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EN010139**

3.3 DCO Schedule of Changes

Planning Act 2008

APFP Regulation 5(2)(q)

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

Volume 8

Change Application - October 2024

Revision 2



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1. Introduction

1.1. Purpose of this document

- 1.1.1. This document details the Applicant's amendments to the draft DCO made since its submission. This document will be updated throughout the Examination and submitted together with each updated revision of the dDCO at the relevant deadlines.
- 1.1.2. Table 1-1 below sets out each material track-change made to the dDCO, the reason for making each change, and the Examination deadline the change was made at.
- 1.1.3. The track-changes shown in Table 1-1 reflect the changes made against the version of the dDCO most recently submitted. For example, if an updated version of the dDCO is submitted at Deadline 4, the track changes set out below for Deadline 4 would show the changes made to the version of the dDCO previously submitted at Deadline 3.
- 1.1.4. Table 1-1 does not detail any non-material changes made to the dDCO by the Applicant throughout the Examination including to amend typos, to correct formatting, or to update cross-references within the dDCO and the Table of Contents.

2. Table 1-1 Schedule of Changes to the draft DCO

| <u>Article / Paragraph / Schedule number</u> | <u>Amendment</u> | <u>Reason for Amendment</u> |
|--|---|---|
| Deadline 1 | | |
| n/a | n/a | n/a |
| Deadline 2 – Revision 2 of the dDCO | | |
| Changes made throughout the DCO | Various minor amendments have been made to the dDCO to correct typos, cross-referencing errors and updates to the Table of Contents. | Clarity and consistency. |
| Article 2 (Interpretation) | The following definition has been inserted: <u>“Environment Agency” means the Environment Agency and any successor in name or function;</u> | This definition has been added to clarify that references to the Environment Agency throughout the dDCO, including for any requirements to consult with the Environment Agency, are to the Environment Agency and any successor in name or function. |
| Article 7 (Disapplication and modification of legislative provisions) | Sub-paragraph (1)(b) has been removed as follows: <i>The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of any part of the authorised development—</i> a) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(1); <u>and</u> b) regulation 12 (requirement for environmental permit) of the | The effect of sub-paragraph 1(b) was to disapply regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016, which would otherwise apply the flood risk activity permit (“FRAP”) regime to the Proposed Development. Following engagement with the Environment Agency, the Applicant is no longer seeking to disapply the FRAP regime for the Proposed Development and sub-paragraph 1(b) of Article 7 has consequently been removed. |

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| | <p>Environmental Permitting (England and Wales) Regulations 2016(b) in relation to the carrying on of a flood-risk activity; and</p> <p>b) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(c).</p> | |
| <p>Article 46 (Inconsistent planning permissions)</p> | <p>The following article has been inserted:</p> <p><u>Inconsistent planning permissions</u></p> <p><u>46.—(1) Any planning permission which has been initiated prior to the commencement of the authorised development pursuant to this Order may continue to be lawfully implemented thereafter notwithstanding any physical incompatibility with the authorised development or inconsistency with any provision of this Order.</u></p> <p><u>(2) As from the date on which the authorised development is commenced any conditions of a planning permission granted pursuant to Part 3 (Control over Development) of the 1990 Act (whether express or otherwise) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Part 1 (requirements) of Schedule 2.</u></p> <p><u>(3) As from the date of this Order where planning permission (whether express or otherwise) is granted (whether prior to the date of this Order or after) pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for</u></p> | <p>Article 46 has been added to address any overlap of the Order with any other planning conditions and planning obligations, and to provide clarity in terms of enforcement and which consent has effect.</p> <p>Article 46 is deemed necessary following <i>Hillside Park Limited v Snowdonia National Park Authority</i> [2022] UKSC 30. In that case, the Supreme Court ruled that, unless there is an express provision otherwise, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission considering what has already been done under the first permission.</p> <p>Paragraph (1) permits certain development authorised by way of a planning permission which has been initiated prior to the commencement of the authorised project to continue to be implemented design physical incompatibility with the authorised project.</p> <p>Paragraphs (2) to (6) address inconsistencies between the Order and implementation of the authorised project and developments previously consented under the planning regime which have already been implemented.</p> |

