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| **Report to the Secretary of State for Environment, Food and Rural Affairs** |
| **by Clive Sproule BSc MSc MSc MRTPI MIEnvSci CEnv** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Date: 20 February 2020** |

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| WATER INDUSTRY ACT 1991 |
| ACQUISITION OF LAND ACT 1981 |
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| APPLICATION FOR CONFIRMATION OF |
| THE UNITED UTILITIES WATER LIMITED  (ECCLES WASTEWATER TREATMENT WORKS)  COMPULSORY PURCHASE ORDER 2016 |
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**Glossary**

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| **Abbreviations(s)** | **Meaning** |
|  |  |
| Acquiring Authority /UUWL /UU | United Utilities Water Limited |
| ANLA 1992 | Access to Neighbouring Land Act 1992 |
| APA | Asset protection agreement |
| ASP | Activated Sludge Plant |
| AIP | Approval in Principle |
| AMP | Asset Management Plan |
|  |  |
| BAFF | Biological Aerated Flooded Filter |
| BOD | Biochemical oxygen demand |
|  |  |
| CAPEX | Capital Expenditure |
| CIC | Capital Investment Committee |
| CoSCSL | City of Salford Community Stadium Limited |
| CPO | Compulsory Purchase Order |
| CS | Closing submissions |
| CSO | Combined sewer overflows |
|  |  |
| D/AIP | Detailed Acceptance in Principle |
|  |  |
| EA | Environment Agency |
| EIA | Environmental Impact Assessment |
| EPR 2016 | Environmental Permitting (England and Wales) Regulations 2016 |
|  |  |
| FE | Final Effluent |
| FTFT | Flow to full treatment |
| Full Scheme | As described in section 3 and Appendix 1 of the SoR [[CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf)], with the a revised version of the SoR Appendix 1 plan at Appendix DS2 [[AA/8/C1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt1-Final-version-30.05.2018.pdf)] |
|  |  |
| IFA | Integrated Fixed-Film Activated Sludge |
| IDAS | Integrated Drainage Area Strategy |
|  |  |
| JSQC | James Strachan QC |
|  |  |
| MBR | Membrane Biological Reactor |
| MSC / the Canal | Manchester Ship Canal |
| MSCCL | Manchester Ship Canal Company Limited |
| MSCCL CS | MSCCL’s closing submissions |
|  |  |
| NEP | National Environment Programme |
| NSAF | Nitrifying Submerged Aerated Filter |
|  |  |
| OPEX | Operational Expenditure |
| Order Scheme | Works proposed for the Order Lands as part of the Full Scheme |
| O/AIP | Outline Approval In Principle |
|  |  |
| PA 2008 | Planning Act 2008 |
| PINL | Peel Investments (North) Limited |
| PSTs | Primary Settlement Tanks |
| PSLL | Port Salford Land Limited |
|  |  |
| RFI | Request for information |
|  |  |
| SoR | Statement of Reasons [CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf) |
| SoC | Statement of Case |
| SOP | Standard Operating Procedure |
|  |  |
| TBM | Tunnel boring machine |
| the 1847 Act | Harbours, Docks, and Piers Clauses Act 1847 |
| the 1885 Act | Manchester Ship Canal Act 1885 |
| the 1981 Act | Acquisition of Land Act 1981 |
| the 1991 Act | Water Industry Act 1991 |
| the 2010 Act | Equality Act 2010 |
| the Canal / MSC | Manchester Ship Canal |
| TOTEX | Total Expenditure |
|  |  |
| UIDs | Unsatisfactory Intermittent Discharges |
| UUWL / UU / Acquiring Authority | United Utilities Water Limited |
| UUWL CS | UUWL’s closing submissions |
|  |  |
| WFD | Water Framework Directive |
| WGIS Road | Salford Western Gateway road |
| WINEP | Water Industry National Environment Programme |
| WLC | Whole life cost |
| WwTW | Wastewater Treatment Works |

|  |
| --- |
| **File Ref: APP/DEFRA/CPO/ECCLES**  **Eccles Wastewater Treatment Works** |
| * The Compulsory Purchase Order (‘the Order’) was made under section 155 of the Water Industry Act 1991 and the Acquisition of Land Act 1981 by United Utilities Water Limited (‘the Acquiring Authority’ or ‘UUWL’) on 21 September 2016. |
| * The purposes of the Order are for the purpose of improving the water quality in Salteye Brook through the implementation and operation of a new pipeline from Eccles Wastewater Treatment Works (‘Eccles WwTW’) to the canalised River Irlam, known as the Manchester Ship Canal and related/ancillary works. |
| * When the Inquiry opened there were 4 remaining objections and no non-qualifying additional objections. On the last sitting day of the Inquiry, there were no objections ‘in-principle’ to the Order, but an objection remains in relation to proposed protective provisions. * Accompanied inspections of the Order Lands took place on 25 May 2018. * Unaccompanied inspections of the surrounding area took place before and during the course of the Inquiry. |
| **Summary of Recommendation:** **That the Order be confirmed with modification.** |
|  |

Procedural Matters and Statutory Formalities

1. A Pre-Inquiry Meeting was held on 20 April 2018 at the Museum of Science and Industry in Manchester. An accompanied site inspection was carried out on 25 May 2018. I also carried out unaccompanied site visits to familiarise myself with locations and features that were discussed during the Inquiry, and I observed the context of the evidence as I travelled in the areas around the Order Lands. The Museum of Science and Industry was also used as the venue for the inquiry, which sat for 29 days on: 12-15, 19-22 and 26-29 June; 10-13 and 17-20 July; 21-23 and 27-30 November; and, 4 and 6 December 2018. The Inquiry was closed in writing on 19 March 2019 following the receipt of written closing submissions [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf), [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf), [MP/INQ/71.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.2-MSCCL-Closing-Submissions-Appendix-2.pdf), [MP/INQ/71.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.3-MSCCL-Closing-Submissions-Appendix-3.pdf), [MP/INQ/71.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.4-MSCCL-Closing-Submissions-Appendix-4.pdf), [MP/INQ/71.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.5-MSCCL-Closing-Submissions-Appendix-5.pdf) and [MP/INQ/71.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.6-MSCCL-Closing-Submissions-Appendix-6.pdf), [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf), [AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf), [AA/INQ/83.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-Mark-up-of-Order-Schedule.pdf), [AA/INQ/83.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles_CPO_Plans_Rev_27_10.01.2019.pdf), [AA/INQ/83.4.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/22.05.2018-PM-to-BDB.pdf), [AA/INQ/83.4.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/23.05.2018-DB-to-PM.pdf), [AA/INQ/83.4.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/11.10.2018-PM-to-BDB.pdf), [AA/INQ/83.4.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/19.10.2018-BDB-to-PM.pdf), [AA/INQ/83.4.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/16.11.2018-PM-to-BDB.pdf) and [AA/INQ/83.4.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/26.11.2018-BDB-to-PM.pdf) ], additional borehole evidence from the Acquiring Authority [[AA/INQ/82](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L+-Helen-Wilson-11.1-1.pdf), [AA/INQ/82.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Supplementary-note-re-BH7-FINAL.pdf) and [AA/INQ/82.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PN183904-BH7-Logs-DRAFT-20190107.pdf)], and associated responses from the two remaining parties to the Inquiry [[MP/INQ/72](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MSCCL-Note-in-response-to-UUWL-Closing-Submissions-1.pdf), [MP/INQ/72a](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-Stephen-West-Note-in-response-to-Borehole-7-Information-2-1.pdf) and [AA/INQ/84](http://www.hwa.uk.com/site/wp-content/uploads/2018/11/UU-Note-in-response-to-MSCCL-8-February-2019.pdf)].
2. Prior to the start of the Inquiry, I was notified that: site notices had been posted 3 days later than sought by Rule 11 of Statutory Instrument 2007/3617 - *The Compulsory Purchase (Inquiries Procedure) Rules 2007*; the Order had been widely publicised; all remaining and former objectors had been aware of the Inquiry dates for some time; and given the expected length of the Inquiry, it was the Acquiring Authority’s view that these factors would ensure that no party would be disadvantaged by the late posting of the notices. I agree with that assessment and arrive at the same view that no party has been disadvantaged by the late posting of the site notices.
3. Prior to the opening of the Inquiry, Standard Life withdrew its objection to the Order via a letter dated 31 May 2018 [[CD/CPO/13](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.13-Letter-dated-31-May-2018-on-Standard-Life-Trustee-Company-Limited-withdrawing-objection.pdf)]. Other parties, namely Port Salford Land Limited (‘PSLL’) [[PS/INQ/5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Let-PSLL-to-SoS-19.11.18.pdf)], City of Salford Community Stadium Limited (‘CoSCSL’) [[PS/INQ/4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Let-CoSCoS-to-SoS-19.11.18.pdf)] and Peel Investments (North) Limited (‘PINL’) [[PINL/INQ/1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Let-PINL-to-SoS-19.11.18.pdf)] withdrew their objections during the Inquiry via letters dated 19 November 2018.
4. The final remaining objector, Manchester Ship Canal Company Limited (‘MSCCL’), withdrew its ‘in-principle’ objection on day 28 of the Inquiry [[MP/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-December-2018-1.pdf) and paragraph 5 of [MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)]. However, MSCCL maintains its objection to:

* certain aspects of the protective provisions proposed by the Acquiring Authority for MSCCL’s undertaking;
* the right to “remain” sought through the Order;
* and, the permanence of the retention of ownership of Plots 6Z and 6Q.

