LS11 9DX, UK  
Tel: +44(0)113 242 6771 Fax: +44(0)113 399 1144  
www.jacobs.com

Project  
**A19 / A184 TESTOS JUNCTION  
IMPROVEMENT**

Drawing Title  
**LAND PLANS  
REGULATION 5(2)(i)  
SHEET 1 of 3**

Drawing Status  
**DCO SUBMISSION**

Scale  
1:2,500  
DO NOT SCALE

Jacobs No.  
B0140300

Client No.  
Drawing number  
TRO100200/APP/11(B)

Rev  
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INDICATIVE AND  
SUBJECT TO CHANGE

NOTES:

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KEY:

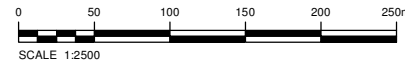
— Development Consent Order (DCO) Boundary/  
Limits of land to be acquired or used permanently  
or temporarily

— Local Authority Boundary

Land to be Acquired

Land to be Used Temporarily

Land to be Used Temporarily and  
Rights to be Acquired Permanently



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3	JUN 15	DCO SUBMISSION	TS	JH	JH	GW
Rev	Revision date	Purpose of revision	Drawn	Check	Review	App'd

Client

highways  
england

Designer

**JACOBS**

1 City Walk, Leeds, LS11 10X, UK  
Tel: +44(0)113 242 6771 Fax: +44(0)113 389 1400  
www.jacobs.com

Contractor

**COSTAIN**

Project

A19 / A184 TESTOS JUNCTION  
IMPROVEMENT

Drawing Title

LAND PLANS  
REGULATION 5(2)(i)  
SHEET 2 of 3

Drawing Status

DCO SUBMISSION

Scale

1:2,500 @ A1

DO NOT SCALE

Jacobs No.

B0140300

Client No.

Drawing number

TRO10020/APP/11(C)

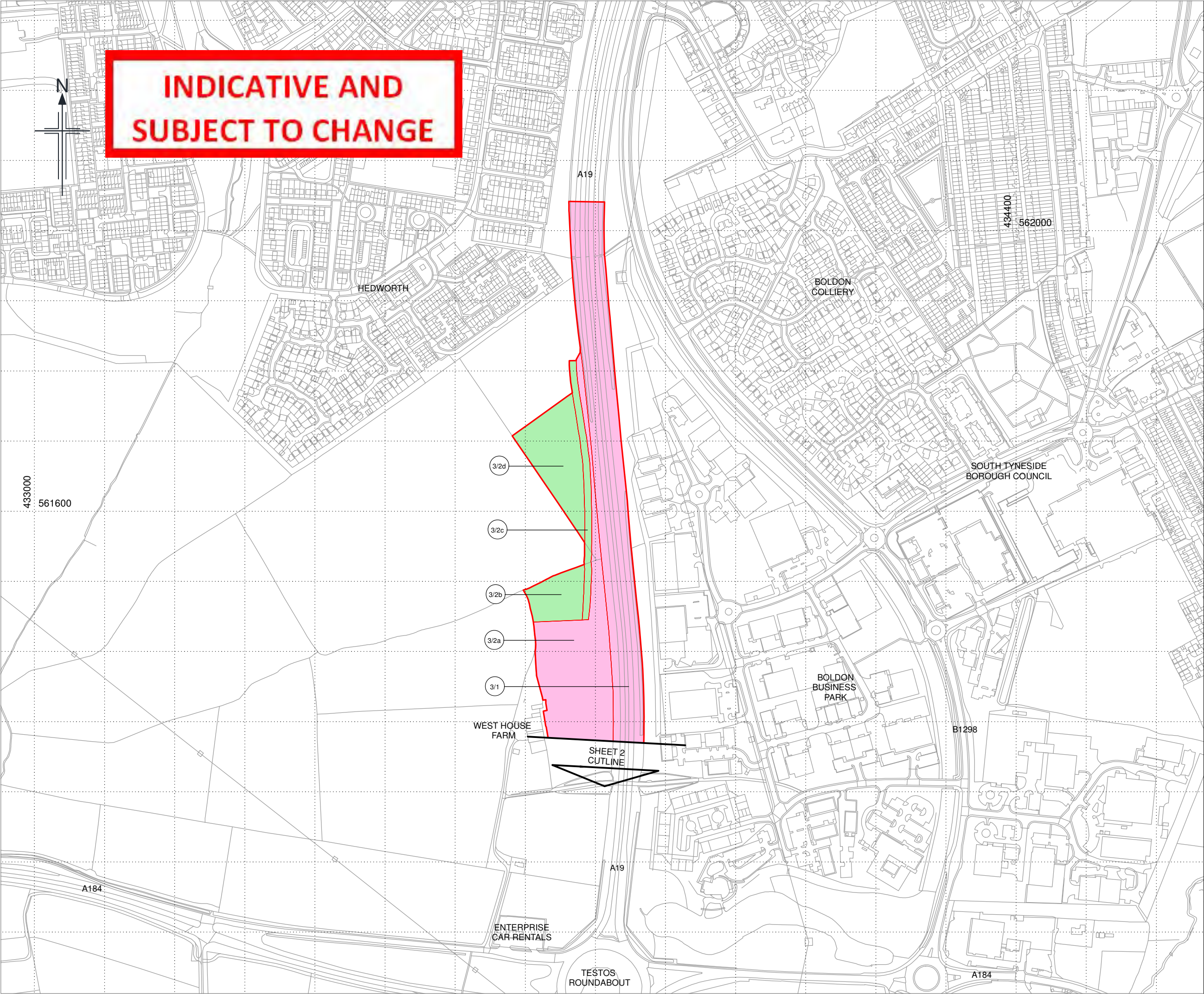
Rev

3

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**INDICATIVE AND  
SUBJECT TO CHANGE**