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| | <p><u>development not forming part of the authorised development, the carrying out of development pursuant to such planning permission is not to operate to prevent the undertaker from carrying out further works for the development of the authorised development pursuant to the terms of this Order.</u></p> <p><u>(4) Nothing in this Order restricts the undertaker from seeking or implementing, or the relevant planning authority from granting, planning permission for development within the Order limits.</u></p> <p><u>(5) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (offences) or 161 (breach of terms of order granting development consent) of the 2008 Act.</u></p> | <p>Paragraph (6) ensures that enforcement action is not taken in respect of planning permissions granted under the 1990 Act which are inconsistent with the works and exercise of powers under the Order.</p> |
| <p>Schedule 2, Part 1, Requirement 4 (Construction environment management plans (CEMP))</p> | <p>Sub-paragraph (1) has been amended as follows:</p> <p>(1) No phase of the authorised development may commence until a CEMP for that phase has been submitted to and approved by the relevant planning authority, <u>such approval to be in consultation with the Environment Agency.</u> Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to for the duration of the works in the phase of the authorised development to which the CEMP relates.</p> | <p>Following engagement with the Environment Agency, sub-paragraph (1) has been amended to name the Environment Agency as a consultee for the approval of the CEMP.</p> |

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| | <p>Sub-paragraph (2)(i) has been amended as follows:</p> <p>(2) <i>The CEMP for each phase of the authorised development must provide details of—</i></p> <p style="padding-left: 40px;">(i) <i>a protocol requiring consultation with the Environmental Agency <u>relevant planning authority</u> in the event that unexpected contaminated land is identified during ground investigation or construction; and</i></p> | <p>Sub-paragraph 2(i) has been amended to require the CEMP to include a protocol requiring consultation with the relevant planning authority, instead of the Environment Agency, in response to comments made by Darlington Borough Council (DBC) at paragraphs 5.9.2 to 5.9.6 of DBC’s Local Impact Report.</p> |
| <p>Schedule 2, Part 1, Requirement 8 (Materials Management)</p> | <p>Sub-paragraph (1) has been amended as follows:</p> <p>(1) <i>No phase of the authorised development is to be commenced until a materials management plan covering that phase and in accordance with the outline materials management plan for that phase has been submitted to and approved by the relevant planning authority in consultation <u>with the Environment Agency.</u> to which the materials management plan for that phase relates.</i></p> | <p>Sub-paragraph (1) has been amended to name the Environment Agency as a consultee for the approval of the materials management plan, in response to comments made by Darlington Borough Council (DBC) at paragraphs 5.9.2 to 5.9.6 of DBC’s Local Impact Report. The deleted text has been removed to clarify the drafting.</p> |
| <p>Schedule 2, Part 1, Requirement 15 (Construction hours)</p> | <p>Sub-paragraph (1) has been amended as follows:</p> <p>(1) <i>Subject to sub-paragraph (2), no construction works are to take place except between the hours of—</i></p> <p style="padding-left: 40px;">(a) <i>08:00 to 18:00 Monday to Friday; and</i></p> <p style="padding-left: 40px;">(b) <i>08:00 to 13<u>4</u>:00 on Saturday.</i></p> | <p>Sub-paragraph (1) has been amended to reduce the permitted Saturday construction hours in response to comments made by Stockton-on-Tees Borough Council (SBC) at paragraph 13.4 of SBC’s Local Impact Report.</p> |
| <p>Schedule 3 (Streets subject to street works)</p> | <p>Within column (3) <i>Description of Works</i> of the table of street works in Schedule 3, references to “highway” have been removed and references to “street” have been inserted.</p> | <p>References to highways have been replaced to references to streets as a matter of drafting precision and for consistency with the references to “streets” within Article 9. The Applicant refers to section 5 of the Applicant’s Rule 9 Response [AS-008].</p> |

For example, row 2 of the table has been amended as follows:

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| <i>Parish of Brafferton</i> | <i>Unnamed Road</i> | <i>Cable works beneath the width of highway <u>street</u> comprising a length of 320m as shown between points marked A and B on sheet 3 of the street works, public rights of way and access plans.</i> |
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Within the table of street works in Schedule 3, two rows have been added as follows:

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| <u>Parish of Bishopton</u> | <u>Folly Bank</u> | <u>Cable works beneath the width of street as shown with reference CC5 on sheet 9 of the street works, public rights of way and access plans.</u> |
| <u>Parish of Redmarshall</u> | <u>Redmarshall Road, in the vicinity of Morrington Bridge</u> | <u>Cable works beneath the width of street as shown with reference CC6 on sheet 11 of the street works, public rights of way and access plans.</u> |

These two rows have been added to provide street works descriptions for two locations where the Applicant proposes to carry out cabling works across the width of a street for the purpose of delivering the off-road cable route. These descriptions are included as a correction to Revision 1 of the dDCO.

Corresponding amendments have been made to the Street Works, Public Rights of Way and Access Plans to indicate these locations.

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| | <p>The following rows have been removed from the table of street works in Schedule 3:</p> <table border="1" data-bbox="577 371 1265 1034"> <tr> <td data-bbox="577 371 779 703"> <p>Parish of Bishopton</p> </td> <td data-bbox="779 371 891 703"> <p>The Green</p> </td> <td data-bbox="891 371 1265 703"> <p>Cable works beneath the width of highway comprising a length of 330m as shown between points marked K and M on sheets 9 and 11 of the street works, public rights of way and access plans.</p> </td> </tr> <tr> <td data-bbox="577 703 779 1034"> <p>Parish of Bishopton</p> </td> <td data-bbox="779 703 891 1034"> <p>High Street</p> </td> <td data-bbox="891 703 1265 1034"> <p>Cable works beneath the width of highway comprising a length of 700m as shown between points marked M and N on sheets 9 and 11 of the street works, public rights of way and access plans.</p> </td> </tr> </table> | <p>Parish of Bishopton</p> | <p>The Green</p> | <p>Cable works beneath the width of highway comprising a length of 330m as shown between points marked K and M on sheets 9 and 11 of the street works, public rights of way and access plans.</p> | <p>Parish of Bishopton</p> | <p>High Street</p> | <p>Cable works beneath the width of highway comprising a length of 700m as shown between points marked M and N on sheets 9 and 11 of the street works, public rights of way and access plans.</p> | <p>These two rows were previously included to provide street works descriptions for the cabling works proposed to be carried out for the on-road cable route through Bishopton.</p> <p>These two have been removed because the cable route optionality in this location has been resolved in favour of the off-road route to the south of Bishopton Village and the Order limits have been updated to remove the on-road cable route through Bishopton. See the Applicant’s Notification of Intention to Submit New or Revised Information – Accepted at the discretion of the Examining Authority [AS-010] for further details.</p> |
| <p>Parish of Bishopton</p> | <p>The Green</p> | <p>Cable works beneath the width of highway comprising a length of 330m as shown between points marked K and M on sheets 9 and 11 of the street works, public rights of way and access plans.</p> | | | | | | |
| <p>Parish of Bishopton</p> | <p>High Street</p> | <p>Cable works beneath the width of highway comprising a length of 700m as shown between points marked M and N on sheets 9 and 11 of the street works, public rights of way and access plans.</p> | | | | | | |
| <p>Schedule 11, Part 4 (For the Protection of the Environment Agency)</p> | <p>Part 4 (For the Protection of the Environment Agency) has been removed from Schedule 11.</p> | <p>Following engagement with the Environment Agency, Part 4 of Schedule 11 has been removed as a responsive amendment to the removal of Article 7(1)(b) above. The parties agree that the Protective Provisions previously included at Part 4 of Schedule 11 are redundant.</p> | | | | | | |
| <p>Change Application – Revision 3 of the dDCO</p> | | | | | | | | |