1. Consequently, MSCCL wishes to modify the Order to address its concerns regarding: protective provisions; the loss of the freehold to Plots 6Z and 6Q; and, the inclusion of a ‘right to remain’ on certain plots within the Order.
2. The Acquiring Authority proposes the Order be modified through: a reduction in the area of Plot 5T and the removal of Plot 3; the inclusion of a new ‘Schedule 1’ to the Order that would provide protections for MSCCL’s undertaking; along with ‘Table 1’ of the Order being placed within a new ‘Schedule 2’. The modifications in relation to Plots 5T and 3 would reduce the area of the Order Lands from 39.34ha to approximately 38ha [paragraphs 2.31 and 2.39 and section 5 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)]. These proposed modifications have been incorporated into revised versions of the Order and its schedules [[AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf)], and the Order Map [[AA/INQ/83.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles_CPO_Plans_Rev_27_10.01.2019.pdf)].

**The Order Lands and Surroundings**

1. The Order Scheme would construct a gravity outfall pipe to carry final effluent from Eccles WwTW to a new outfall into the Manchester Ship Canal (‘the Canal’ or ‘MSC’). The Order Scheme is part of a larger project where works have already been carried out. The starting point of the gravity outfall pipe would be in ‘Shaft 03’ of that larger project, which is referred to as the ‘Full Scheme’ in the Statement of Reasons (‘SoR’) [[CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf)]. The elements of the Full Scheme, including the parts that would require the Order to complete them, are described in section 3 and shown in Appendix 1 of the SoR. A revised version of the SoR Appendix 1 plan is provided as Appendix DS2 to Mr Sephton’s proof of evidence [[AA/8/C1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt1-Final-version-30.05.2018.pdf)].
2. The outfall pipe would be approximately 1.16km long and would have an internal diameter of approximately 2.85m. It would be installed by tunnelling at a depth of approximately 10m below ground level along most of its length. The gravity outfall pipe would terminate very close to the proposed outfall in a new vertical shaft (referred to as ‘Shaft 04’), that would be approximately 15m in diameter and 12.5m in depth. From Shaft 04, twin pipes (each with an internal diameter of approximately 2.1m) would be constructed to carry the final effluent to the outfall [pages 20 and 21 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)].
3. The outfall structure would sit within the canal bank immediately downstream of Barton Locks. It would have an apron, wing walls and headwall constructed in reinforced concrete, and be approximately 10.5m wide, 17.5m long and 10m high. It would be largely underwater with no part projecting beyond the existing profile of the canal bank [page 21 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)].

The Order Lands

1. The Order Lands are comprised of plots of land that are grouped in Work Package Plans contained in Appendix 2 of the SoR [[CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf)]. At this stage, the proposals now should be read with reference to the Acquiring Authority’s modifications outlined above and contained within [AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf) and [AA/INQ/83.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles_CPO_Plans_Rev_27_10.01.2019.pdf). The titles of the Work Package Plans and the description of the works in section 3 of the Acquiring Authority’s Statement of Case [[CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf)] provide further details of how the land and rights sought through the Order Scheme would be used.
2. The land includes the right to run a temporary discharge pipe south(east)wards from Eccles WwTW the short distance to the Canal across land that includes the canal bank and the access track along it. This would be used when the Order Scheme’s permanent gravity outfall pipe requires maintenance.
3. Most of the Order Lands lie to the west of Eccles WwTW. They would provide a corridor for the route of the tunnel and the gravity outfall pipe within it. Where necessary, the Order Lands also would provide access to that route. They include land beneath part of the Barton High Level Bridge which carries the M60 Motorway across the Canal, and the recently constructed parallel section of the Salford Western Gateway road (often referred to as ‘the WGIS Road’ in Inquiry documentation).
4. The Order Lands then cross open ground that has planning permission for retail development [paragraph 2.35.3 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)]. The route of the tunnel and gravity outfall pipe would pass around the southern side of the AJ Bell Stadium. It would then continue westwards along the northern side of the Canal to Barton Locks. The Order Lands also include the access to the stadium. On all of these plots the Acquiring Authority seeks the permanent acquisition of rights, whereas land would be acquired around the proposed outfall and Barton Locks on the northern bank of the Canal. Rights are also sought for the water body of the Canal from immediately above Barton Locks southwest to Irlam Container Port, along with the access into Irlam Container Port and through the site to the wharf, hardstanding and slipway. [[AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf) and [AA/INQ/83.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles_CPO_Plans_Rev_27_10.01.2019.pdf)]
5. A large proportion of the works within the Order Scheme are development permitted through Statutory Instrument 2015 No.596 - *The Town and Country Planning (General Permitted Development) (England) Order 2015* and related statutes. In addition, planning permission has been granted for the outfall structure. [paragraph 8.13 and page 233 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf) & Planning Application Ref.: 17/70871/FUL the details of which are within various Core Documents beginning at [CD/UU-PP/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.UU_.PP_.3-Planning-application-reference-17_70871_FUL-dated-31-October-2017-United-Utilities.pdf)]

The Case for United Utilities Water Limited (‘the Acquiring Authority’)

1. The case set out below is an edited summary of the Acquiring Authority’s closing submissions contained within [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf). The text below omits matters such as: views expressed in relation to potential motives for objection to the Order Scheme; compensation, which would be a matter for the Upper Tribunal; details provided earlier in the report; and certain details within footnotes. The full text of the closing submissions is within [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf).

**Introduction**

Overview

1. The Acquiring Authority considers the Order to be urgently required in order to facilitate the construction of a new underground pipeline and outfall to serve the ever-expanding drainage needs of the Eccles area in Greater Manchester. The company believes it to be a vital step in the delivery of essential infrastructure for the many members of the public who live in that area. It is the Acquiring Authority’s statutory function to provide drainage for that area, in compliance with the environmental requirements regulated by the Environment Agency (‘EA’).
2. The Order is required to enable the Acquiring Authority to fulfil that function, whilst meeting the water quality requirements for both Salteye Brook and the Canal. Despite the Acquiring Authority’s best and persistent efforts, the necessary land and rights in the Order for delivery of the scheme could not be secured by agreement. It is therefore difficult to identify any better foundation for a “compelling case in the public interest” for confirmation of this Order.
3. In any event, the need for the Order, and the compelling case in the public interest for its confirmation, are now beyond doubt. At the close of this Inquiry, the Acquiring Authority has secured the withdrawal of all ‘in principle’ objections to the Order. That includes withdrawal of the ‘in principle’ objection from the Manchester Ship Canal Company Ltd (‘MSCCL’), the last remaining objector.
4. Therefore, all the parties now recognise: (i) the need for a scheme to address the position at Eccles WwTW required by the EA; (ii) the absence of any preferable alternative to the Acquiring Authority’s scheme; and (iii), the compelling case in the public interest for the Order to be confirmed to deliver that scheme.
5. The only residual point of difference at the close relates to the precise terms of protective provisions for the Order itself affecting MSCCL land. Even in that respect, notwithstanding the length of MSCCL’s closing submissions, MSCCL describes the points of addition it seeks as going “only little further” than the Acquiring Authority’s proposals, and as “modest additions”.[[1]](#footnote-1) None of the points of difference affect the overarching recognition of the need for confirmation of the Order.
6. Parliament itself, in enacting the key sewerage laws of this country, already recognises the basic importance of utility companies providing sewerage infrastructure, along with the public interest it serves. The Acquiring Authority’s Opening Submissions highlighted that ss.158 and 159 of the Water Industry Act 1991 (‘the 1991 Act’) already provide sewerage undertakers with a statutory right to lay pipes on other people’s land without the need for their consent. Parliament has given these powers to sewerage undertakers to enable them to fulfil their key duty and vital role under s.94 of the same Act, namely to provide, improve, and extend a system of sewers to ensure that the land in their area is and continues to be effectually drained.
7. The only point of difference here is that there is a requirement for a new right to discharge into a watercourse (in contrast to the pipes to get to that discharge). It is this new right to discharge which needs to be acquired either by agreement, or by compulsory acquisition. If it were not for the new outfall: (i) it would have been a project that could have been constructed without recourse to the Compulsory Purchase Order (‘CPO’) power under s.155 of the 1991 Act; and (ii), in respect of which no objection could have been taken (meaning that this Inquiry would not have taken place).
8. The Acquiring Authority has also made reference to a potential uncertainty over whether all of the ancillary infrastructure (such as Shaft 04) involved in the scheme would fall within the ambit of the pipe-laying powers. Given the requirement to acquire the right to discharge, it has not been necessary to resolve this point for this scheme, because the Acquiring Authority has pragmatically incorporated all of the required land and rights within the Order itself. However, the existence of any such uncertainty does not detract from the point of principle that Parliament has recognised the existence of a public interest for the pipe-laying powers (whatever their precise ambit and which themselves embody inherent automatic compulsory acquisition powers). Thus, the pipe-laying powers are clearly relevant when it comes to considering whether a compelling case in the public interest exists for confirmation of the Order.