**NOTES:**

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**KEY:**

- Development Consent Order (DCO) Boundary/  
Limits of land to be acquired or used permanently or temporarily
- Local Authority Boundary
- Land to be Acquired
- Land to be Used Temporarily
- Land to be Used Temporarily and  
Rights to be Acquired Permanently

0 50 100 150 200 250m  
SCALE 1:2500

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3	JUN 15	DCO SUBMISSION	TS	JH	JH	GW
Rev	Revision date	Purpose of revision	Drawn	Check	Review	App'd
Client						
Designer <b>JACOBS</b> 1 City Walk, Leeds, LS11 9DX, UK Tel: +44(0)113 242 6777 Fax: +44(0)113 389 1400 www.jacobs.com						
Contractor <b>COSTAN</b>						
Project A19 / A184 TESTOS JUNCTION IMPROVEMENT						
Drawing Title LAND PLANS REGULATION 5(2)(i) SHEET 3 OF 3						
Drawing Status DCO SUBMISSION						
Scale	1:2,500 @ A1		DO NOT SCALE			
Jacobs No.	B0140300					
Client No.						
Drawing number	TRO10020/APP/11(D)					Rev
						3

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# **WORKS PLANS**

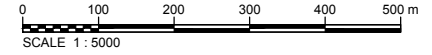




INDICATIVE AND  
SUBJECT TO CHANGE

- NOTES
- All dimensions are in metres unless stated otherwise.
  - Works are described in Schedule 1 (Authorised Development) of the Development Consent Order.
  - The proposed works will be subject to detailed design development. Any changes will be limited to being within the Development Consent Order Boundary and any other constraints included in the Development Consent Order.
  - These Works Plans should be read in conjunction with the Engineering Sections Drawings (TR010020/APP/32.2).

- KEY
- Development Consent Order (DCO) Boundary/ Limit of lands to be acquired or used permanently or temporarily
  - Local Authority Boundary
  - Limit of Deviation of Permanent Works
  - Area not included within the DCO boundary
  - The Project (shown for illustrative purposes)
  - Linear Work Centerline (Approx)
  - Non-linear Work Boundary (Approx)
  - Linear Diversion Work Centerline (Approx)
  - Diversionary Work Limit of Deviation (Approx)
  - Commencement of linear Works (Approx)
  - Termination of linear Works (Approx)



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0	23/11/2016	DCO SUBMISSION	TS	RA	RA	GW
Rev	Revision date	Purpose of Revision	Drawn	Check'd	Rev'd	App'd

Client  
highways  
england

Designer  
**JACOBS**  
1 City Walk, Leeds, LS11 9DX  
Tel: +44(0)113 242 8771 Fax: +44(0)113 389 1389  
www.jacobs.com

Contractor  
**COSTAIN**

Project  
A19 / A184 TESTOS JUNCTION IMPROVEMENT

Drawing title  
WORKS PLANS  
REGULATION 3(2)(j) & 3(4)  
KEY PLAN

Drawing status  
DCO SUBMISSION

Scale  
1:500 @ A1  
DO NOT SCALE

Jacobs No.  
10300

Client no.  
Drawing number  
TR010020/APP/12(A)

Rev  
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INDICATIVE AND  
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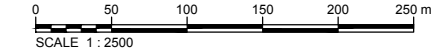
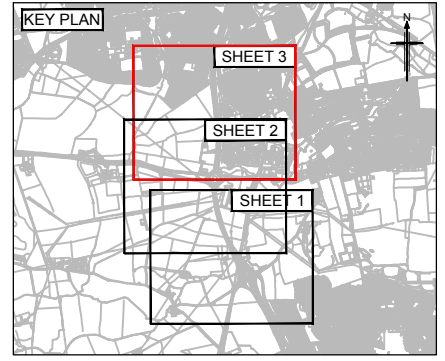


NOTES

1. All dimensions are in metres unless stated otherwise.
2. Works are described in Schedule 1 (Authorised Development) of the Development Consent Order.
3. The proposed works will be subject to detailed design development. Any changes will be limited to being within the Development Consent Order Boundary and any other constraints included in the Development Consent Order.
4. These Works Plans should be read in conjunction with the Engineering Sections Drawings (TR010020/APP/32.2).

KEY

- Development Consent Order (DCO) Boundary/ Limit of lands to be acquired or used permanently or temporarily
- Limit of Deviation of Permanent Works
- The Project (shown for illustrative purposes)
- Linear Work Centerline (Approx)
- Non-linear Work Boundary (Approx)
- Commencement of linear Works (Approx)
- Termination of linear Works (Approx)



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0	29/11/2016	DCO SUBMISSION	TS	RA	RA	GW
Rev	Revision date	Purpose of Revision	Drawn	Check'd	Rev'd	App'd



Designer **JACOBS** Contractor **COSTAIN**  
1 City Walk, Leeds, LS11 9DX  
Tel: +44(0)113 242 8771 Fax: +44(0)113 389 1389  
www.jacobs.com

Project **A19 / A184 TESTOS JUNCTION IMPROVEMENT**

Drawing title **WORKS PLANS REGULATION 3(2)(c) SHEET 3 OF 3**

Drawing status **DCO SUBMISSION** Scale **1:250 @ A1** **DO NOT SCALE**

Jacobs No. **10300** Client no.

Drawing number **TR010020/APP/12(D)** Rev **0**

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