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| <p>Changes made throughout the DCO</p> | <p>Various minor amendments have been made to the dDCO to correct typos, cross-referencing errors and updates to the Table of Contents.</p> | <p>Clarity and consistency.</p> |
| <p>Article 21 (Compulsory Acquisition of Land)</p> | <p>Sub-paragraph (2) has been amended as follows: <i>(2) This article is subject to paragraph (2) of article 23 (compulsory acquisition of rights), article 25 (acquisition of subsoil only) and article 2930 (temporary use of land for carrying out the authorised development).</i></p> | <p>This amendment has been made as a consequence of the addition of Article 25 (Acquisition of subsoil only). The amendment makes clear that, where relevant, the undertaker can only acquire new rights or take temporary possession of land and cannot acquire the freehold interest in that land.</p> |
| <p>Article 25 (Acquisition of subsoil only)</p> | <p>The following Article has been inserted: Acquisition of subsoil only <u><i>(25)(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) 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.</i></u> <u><i>(2) Where the undertaker acquires any part of, or rights in, the subsoil of land, the undertaker is not required to acquire an interest in any other part of the land.</i></u> <u><i>(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—</i></u> <u><i>(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by Schedule 9 (modification of compensation and compulsory purchase enactments</i></u></p> | <p>This Article has been added pursuant to the change referred to as Change 1 within the Applicant’s Change Application. This Article has been added to enable the Applicant to compulsorily acquire only the subsoil of land required for the laying of cables along the on-road cable route. The relevant land plots over which the power in this Article could be exercised have been included in Schedule 8 (Land in which only new rights etc. may be acquired) and other consequential amendments have been made throughout the dDCO.</p> |

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| | <p><u>for the creation of new rights and imposition of new restrictive covenants);</u></p> <p><u>(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and</u></p> <p><u>(c) section 153(4A) (blighted land: proposed acquisition of part interest, material detriment test) of the 1990 Act.</u></p> <p><u>(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.</u></p> | |
| <p>Article 26 (Application of the 1981 Act)</p> | <p>A new sub-paragraph (9) has been inserted as follows:</p> <p><u>(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute— “(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 20[•], which excludes the acquisition of subsoil only from this Schedule.”</u></p> | <p>This amendment makes a standard modification to the 1981 Act as a consequence of the addition of Article 25 (Acquisition of subsoil only).</p> |
| <p>Article 28 (Modification of Part 1 of the Compulsory Purchase Act 1965)</p> | <p>A new sub-paragraph (5)(a) has been inserted as follows:</p> <p><u>(5)(a) For paragraphs 1(2) and 14(2) substitute—</u></p> <p><u>“(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 20[•], which excludes the acquisition of subsoil only from this Schedule”; and</u></p> | <p>This amendment makes a standard modification to the 1965 Act as a consequence of the addition of Article 25 (Acquisition of subsoil only).</p> |
| <p>Article 30 (Temporary use of land or carrying out the authorised project)</p> | <p>Sub-paragraph (10) is inserted as follows:</p> <p><u>(10) Nothing in this article precludes the undertaker from—</u></p> | <p>This amendment clarifies that Article 30 does not preclude the undertaker’s exercise of the rights included in Schedule 8 of the dDCO including pursuant to the power in Article 25 (Acquisition of subsoil only).</p> |