The Residual Objections

1. At the outset of the Inquiry, there were only four outstanding objections to the confirmation of the Order. Three from CoSCSL, PSLL and PINL have been fully withdrawn. The fourth, from MSCCL, has fundamentally altered. As already indicated, it is no longer an objection ‘in principle’ to the making of the Order. It is now recognised by MSCCL that the Order and consequential scheme is in the public interest. The only residual points are ones as to the precise terms of the Order.[[2]](#footnote-2)
2. The Acquiring Authority has only ever wanted to secure the necessary rights and powers to deliver a scheme that is required in consequence of the requirements of the EA, which is itself a body charged with acting in the public interest.
3. MSCCL has faced no sanction at all for pursuing its ‘in principle’ objections and the consequential delay to the delivery of the scheme. That is, for example, notwithstanding that its own key witness agreed that key aspects of the objection were based on misleading evidence that he had presented.
4. The important point is that the case for confirmation of the Order is now unanswerable. It is not subject to any ‘in principle’ objection. In the circumstances, the Acquiring Authority will not cover in full detail the many technical issues that have been comprehensively addressed in evidence (by way of response to MSCCL’s misconceived objection in principle).
5. By repeatedly urging the Inspector and Secretary of State to favour an unnecessary, more expensive, alternative, MSCCL was leading them into legal error. It has only been after 28 days of Inquiry time that MSCCL has eventually withdrawn such arguments based on a supposedly ‘in principle’ objection.

Summary Overview

1. This is a paradigm case where there is a compelling case in the public interest; both in terms of the need for the infrastructure itself, but also because the solution properly reflects the economic interests of the individual members of the public who have to pay for it. This is rightly at the heart of the Acquiring Authority’s decision making, and of the decision to be made in this case.
2. Overall, the evidence has confirmed that the Order Scheme is hugely beneficial. In summary, it will (amongst other things):
3. Significantly and immediately improve water quality in Salteye Brook by removing all but greater than 1 in 5 year discharges from sewerage infrastructure directly into this watercourse. This is one of the EA’s fundamental objectives.
4. Reduce the quantity of Unsatisfactory Intermittent Discharges (‘UIDs’) arising from the sewer infrastructure in this location. Again, this is one of the EA’s fundamental objectives.
5. Reduce the overall volume of water discharged from UIDs.
6. Remove a significant part of the pollutant load and debris that currently enters into the watercourse through: i) storage provided between Shafts 01 and 03; and ii) the screening of flows, which thus improves the aesthetic of the Canal. Again, this is one of the EA’s fundamental objectives.
7. Provide a net benefit to water quality in the Canal. MSCCL’s stance throughout the Inquiry resisted the delivery of this benefit.
8. Allow for the future diversion of the existing pipe that leads to Salteye Brook under third party land, so facilitating development in the area currently occupied by this underground pipe.
9. Reduce the level of flood risk to properties connected to the sewer network upstream of Eccles WwTW, particularly in Peel Green Road.
10. As to s.16 of the Acquisition of Land Act 1981 (‘the 1981 Act’) and the effect of the Order on the statutory undertaking of MSCCL, it is now common ground that MSCCL’s land and interests (and indeed rights over them) can be purchased under the Order and not replaced without causing any material detriment, let alone serious detriment, to the carrying on of MSCCL as the relevant undertaking. The only residual dispute is whether this is achieved by UU’s wording, or whether additional wording proposed by MSCCL is necessary. That is the residual matter covered in section 7 of the closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] (along with the residual debates over: i) the right to remain on certain plots; and, ii) the return of lands that are covered in section 5 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)).
11. Therefore, the Acquiring Authority seeks the Secretary of State to confirm the Order, with the proposed wording that the Acquiring Authority has advanced in the proposed schedule appended to the closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)], which reflects the wording of protective provisions proposed in June 2018 [[AA/INQ/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_7-Letter-from-Pinsent-Masons-to-BDB-regarding-MSCCLs-statutory-undertaking-with-enclosure-dated-13%25.pdf)] and those subsequently included in the draft Order dated 6 December 2018 [[AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf)]. It will remain a matter for the Secretary of State to decide whether it is necessary, or appropriate, to include any or all of the wording that MSCCL has proposed. The Acquiring Authority does not consider such additional wording is in fact necessary or reasonable (for the reasons addressed in section 7 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)); but the crucial thing is to confirm the Order with whatever wording that the Secretary of State sees fit in a way which ensures the Acquiring Authority’s ability to deliver the underlying Order Scheme in the public interest.

**Description of Eccles WwTW, the Full and Order Schemes and the Order Lands**

Eccles catchment and Eccles WwTW

1. The Acquiring Authority refers to, and relies upon in full, the detailed evidence provided by its witnesses as to the description of Eccles WwTW and its operation. This includes the evidence, in particular, provided by Mr Keith Haslett ([[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)] and rebuttal [[AA/1/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_R-Keith-Haslett-Rebuttal.pdf)], along with associated appendices), Ms Joanne Rands (see rebuttal [[AA/12/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_12_R-Joanne-Rands-Rebuttal.pdf)], along with Ms Rands’ technical note, which is appended to Dr Hendry’s proof of evidence at Appendix 5 of [[AA/3/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendics-to-Proof-of-Evidence-amended.pdf)]), Mr David Sephton (see proof of evidence [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)] and rebuttal [[AA/8/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_R-Sephton-Rebuttal-FINAL.pdf)]), along with associated appendices) and Dr Keith Hendry (see proof of evidence [[AA/3/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Keith-Hendry-Proof-PDF.pdf)] and rebuttal [[AA/3/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_3_R-Keith-Hendry-Rebuttal-.pdf)], along with associated appendices). For the sake of brevity, it is not repeated here. However, so far as the Acquiring Authority’s notes of the Inquiry record, there was no substantive challenge to any of that evidence. It therefore provides a reliable and full account of the WwTW and its operation. By contrast, claims made by MSCCL in contradiction of that evidence were generally challenged wherever material and again, as UU’s notes of the evidence record, such claims were either abandoned by MSCCL’s witnesses (in particular, Mr Perry), or were demonstrated to be misconceived (as summarised below).
2. The growing Eccles catchment is served by the public wastewater network, which is comprised predominantly of combined sewer systems.
3. As explained in section 7 of the proof of evidence of Mr Haslett [[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)]:
4. The nature and operation of combined sewer systems necessarily rely upon the provision of sufficient, and appropriate, combined sewer overflows (‘CSOs’). As with virtually all sewer systems nationally, they act as essential overflows for the sewerage system. SAL0018 (Winton outfall) and the Eccles WwTW inlet CSO are both examples of CSOs. They offer a point of relief which protects the wastewater network (and the WwTW itself) from flooding during times of peak flow.
5. Eccles WwTW is a biological filtration plant. A schematic representation of the WwTW is provided, along with a more detailed description, in sections 5 and 6 of the Optioneering Solutions Report dated May 2018 [[CD/OTH/33](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.OTH_.33-UU-Optioneering-Solutions-Report-09052018.pdf)].
6. Combined foul and surface water flow enters the WwTW at the inlet. From here it passes through the screens, where solids with a size greater than 6mm are removed and sent to landfill.
7. The flow then passes through detritors, where the velocity is reduced to allow for further settlement of inorganic solids which have otherwise passed the screening process. Again, these solids are collected in skips and recycled, or sent to landfill.
8. From the inlet flume (where high flows are split so that flow to full treatment (‘FTFT’) is passed for treatment and flows in excess are discharged to the storm tanks), primary treatment of the wastewater is then provided by settlement in large Primary Settlement Tanks (‘PSTs’). This takes place over an extended period of two to three hours. Solids settle in hoppers at the bottom of the tanks in the form of sludge. This sludge is then removed for processing elsewhere.
9. Once such solids have been removed, the separated effluent water that comes from the PSTs is then passed on to the secondary treatment process, where the flow is divided and passes through one of two banks of filter beds. Here the water is distributed over blast furnace slag filter media, which encourages and supports the biological processes which treat the effluent and purify the flow.
10. The final process of secondary treatment is a further stage of extended settlement, for a period of two to three hours, in humus tanks. Humus is organic matter which includes decayed bacteria, algae and biomass resulting from the biological filtration process. The design of the tanks and the time that the water is retained in these tanks encourages any remaining solids to settle. The settled humus sludge is then collected and pumped to the PSTs for further treatment, where the humus sludge is co-settled with the primary sludge.
11. The fully treated wastewater, now classified as Final Effluent (‘FE’), passes over a weir around the perimeter of the humus tanks and is discharged, via the current outfall pipe, to Salteye Brook and, via Salteye Brook, enters the Canal downstream of Barton Locks.

The condition and operation of Eccles WwTW

1. MSCCL originally claimed in written evidence that Eccles WwTW was in some way ‘failing’ and/or in a poor operational condition (see proof of evidence of Mr Perry [[MP/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_1_A-Proof-of-Evidence-of-Trevor-Perry.pdf)], including paragraphs 6.4.23 to 6.4.30). These claims were not only based on inadequate and inaccurate information (such as Mr Perry’s bizarre calculations of volume of PSTs based on measurements from satellite imagery, when he could have obtained the correct data from the Acquiring Authority), but the claims proved to be highly misleading as confirmed in cross-examination of Mr Perry.
2. The claimed inadequate performance of Eccles advanced in Mr Perry’s written evidence was never backed up by even the most basic statistical analysis,[[3]](#footnote-3) and was in fact contradicted by the available data.
3. Even by Mr Perry’s own analysis (see proof of evidence of Mr Perry [[MP/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_1_A-Proof-of-Evidence-of-Trevor-Perry.pdf)], at paragraph 5.3.11), for a WwTW to be performing well, he would have expected to see the permitted concentrations of relevant determinands (e.g. ammonia etc) to be around 50% of their consented value. When measured against this expected standard, Mr Perry conceded that the empirical data demonstrated that Eccles WwTW is in fact currently performing well. This also reflected its historic performance. All of the data demonstrates performance at, or better than, that standard. Mr Perry misled the Inquiry in his evidence in claiming under-performance of Eccles WwTW when in fact the data available to him demonstrated the very opposite; namely a WwTW performing well.
4. Of perhaps even greater significance was the fact that – despite not having identified this in his evidence – Mr Perry accepted that was plainly “highly relevant” for the Inspector and Secretary of State to recognise that Eccles WwTW performs well for such determinands, and in particular ammonia levels. That is because in considering whether any alternative treatment option might be required, it is highly relevant to know whether the existing WwTW is already fit for purpose.
5. The relevance of this ought to have been recognised by MSCCL through advice from Mr Perry, before attempting to argue that the Acquiring Authority should spend its customers’ money on further treatment options at Eccles WwTW in order artificially to improve ammonia levels in the final effluent in circumstances where no such further treatment was necessary because Eccles was already performing very well using the existing infrastructure. As Mr Perry conceded under cross-examination, there simply is “*no case to use customer money to replace assets that work well*”.
6. Mr Perry was unable to defend his and MSCCL’s case on this data when it was presented to him during cross-examination. He could neither defend the factual inaccuracy of his claims about the WwTW’s performance, nor the practical significance as to the way the true position undermined his assessment. There was a series of points which proved to be misleading. For example:
7. The points that Mr Perry had claimed in relation to alleged screed wear (see proof of evidence of Mr Perry [[MP/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_1_A-Proof-of-Evidence-of-Trevor-Perry.pdf)], at paras 6.3.11 and 6.3.12) for the screw pumps that lift the wastewater into the WwTW were accepted by him as “*irrelevant*” – for even if such screed wear existed (as to which there is no evidence), the solution would be for the Acquiring Authority to repair its screeds, not to replace the treatment parts of the works itself.
8. In relation to claimed inadequacies in the screens, detritors, grit classifiers and the emptying of storm tanks (see paragraphs 6.4.5, 6.4.7 and 6.4.15 to 18 of [[MP/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_1_A-Proof-of-Evidence-of-Trevor-Perry.pdf)]), Mr Perry conceded in oral evidence that whatever the position with these pieces of apparatus and their operation, in fact Eccles WwTW currently performed well and was fit for purpose. Moreover, even if these things were not working in the manner he wanted, further maintenance work would be the answer and this would only serve to improve the performance of the WwTW beyond the level of performance it was already achieving (i.e. working well), so further undermining the need for any more costly treatment options of the type he had originally been suggesting by way of alternatives.
9. Moreover, and in respect of suspended solids, Mr Perry also accepted that Eccles WwTW and its PSTs, secondary treatment and humus tanks are “*very effective*” in removing suspended solids as compared with the environmental permit requirement (as revealed across a whole range of time periods). Mr Perry also accepted that this was something that was “*very relevant*” to his case that he “*should have brought to the Inspector’s attention*”, but failed to do so.
10. Mr Perry accepted that his evidence was an attempt to create an impression that Eccles WwTW is underperforming, despite the data available from the EA, which was - at all times - available to MSCCL and which in fact confirmed full compliance. In the circumstances, it was a misguided and misleading attempt that failed.
11. In reality, MSCCL’s criticisms as to the condition and operation of Eccles WwTW were not well-founded and were not a proper basis for any sort of meaningful objection to the Order.
12. Moreover, even if the sort of criticisms made had been correct, they could never have formed a proper basis for supporting alternatives involving huge investment in tertiary treatment, whether additional to or as replacement for existing assets. Rather, they would have prompted relatively minor – and comparably straightforward - investment in changing operational procedures and/or repairing any assets said to have required attention. Mr Perry conceded that Eccles WwTW is in fact performing very well (even with what he claimed to be its operational issues). Any further changes in operational procedures or maintenance (even if they had been required) would simply make Eccles WwTW perform even better.
13. There was a further basic difficulty with MSCCL’s case. Eccles WwTW operates well against specific regulatory standards set by the EA. As both Mr Perry and Dr Studds eventually conceded, the EA sets those standards to meet precautionary and rigorous requirements for water quality in both Salteye Brook and the Canal in order to address the Water Framework Directive (‘WFD’) requirements. It became apparent that both Mr Perry and Dr Studds were seeking to arrogate to themselves this regulatory role and to suggest that Eccles was the subject of “relaxed” permits (see, for example, the proof of evidence of Mr Perry, at paragraph 6.3.56 [[MP/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_1_A-Proof-of-Evidence-of-Trevor-Perry.pdf)]).
14. This proved to be without substance. In fact, comparison of the water flows from Eccles WwTW with, for example, those from Davyhulme WwTW, demonstrated that the permit levels for ammonia were proportionately the same in terms of strictness. Both then accepted that:
15. The EA in fact regulate the position correctly based on their independent assessment of water quality, which had been thoroughly scrutinised for Eccles WwTW;
16. If there were a need for tighter permit levels in any respect, the EA would impose such tighter levels; and
17. They were not actually in any position to question the EA’s approach to setting the appropriate levels for discharge consents.
18. During cross-examination: Mr Perry agreed that all parties should be working to the EA’s regulatory requirements and in that context there is therefore “*no basis for describing permits issued by the EA as being ‘relaxed’*” and, further, that he agreed that “*if the EA is complying with the law, they will have set appropriate levels for the permit to ensure that there is no deterioration*”; and Dr Studds accepted that there was “*no question of Eccles being a relaxed permit*”.
19. Of course, there is no basis for seeking to impugn the EA’s approach to water quality in Salteye Brook or the Canal. Indeed, the need for the underlying scheme is driven by the EA’s specific requirements for Salteye Brook, in full knowledge and appreciation of the requirements for the Canal based on extensive modelling (as explained in the evidence of Mr Haslett, Ms Rands, Mr Pearson and Dr Hendry[[4]](#footnote-4))

The Order Scheme and the Full Scheme

1. The evolution of the Full Scheme to meet the identified regulatory and environmental need was covered in the evidence of Mr Haslett and Mr Pearson in particular (in relation to interaction with the EA in particular, see – for a summary - the proof of evidence of Mr Haslett [[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)], at section 11). It was the subject of no meaningful challenge and should therefore be relied upon in full.
2. The Proof of Evidence of Mr Sephton sets out a summary of the development of the Full Scheme, including the Order Scheme, from a technical perspective (see [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)], at section 4, along with sections 5, 6 and 7 which consider physical, hydraulic and outfall design constraints respectively). A description of the main features and functions of the Order Scheme and Full Scheme are at section 3 of [AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf). Mr Sephton’s evidence was the subject of no meaningful challenge. It should also be relied upon in full.
3. For ease of reference, a brief summary of the main features and functions of the Order Scheme and Full Scheme is set out below.