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| | <p><u>(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired); or</u></p> <p><u>(b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 25 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 29 (rights under or over streets)</u></p> | | | | |
| <p>Article 46 (Funding)</p> | <p>A new sub-paragraph (2)(d) is inserted as follows:</p> <p><u>(d) article 25 (acquisition of subsoil only)</u></p> | <p>This amendment has been made as a consequence of the addition of Article 25 (Acquisition of subsoil only). The amendment makes clear that, the undertaker must not exercise compulsory acquisition powers under Article 25 unless it has first provided the required guarantee or security under Article 46.</p> | | | |
| <p>Schedule 5, Part 1, (Public rights of way to be temporarily stopped up)</p> | <p>The following row is inserted into the table:</p> <table border="1" data-bbox="573 778 1272 1114"> <tr> <td data-bbox="573 778 734 1114"> <p><u>Parish of Brafferton</u></p> </td> <td data-bbox="734 778 882 1114"> <p><u>Footpath No.9</u></p> </td> <td data-bbox="882 778 1272 1114"> <p><u>Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 613m as shown between points 11 and 11a on sheet 1 of the Street Works, Public Rights of Way and Access plans</u></p> </td> </tr> </table> | <p><u>Parish of Brafferton</u></p> | <p><u>Footpath No.9</u></p> | <p><u>Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 613m as shown between points 11 and 11a on sheet 1 of the Street Works, Public Rights of Way and Access plans</u></p> | <p>This amendment has been made pursuant to the change referred to as Change 2 within the Applicant’s Change Application. This amendment is to authorise temporary management measures along Footpath No.9 on High House Lane.</p> |
| <p><u>Parish of Brafferton</u></p> | <p><u>Footpath No.9</u></p> | <p><u>Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 613m as shown between points 11 and 11a on sheet 1 of the Street Works, Public Rights of Way and Access plans</u></p> | | | |
| <p>Schedule 8 (Land in which only new rights etc. may be acquired)</p> | <p>Column 1 is amended as follows:</p> | <p>This amendment has been made pursuant to the change referred to as Change 1 within the Applicant’s Change Application. The additional plot numbers relate to the on-road cable route.</p> | | | |

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| | <p>1/1, 1/2, 2/2, 2/4, 2/6, 3/1, 3/6, 4/2, 4/3, 5/2, 5/3, 6/1, 6/2, 6/4, 6/6, 6/7, 8/6, 9/6, 9/8, 9/9, 10/1, 10/2, 11/3</p> | <p>Work No. 3</p> | | |
| <p>Schedule 8 (Land in which only new rights etc. may be acquired)</p> | <p>Column 1 is amended as follows:</p> <p>7/3, 7/4, 7/5, 7/6, 7/8, 8/3, 8/4, 8/5, 9/2, 9/3, 9/4, 9/5</p> | <p>Work No. 3 and Work No. 5</p> | | <p>This amendment has been made pursuant to the change referred to as Change 1 within the Applicant’s Change Application. The additional plot numbers relate to the on-road cable route.</p> |
| <p>Schedule 8 (Land in which only new rights etc. may be acquired)</p> | <p>Column 1 is amended as follows:</p> <p>9/15, 9/16, 11/1, 11/5, 11/6, 11/7, 11/9, 11/10, 11/11, 11/12, 11/13, 11/14, 11/15, 11/16, 11/17, 11/18, 12/1, 12/2, 12/3, 12/4, 12/5, 12/6,</p> | <p>Work No. 5</p> | | <p>This amendment has been made pursuant to the change referred to as Change 1 within the Applicant’s Change Application. The additional plot numbers relate to the on-road cable route.</p> |

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| | <p>12/7, 12/8, 12/9, 12/10, 12/11, 12/12, 12/13, 12/14, 12/15, 12/16, 12/17, 12/18, 12/19, 12/20, 12/21, 12/22, 12/23, 12/24, 12/25, 12/26, 12/27, 12/28, 12/29, 12/30, 12/31, 12/32, 13/1, 13/2, 13/3, 13/4, 13/5, 13/6, 13/7, 13/8, 13/9, 13/10, 13/11, 13/12, 13/13, 13/14, 13/15, 13/16, 13/17, 13/18</p> | | | |
| <p>Schedule 9 (Modification of Compensation and Compulsory Purchase Enactments for the Creation of New Rights and Imposition of New Restrictive Covenants), Paragraph 10</p> | <p>Sub-paragraph 1(2) has been inserted within “Schedule 2A Counter-Notice Requiring Purchase of Land” as follows:</p> <p><i>(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 20[*] which excludes the acquisition of subsoil only from this Schedule.</i></p> | | | <p>This amendment is in consequence to the addition of Article 25 (Acquisition of subsoil only).</p> |