The Order Scheme

1. The Order Scheme comprises of a new underground gravity outfall pipe that will convey Final Effluent from Eccles WwTW and the storm flows from three existing overflows before discharging them directly into the Manchester Ship Canal, rather than into Salteye Brook as occurs currently.
2. The selected outfall location enables a gravity flow in the new pipe without any need for pumping because of the relative water levels in the Canal at the point of discharge, in comparison to those adjacent to Eccles WwTW.
3. The proposed outfall into the Manchester Ship Canal is close to Salteye Brook’s confluence with the Canal. Therefore, the selected outfall location involves a discharge in essentially the same location as currently occurs through Salteye Brook.
4. The proposed outfall pipe will accommodate the vast majority of flows. However, a back-up outfall into Salteye Brook will need to be maintained for storm flows in excess of a one in five year return period. This requirement will be met by the existing pipe to Salteye Brook, which will be retained and maintained for the purposes of intermittent discharge as approved by the EA. As the Acquiring Authority already has the necessary rights in relation to this pipe and outfall into Salteye Brook it is not included within the Order Scheme.
5. The description of the Order Scheme included within the Acquiring Authority’s closing submissions has been incorporated into the introduction to the description of the Order Lands at the beginning of this report, and so is not repeated here.
6. Shaft 03, along with the associated retaining wall and outfall structure need to be constructed from the surface, rather than tunnelled. In order to do this, the Acquiring Authority requires access over some working areas, as well as within adjacent parts of Salteye Brook and the areas of the Canal surrounding the new outfall.
7. The Acquiring Authority needs the ability to empty the outfall pipe and to provide a bypass outfall route in order that personnel can safely access the inside of the outfall pipe for maintenance in future years. This bypass outfall would be achieved via a temporary, intermittent discharge pipe laid directly from Eccles WwTW south to the Canal. The treated effluent from Eccles WwTW would need to be pumped through this pipe due to the height of the water level in the Canal at the discharge point. This pipe would be removed when not required.
8. Once constructed, the Acquiring Authority requires access to the shaft and outfall area for maintenance purposes only. This would be taken from an existing private road which leads from the A57 Liverpool Road to the south of and past the existing stadium (Stadium Way) and then joining an existing track which leads west along the north bank of the Canal, towards Barton Locks operational area. The access will then be routed north and then west to avoid having to access through the lock operational area.[[5]](#footnote-5)
9. Access to the outfall pipe for maintenance purposes would only be taken during periods of dry weather when storm flows would not be discharging to the outfall tunnel and treated wastewater flow rates were low. It is anticipated that this sort of maintenance would be required on a very infrequent basis, around every 10 years, although maintenance access is required in the event of unplanned maintenance events being necessary.
10. During construction, the access route to the construction compound will be similar to that described above for the operational stage of the pipeline. However, the construction access would be further north, along the pipeline corridor, rather than being routed through Barton Locks.

The Full Scheme

1. The Order Scheme is part of the wider Full Scheme described in section 3 and Appendix 1 of the SoR [[CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf)], with the revised version of the SoR Appendix 1 plan at Appendix DS2 [[AA/8/C1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt1-Final-version-30.05.2018.pdf)]. The following is a summary of some of the main elements of the Full Scheme (excluding the Order Scheme):
2. New pipework and a new underground chamber (known as the SAL0018 screened bifurcation chamber) to the south west of Junction 11 of the M60 motorway, to intercept the storm spill flows in the existing trunk sewer on which the existing SAL0018 CSO is located. The construction of these elements is substantially complete.
3. Works to the existing SAL0018 CSO underneath the motorway, in order to seal and decommission the existing sewage spill outlets which currently pass storm spill flows directly to Salteye Brook.
4. Three new shafts - Shaft 01 to the south west of Junction 11, Shaft 02 to the south east of the Junction and Shaft 03 within Eccles WwTW. A 2.1m ID tunnel connecting Shaft 01 with Shaft 02 and a 2.85m ID tunnel connecting Shaft 02 with Shaft 03, which will allow flows to discharge to the Canal (via the Order Scheme outfall tunnel). The construction of these elements is substantially complete.
5. In addition to conveying flows from the SAL0018 bifurcation chamber to Shaft 03, Shafts 01, 02 and 03 and the tunnels connecting them will also perform a storage function, allowing 5,690m3 of screened storm flows to be stored. Once flow levels have returned to normal, these stored flows are pumped to Eccles WwTW to be treated and discharged to the Canal (via the Order Scheme Outfall tunnel).
6. New pipework and culverts on the Eccles WwTW site, in order to provide additional flow capacity for storm spill flows to pass from the existing Inlet CSO and Storm Tank overflow to the Canal (via the Order Scheme outfall tunnel) and to Salteye Brook (via a surcharge relief chamber and new pipework which connects to the existing outfall pipe to Salteye Brook). The construction of these elements is substantially complete.
7. Modifications to the Inlet CSO to allow mechanical 6mm storm screens to be fitted.
8. A new chamber to allow the Final Effluent flows to discharge to the Canal (via the Order Scheme outfall tunnel).
9. On Peel Green Road, to the east of Eccles WwTW, new sewer pipework (which also passes into the WwTW), to provide additional capacity for combined sewers in Peel Green Road. The construction of this element is partially complete.
10. A fuller description is provided in section 3 of Mr Sephton’s proof of evidence [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)].

Description of the Order Lands

1. The Full Scheme, of which the Order Scheme forms the final part, has been the subject of extensive design evolution and analysis. Throughout that design process, the Acquiring Authority has engaged extensively with all relevant stakeholders, with amendments being made where appropriate as part of the solution development. The Acquiring Authority has always been willing to engage with appropriate stakeholders in a manner that seeks to minimise the extent of the land and rights and has negotiated in an attempt to secure that which is necessary by agreement where possible.
2. This is vividly illustrated by the Acquiring Authority’s willingness to move the outfall location at the behest of MSCCL twice (see proof of evidence of Mr Sephton [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)]; for example, at paras 4.60, 4.67, 12.13 and 12.43). When first examined, it was originally proposed that the outfall be provided within the Barton Locks wing wall. At the request of MSCCL, this was moved to a location downstream of the Salteye Brook outlet. Then, following a further request that this location be changed again to reflect development aspirations of the Peel Group for Port of Salford, it was moved to its proposed location immediately upstream of the Salteye Brook outlet, where there were extensive discussions and agreement upon the suitability of that location (prior to the change of heart of MSCCL).
3. The Acquiring Authority also engaged appropriate expertise to develop an outline construction methodology that has informed the nature and extent of the land and rights identified for compulsory purchase.
4. The table in Appendix DS43 to Mr Sephton’s evidence [[AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf)] sets out how UUWL intends to use each plot included within the Order Lands, during construction and operation, and the indicative timings for the activities within each plot. With the exception of the “right to remain” expressed for some of the plots (a point dealt with below, and in Section 5 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)), none of this is now controversial.
5. A summary of the requirements of the Order Lands in relation to the key parts of the Order Scheme is as follows:
6. The new outfall pipe would start at Eccles WwTW at a shaft within UU’s land that has already been constructed (Shaft 03).
7. The new underground pipe will pass under land immediately adjacent to Eccles WwTW on which the WGIS Road has been constructed. The Acquiring Authority has discussed the interaction of the Order Scheme and WGIS Road extensively with the land owner / developer. It has designed the Order Scheme to take account of the WGIS Road.
8. The underground outfall pipe then passes under land on which the M60 motorway bridge sits, before continuing west and then south-west. CoSCSL currently proposes that part of this land will be used for a retail development, and outline planning permission has been granted for it. There has been detailed discussion and agreement as to how that development can be accommodated in conjunction with the underground pipe (see, for examples, the proof of evidence of Mr Sephton [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)], at paras 4.21.3, 4.101, 4.166 and 5.35 and subsequent paragraphs).
9. The pipeline continues underground past the AJ Bell Stadium, and with no effect upon it, turning west to run along, but north of, the Canal and north of the operational area of Barton Locks. The pipeline then reaches the point at which the other shaft (Shaft 04), a retaining wall and then outfall to the Canal are to be constructed, just to the east of where Salteye Brook discharges into the Canal.
10. The Acquiring Authority re-designed the outfall itself to ensure it is compatible with shipping movements / turning in the Canal. This was in light of its detailed discussions and agreements with MSCCL, including as to where such movements may become more numerous in the area of the Order Scheme once Port Salford has been developed.
11. The construction compound is situated on an area of land to the east of Salteye Brook and north of the Canal and it has been reduced in size in the proposed version of the Order so as to minimise the effect of construction upon the land.
12. The scheme involves the right to run a temporary discharge pipe southwards across a strip of land from Eccles WwTW to the bank of, and into, the Canal, for very occasional use when maintenance of the permanent underground pipe is required.
13. The construction and permanent access routes are over, where possible, existing roads or tracks, starting at the Liverpool Road and along Stadium Way. The above ground construction route follows the pipeline corridor to the construction compound / outfall area. The permanent access route runs south across the outfall pipe corridor and then follows an existing track westwards along the Canal, before heading north and then west to avoid having to access through the lock operational area. Both the construction routes and the permanent access routes have been designed to minimise any effects on the land.
14. There is an access route into Irlam Container Port for construction and maintenance purposes which follows the existing private road and crosses the port area, with an area of the port included in the Order Lands for accessing the Canal itself. Between Irlam Container Port and Barton Locks / the area around the proposed outfall, the Order Lands includes the Canal water body.

Scope of rights sought

1. As explained by Mr Smith (paragraph 45 of [[AA/10/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_10_A-Colin-Smith-Proof-FINAL.pdf)]), when making a CPO, defining the nature and extent of required rights is necessarily done with a degree of caution. This is because the precise requirements arising from construction are not known with certainty and allowance has to be made to ensure that the relevant project can be delivered taking account of the circumstances which could reasonably be foreseen at the relevant time. The overriding need is to ensure that whatever land and rights are required are included in the CPO. When undertaking construction and operating the infrastructure, the rights which are actually taken and used would at all times be limited to what is necessary and required.
2. Ultimately, however, if despite the rights exercised being minimised, costs arise and/or losses occur then it becomes a matter to be dealt with by compensation.
3. MSCCL’s original objection alleged that the extent and impact of the new rights sought were excessive, disproportionate and ultra vires the 1991 Act powers (see, for example, MSCCL’s opening submissions [[MP/INQ/4](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Eccles-CPO-Opening-Submissions-MSCCL-_-PINL.pdf)], at paragraphs 1.4.6). That objection has now been withdrawn (save in relation to the ‘right to remain’, which is addressed further in section 5 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)).
4. The Acquiring Authority has put forward two minor modifications to the Order, both of which reduce the land proposed to be subject to the Order and which have been agreed with the relevant parties (e.g. CoSCSL and PINL). Those modifications are set out and described in section 5 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf).
5. It has been asserted by MSCCL that an “*unfettered right for UUWL to discharge, in perpetuity, whatever it sees fit into the MSC*” (see MSCCL’s Statement of Case [[CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf)], at para 11.3) is a particular concern to MSCCL. Although no longer the basis of any ‘in principle’ objection, MSCCL now appears to pursue that concern as a basis for seeking to impose what it refers to as a ‘discharge proviso’ (see MSCCL’s closing submissions [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)], at paras 214 to 253, and section 7 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)). This concern is factually and legally misconceived. It simply ignores the impact of the stringent statutory environmental regulation to which the Acquiring Authority is subject.
6. The Acquiring Authority is not free to discharge whatever it wishes into the Canal. It is subject to the statutory control of the environmental permitting regime that gives effect to the Water Framework Directive. It is subject to monitoring by the EA and would face prosecution for material breaches of that legislation. The environmental permitting regime imposes restrictions on what can be discharged through the discharge into the Canal, as is the case now. Indeed, it is precisely because of this environmental permitting regime, and the need for improvements in the water quality of Salteye Brook, that the Order Scheme is being promoted (as described by Mr Haslett, Mr Baron, Mr Pearson and Dr Hendry). As set out in their evidence, that regime balances the environmental benefits of potential projects against their costs, which will ultimately be borne by the Acquiring Authority’s customers (see, for example, the proof of evidence of Mr Haslett [[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)], at section 5).
7. MSCCL’s claim that the Order creates an unfettered right in perpetuity for the Acquiring Authority to discharge whatever it sees fit into the Canal is therefore obviously and fundamentally wrong. The Acquiring Authority will have to comply with the statutory regulatory requirements imposed by the EA as to what is discharged into the Canal. As this case demonstrates, and is to be expected, the EA regulates the position rigorously.

**The Statutory Context**

1. The Acquiring Authority is the statutory water and sewerage undertaker for the North West of England, as appointed by the Secretary of State under s.6 of the 1991 Act [[CD/OTH/16](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.OTH_.16-Conformed-copy-of-appointment-of-UU-as-a-water-and-sewerage-undertaker-made-by-the-SofS-for-the-Environment-dated-August-1989.pdf)].
2. Across the region, the public sewerage system for which the Acquiring Authority is responsible serves circa 7 million customers and 200,000 businesses.
3. In and around Manchester, significant investment has been required in order to ensure environmental compliance with the relevant environmental legislation (now principally derived from the Water Framework Directive), and in order to provide additional capacity to be able to cope with the rapid growth in additional flows and consequential loads from population growth, including at Davyhulme WwTW and Salford WwTW. The Full Scheme is another key part of this capital investment programme to enable the Acquiring Authority to meet its sewerage obligations and environmental regulatory requirements for environmental performance and sewer flooding, amongst other things.

Water Industry Act 1991 (‘the 1991 Act’)

Duties

1. The starting point for considering the Acquiring Authority’s powers under the 1991 Act is the duties which those powers are provided to serve. The Acquiring Authority’s general duty is set out under s.94 of the 1991 Act, and includes a duty not just to provide and operate a sewerage system, but to improve and extend it and to maintain the sewers:

“…*(1) It shall be the duty of every sewerage undertaker—*

*(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers and any lateral drains which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained; and*

*(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers*…”.

1. The effect of s.94 has been analysed in detail by the House of Lords in the *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66case to which reference was made in the Acquiring Authority’s Opening Submissions ([[AA/INQ/3](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/UU-OPENING-FINAL.pdf)] paragraphs 4.6 and 4.7), the detail of which is not repeated here.
2. In brief summary, the Acquiring Authority has an obligation to drain its areas, no matter what the population of that area, or the rate of growth of that population. In order to conduct its operations and meet its regulatory requirements, the Acquiring Authority is required to invest into building new, and maintaining existing, infrastructure sufficient for it to meet the necessary regulatory standards. However, the choices it makes are regulated from an economic perspective for the protection of the consumer by Ofwat.
3. In this regard, it is instructive to note that during cross examination Mr Fields agreed with the evidence of the Acquiring Authority’s witnesses (principally Mr Haslett and Mr Baron) that the system operates so that: i) sewerage undertakers consider the respective list of interests and priorities; ii) they set necessary outputs and outcomes in their funding submissions; iii) which the economic and environmental regulators either agree or disagree with.
4. Mr Fields also agreed with the evidence of Mr Haslett and Mr Baron that in a forum such as this, the Inspector and Secretary of State are not in the business of “*seeking to second guess that process*”.
5. Despite this, it was exposed that MSCCL was seeking to do just that, through its attempts to promote alternative schemes that would have involved large amounts of additional expenditure (some £50m+ difference) in order to achieve unnecessary and very small reductions in ammonia levels in the final effluent output beyond those required by the EA, without then considering how such money might be better spent addressing the many other competing interests for such expenditure. The simple point is that an additional £50m+ spent at Eccles (for a change which is not required by the EA) would mean £50m+ not spent elsewhere, or not used to assist in driving down customers’ bills. As stated by Mr Baron (in evidence in chief and cross-examination), the Acquiring Authority’s customers can ill afford such extravagant wastage of money of the type that MSCCL proposed, with its customer base including some of the most deprived areas in the United Kingdom.

Compulsory Purchase Powers

1. To enable it to fulfil its statutory functions, the Acquiring Authority has the power of compulsory purchase under section 155(1) of the 1991 Act. Under section 155(2)(a), the power of compulsory purchase extends not just to the acquisition of land, but also to the creation of new interests and rights.

Pipe-laying powers

1. Another means given to the Acquiring Authority under the 1991 Act to achieve its statutory purposes is the power to lay pipes under streets and private land in ss.158 and 159. S.159(1) provides:

“…*(1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—*

*(a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;*

*(b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;*

*(c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above*...”

1. Under s.159(4), the power to lay or alter a pipe is exercisable only after reasonable notice. Ordinarily, under s.159(5) that means three months for the laying of a new pipe, or 42 days for alterations to an existing pipe. S.159(6) provides various exceptions to that, including in cases of emergency. As dealt with in section 7 below, this notice period should not be confused with the sorts of additional notice period that MSCCL are seeking to impose. The 3 month or 42 day notice period (depending on whether a new pipe or alteration to an existing pipe is proposed) is a notice period that the power is to be exercised, with no other notice being required. Other than that notice, the landowner has no right to know in advance that the work is to be done.
2. By contrast, the power of compulsory purchase under s.155 is subject to far more detailed notice requirements under the legislation dealing with compulsory purchase generally. There is notice of the compulsory purchase order itself, which then provides for a right of objection. That has already occurred in this case. Where a compulsory purchase order is confirmed, then the implementation of that Order (for example by general vesting declaration) will then be subject to its own notice under the 1981 Act. A landowner therefore has far more extensive notice of potential works occurring under s.155. MSCCL’s submissions on this point ignore this obvious difference and the various and extensive notice that it receives (and has already received) under the compulsory purchase process (together with a right of objection which it has exercised).
3. The power under s.159 is a power to lay “*a relevant pipe*”. That phrase is defined in s.158(8). In respect of a sewerage undertaker, it includes “*any sewer or disposal main*”.
4. The definitions operate so as to extend the meaning of “*pipe*” beyond simply the spherical / cylindrical object so as to include its “accessories”. S.219(2) provides:

“*(2) In this Act—*

*(a) references to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe; and*

*(b) references to any sewage disposal works shall include references to the machinery and equipment of those works and any necessary pumping stations and outfall pipes;*

*and, accordingly, references to the laying of a pipe shall include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another.*”

1. This demonstrates that whether or not a particular piece of apparatus falls within the definition requires consideration for each piece of apparatus. In general terms, the statutory intention is clear. In order to fulfil their duty under s.94, it may be necessary for undertakers to install not just a pipe, but various accessories which allow for its efficient working or maintenance in furtherance of that duty. The wide definition of “*relevant pipe*” extends the statutory power to allow undertakers to construct such apparatus as well. Undertakers are empowered not just to construct a pipe, but all the infrastructure necessary to ensure that it functions as intended.
2. As noted above, it was considered that there was scope for legal uncertainty in respect of the Order Scheme as to whether the outfall structure and accessories would all inevitably fall within this statutory definition; however, it was not necessary to test that proposition in this case as it is considered that the right to discharge from the outfall requires the exercise of compulsory purchase powers under s.155 of the 1991 Act. In those circumstances, it was considered appropriate to include the relevant scheme and its structures as a whole within the Order.
3. S.159 itself does not grant rights to access land in order to carry out works authorised by it. That right is conferred by s.168:

“*(1) Any person designated in writing for the purpose by a relevant undertaker may enter any premises for any of the purposes specified in subsection (2) below.*

*(2) The purposes mentioned in subsection (1) above are—*

*(a) the carrying out of any survey or tests for the purpose of determining—*

*(i) whether it is appropriate and practicable for the undertaker to exercise any relevant works power; or*

*(ii) how any such power should be exercised;*

*or*

*(b) the exercise of any such power.*

*(3) The power, by virtue of subsection (1) above, of a person designated by a relevant undertaker to enter any premises for the purposes of carrying out any survey or tests shall include power—*

*(a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and*

*(b) to take away and analyse such samples of water or effluent or of any land or articles as the undertaker—*

*(i) considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above; and*

*(ii) has authorised that person to take away and analyse.*

*(4) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by this section.*

*(5) In this section “relevant works power” means any power conferred by any of the provisions of sections 158, 159, 161, 163 and 165 above, other than section 161(3).*”

Protections for undertakers from the exercise of pipe laying powers

1. The exercise of the two powers for pipe laying (i.e. without the need to resort to compulsory purchase powers) is subject to the requirements of Schedule 13 to the 1991 Act, where the land or rights affected belong to other statutory undertakers. This balances the power of sewerage undertakers to deliver sewerage schemes in the public interest using land belonging to others, with the protection of other statutory undertakers. It does so by introducing a requirement to obtain the consent of the latter to works by the sewerage undertaker where the works in question would interfere either with works or property vested in the statutory undertaker, or the use of those works or property, so as to affect injuriously the works or property of the statutory undertaker. It is, however, subject to the condition that the consent shall not be unreasonably withheld, but may be made subject to reasonable conditions, and with provision for arbitration in the case of disagreement about that consent.
2. Thus, Schedule 13 paragraph 1 provides:
3. “*(1) Nothing in this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—*

*(a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or*

*(b) with the use of any such works or property,*

*as to affect injuriously those works or that property or the carrying on of that undertaking.*”

1. And:

“*(3) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.*

*(4) Subject to the following provisions of this Schedule, any dispute—*

*(a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1) above;*

*(b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or*

*(c) as to whether any condition subject to which any such consent has been given was reasonable, shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.*”

1. Schedule 13 paragraph 2 provides:
2. “*Nothing in any provision of this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything which prejudices the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by any persons carrying on an undertaking protected by paragraph 1 above.*”
3. It should be noted this specific protection for dock undertakers in Schedule 13 paragraph 5 does not apply in the case of an exercise of s.159 or s.168. That paragraph only applies to “*the relevant sewerage provisions*”, which as defined in s.219(1) do not include either ss.159 or 168.
4. The provisions of Schedule 13 do not apply in a case where a statutory undertaker exercises the power of compulsory purchase under s.155 itself. However, in such a case the processes involved in making and confirming a CPO enable statutory undertakers to raise an objection which can then be tested at Inquiry (where necessary) before the relevant order is confirmed - as has occurred here. In addition, acquisition of land, or rights over land, acquired under s.155 of the 1991 Act can be framed so as include equivalent protection to Schedule 13 if this is considered necessary in any particular case.

The Acquiring Authority’s Regulated Operations Within the Statutory Scheme

1. As noted above, the 1991 Act sets out the powers and duties of water and sewerage undertakers. What is required of undertakers to comply with those duties is the subject of a sophisticated regulatory regime, both economically and environmentally.
2. The economic regulation is provided through Ofwat for the protection of the consumer, principally under the provisions of the 1991 Act. The environmental regulation is principally provided by the EA, which participates in the process of regulation by Ofwat, but also sets the relevant environmental restrictions pursuant to its statutory functions which give effect to overarching legislation principally now derived from the Water Framework Directive. The EA is responsible for implementing, monitoring and enforcing the Environmental Permitting (England and Wales) Regulations 2016 (as amended) (‘the 2016 Regulations’). The 2016 Regulations transpose (amongst other things) the UK’s obligations under European legislation in respect of the Water Framework Directive and the Urban Wastewater Treatment Directive.
3. For the purposes of the 1991 Act, the Acquiring Authority is the water and sewerage undertaker for an area that includes the Order Land. The Acquiring Authority is, therefore, a “*relevant undertaker*” (as defined in s.219), that can be authorised to acquire land and rights compulsorily for the purposes of or in connection with the carrying out of its functions.
4. As already mentioned, Chapter I of Part IV of the 1991 Act sets out the functions of sewerage undertakers. Thus, the Acquiring Authority is responsible for maintenance of the public sewer network to ensure that the drainage area is drained based on its design capacity and the wastewater discharge into the treatment works is safely treated before discharging to the environment. The final effluent standards are set by the EA and vary due to different water catchments and the required receiving water quality to reflect the relevant European standards.
5. However, the Acquiring Authority’s statutory duties of drainage and the requirement to meet the relevant environmental standards arise regardless of the relevant population of each catchment area. Therefore, an important feature of the company’s operations is the requirement to continually balance competing interests, regulatory requirements and network improvements. Indeed, Mr Fields ultimately agreed with the Acquiring Authority’s witnesses (principally Mr Haslett, Mr Baron and Mr Pearson) in acknowledging during cross examination that:
6. The Acquiring Authority has to meet the relevant environmental standards imposed by the EA;
7. In making strategic priority decisions as to how to meet those relevant environmental standards, the Acquiring Authority must have regard to all of its customers and competing priorities of expenditure, taking into account its customer base as a whole, businesses and the community;
8. If spending money on any particular project, the Acquiring Authority needs to look at all of its customers based upon “*a range of competing interests and competing priorities across its area*”;
9. As a matter of principle, water and sewerage undertakers have a huge number of projects that would be identified for funding but there is a balance as to what can be funded;
10. The Acquiring Authority has a “*whole host of priorities that are not funded*” and “*it cannot afford to do everything that it would like to*”; and
11. If and when there is excess money available, that it “*should be spent in relation to those priorities if the benefits were such that they justified the expenditure*”.
12. The statutory scheme in which the Acquiring Authority operates is such that:
13. Ofwat closely monitors and regulates the Acquiring Authority’s funding and consequent expenditure, with the role of Ofwat being set out in the 1991 Act and including:
    * + - 1. Protecting the interests of customers and promoting competition;
          2. Ensuring water companies can finance their statutory functions; and
          3. Securing long term resilience of companies’ water and wastewater systems so that they are able, in the long term, to meet customers’ expectations of the service.
14. The EA closely monitors and regulates discharges arising from the Acquiring Authority’s operations, with the EA having powers to take enforcement action (with fines, prosecutions etc) if permits are not complied with.
15. All investment in infrastructure (new or otherwise) requires a close balance to be struck between a required level of expenditure and the consequent cost to customers.
16. Similarly, prioritisation of investment in new sewerage infrastructure requires a close balance to be struck between competing needs (including similar needs elsewhere in the area for which the Acquiring Authority has responsibility), along with detailed consideration as to the urgency of the same.
17. Therefore, and as described in the evidence of Mr Haslett, a key element of water and sewerage companies’ operations is liaison with the relevant regulators (see the proof of evidence of Mr Haslett [[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)], at paragraph 5.32); in particular, this means working closely with the EA to determine the environmental improvement schemes that are necessary, as well as the requirement to set the consequential price limits with Ofwat in order to deliver such schemes during the relevant five year Asset Management Plan (‘AMP’) cycle.
18. As Mr Haslett and Mr Baron explained:
19. Any proposed solution must meet the environmental standards that are imposed by the EA.
20. Any proposed solution that meets those standards must also adhere to the customer expectations of demonstrating lowest whole life cost (‘WLC’) and be in accordance with the business plan approved by Ofwat. The Acquiring Authority is obliged to meet defined environmental needs only, and it is not free to spend customers’ money by investing beyond this level due to its statutory commitment to protect the interests of customers through delivery of a value for money service. Indeed, the prioritisation of needs is an essential element in ensuring that as many of the identified needs are met within regulated investment totals in a manner that satisfies the needs and expectations of the Acquiring Authority’s customers and regulators.
21. Such a balance is struck by requiring each water and sewerage company to submit a business plan to Ofwat every five years. This details the level of revenue that is considered necessary in order to finance the Total Expenditure (‘TOTEX’) investment i.e. Capital Expenditure (‘CAPEX’) plus Operational Expenditure (‘OPEX’) required not only to comply with the company’s statutory and regulatory obligations, but also to deliver service levels to customers for the following five years. These service levels are contained in the Final Determination made by Ofwat following submission of the company business plan for the AMP period under consideration.
22. In this respect, the EA liaises with each Water and Wastewater Company (and the water industry as a whole) so as to identify a list of schemes that each company must deliver to ensure European and national environmental targets or requirements related to water are met. This programme of work required by the EA is made up of environmental improvement schemes or, in respect of situations where the environmental impact is unknown and further evidence is required, investigations are incorporated requiring assessment of any work required in the future. Historically this programme of work was called the National Environment Programme (‘NEP’), but now is known as the Water Industry National Environment Programme (‘WINEP’).
23. The practical effect of the above is that the Acquiring Authority is (amongst other things) obliged to determine the appropriate and efficient level of investment necessary in respect of wastewater through its strategy team in order to deliver each of the schemes set out within its NEP/WINEP. This has to be incorporated into the future five year AMP or, where appropriate and necessary, the company has to agree a longer delivery period for such delivery into the next investment cycle. Throughout this whole process, the company liaises with the EA to ensure there is clear understanding and agreement of the environmental needs and to ensure that any environmental benefit is delivered with the best technical knowledge without excessive cost, which will ultimately be borne by customers.
24. The revenue requirement for this five year business plan necessarily dictates the resultant value of customers’ bills during the period. This investment has to cover regulatory obligations (environmental and water quality), growth in demand from existing or new customers, enhancement to protect customer properties from flooding and routine maintenance to maintain the company’s asset base and to continue to provide acceptable levels of service to customers. In developing the business plan, the Acquiring Authority is required to set stretching performance targets for key service and quality metrics, as well as ensuring that investment levels are delivered efficiently, with proposed new assets being assessed on, among other things, the cost to operate over the lifetime of the asset.
25. Once revenues and customers’ bills have been set through Ofwat’s final determination, companies are initially required to manage any increased expenditure that may occur. Such increases can occur, for example, due to cost increases or changes in requirements. Increases in investment requirements are managed through the TOTEX incentive mechanism. This enables companies to recover approximately half of any overspend through increases in revenue and therefore via higher customer bills in the following AMP period. This process is also applicable to any underspend, which can result in lower customer bills in a future AMP periods. If the increased requirements become significant, the company can seek an interim determination from Ofwat during the five year window. For an interim determination to apply, the cost increase must meet a materiality test of being at least equal to ten percent of the company’s turnover.
26. Similarly, if changes are required to the NEP/WINEP during the AMP, for example if additional environmental needs are identified, or an assessment determines that a project is not required, liaison is undertaken between the company and the EA to determine whether these changes can be accommodated within the investment allowance. If this is not possible then alternative options, such as Change Protocols (up to AMP6), or interim determinations are considered. The Change Protocols offer a mechanism by which changes to the prescribed delivery of schemes can be agreed with the regulators.
27. The prioritisation of needs is an essential element in ensuring that as many of the identified needs are met within regulated investment totals in a manner that satisfies the needs and expectations of the Acquiring Authority’s customers and regulators:
28. As part of the Acquiring Authority’s instrument of appointment,[[6]](#footnote-6) it is required to carry out its regulated activities economically and efficiently ([[CD/OTH/16](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.OTH_.16-Conformed-copy-of-appointment-of-UU-as-a-water-and-sewerage-undertaker-made-by-the-SofS-for-the-Environment-dated-August-1989.pdf)], Condition L, clause 2.2), with one of Ofwat’s key duties being to further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition and to promote economy and efficiency by water companies in their work.
29. These obligations and duties are demonstrated through the price review process.
30. A WLC model has been developed in order to ensure that the Acquiring Authority complies with this regulatory requirement. Using this approach, the WLC of the various solution options are compared during the Optioneering phase of projects (i.e. pre-implementation sanction being approved at the Acquiring Authority’s Capital Investment Committee (‘CIC’)).
31. This approach ensures that the Acquiring Authority acts in the best interest of its monopolised customer base in order to maintain sewage charges that are both affordable and deliver value for money whilst ensuring the long-term stewardship of the Acquiring Authority’s asset base.
32. Consequently, there is an iterative optioneering process for delivery of required schemes, such as that which underpins the Order Scheme in this case. The optioneering carried out by the Acquiring Authority leads to the selection of the most appropriate economic and sustainable option for its customers. In this regard, it is relevant to note that the Acquiring Authority’s WLC model necessarily considers both capital expenditure and operational expenditure (manpower, chemicals and maintenance), business rates, power and depreciation of non-infrastructure assets, in order to determine the most economically appropriate option for its customers.
33. In the context of objections that were advanced by MSCCL to the Order Scheme, and that is discussed in more detail in section 4 the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)], it was established that none of its suggested alternatives would have met the fundamental requirement to satisfy the regulatory requirement at the lowest WLC. MSCCL has, in any event, abandoned any reliance on its proposed alternatives and has withdrawn its ‘in principle’ objection to the Order and the underlying Order Scheme. The reality is that such objection based on claimed alternatives was always flawed.

Interaction with the EA during the development of the Order Scheme

1. The EA has placed a conclusive, legal requirement upon the Acquiring Authority to satisfy the regulatory standards the EA has set for Salteye Brook, containing four main regulatory drivers, along with a requirement to address the flooding issue experienced by residents of Peel Green Road.
2. The EA identified at an early stage that the diversion of relevant discharges from the Salteye Brook directly into the Canal would be its preferred option to achieve the water quality standards for Salteye Brook. The reasons why this is a preferred option are obvious and are vividly demonstrated in Dr Hendry’s evidence. Given the levels of flow within Salteye Brook and its nature as a watercourse, it is obvious that the best solution is one which diverts final effluent away from it and transfers it directly into the Manchester Ship Canal, rather than indirectly into the Canal via Salteye Brook. There is, of course, no alternative to final effluent flowing into the Canal itself, and the Canal depends upon such flows in order to be navigable for ships.
3. Much of the subsequent modelling and optioneering has worked towards achieving a solution with that EA preference in mind. As the evidence demonstrates, the assessment of resulting water quality demonstrates that discharge to the Canal downstream of Barton Locks, diverting the flow away from Salteye Brook, shows a significant benefit to Salteye Brook and an overall net benefit to the Canal. Achieving this with a gravity solution (i.e. one that does not build in the permanent disbenefits of pumping) is the obviously correct solution overall.
4. As part of the development of a scheme to deliver the required improvements, the Acquiring Authority has considered various options with reference to considerations such as buildability and WLC. It has compared these with a view on value for money to customers, resilience and delivery of the identified environmental need.
5. Both the Full and Order Schemes are the result of that detailed process, designed to meet that clear regulatory imperative described above with agreement having been reached with the EA over the project scope.
6. The regulatory date for delivery of the four regulatory requirements for Salteye Brook was 28 February 2015. Requests to change that date have not been accepted. Therefore, meeting the water quality requirements remains a statutory obligation under the WFD and, as such, although works towards delivery of the agreed scheme are substantially complete (upstream sections of tunnel and three associated shafts), there is an ever increasing urgency for the delivery of the Order Scheme as part of the overall delivery of the Full Scheme.
7. The inability to comply with the agreed regulatory date continues to place the Acquiring Authority at risk due to a breach in the agreed permit as part of the NEP of deliverable schemes and, of course, is not in the public interest. In the absence of MSCCL’s agreement, the Order is necessary and essential to enable this public interest project to proceed.
8. Despite the fact that the EA views the water quality of Salteye Brook as a priority under the WFD, the only reason that it has not taken action to date is because of the Acquiring Authority’s clear commitment of time, resources and expenditure to delivery of the Full Scheme, using compulsory purchase powers as necessary, along with the work completed thus far. Confirmation of the Order is now required to enable the final delivery of the Full Scheme, in the public interest.
9. Overall, and in order to meet the EA’s requirements, it remains the case that the Full and Order Scheme – an integrated solution that affords long term sustainability benefits in the form of a gravity solution, discharging final effluent from the WwTW directly to the Canal and diverting such flows away from Salteye Brook, and which also represents the lowest WLC to UUWL’s customers - is self-evidently the correct solution in the public interest. The need for a long term sustainable solution does not just relate to issues such as energy consumption or carbon usage, but also in relation to future-proofing the solution, and paying due regard to the potential for the EA to tighten the discharge permits further in the future. In this context, MSCCL’s own witness accepted that an alternative treatment solution which maintained a flow into Salteye Brook (such as those originally promoted by MSCCL) would be “*a complete waste of money*”.[[7]](#footnote-7) Unlike the current scheme, such an alternative scheme could be wholly superseded if a future tightening of the permit required further treatment processes to be put in place at Eccles WwTW.
10. Indeed, set against that regulatory backcloth, it is instructive to note that Mr Perry also agreed during cross examination that:
11. The Acquiring Authority cannot charge what it wants and that its costs must be reviewed by Ofwat considering all competing pressures on UU’s wider operations, rather than just Eccles;
12. It would be “*wrong in principle*” to think that there is excess money to spend on Eccles WwTW without thinking about what requires expenditure elsewhere; this is a balancing exercise to be performed by Ofwat through the price review process;
13. There is no basis to interfere with the Ofwat process through the choice of schemes here and that the regulatory ‘driver’ or need concerns water quality and compliance for Salteye Brook;
14. The EA has an important role in this context as the ‘driver’ or need arises from the EA’s requirements. It is the EA that can determine how that requirement can be met in general terms and the EA has expressed a preference to see the solution involving the transfer of Final Effluent (‘FE’) flows from Salteye Brook to the Canal, which was said to be “*an important preference based on* [the EA’s] *position of knowledge of the area*”;
15. Therefore, when considering the optimum solution, it is important to bear in mind:
    * + - 1. The preferred option of the EA is for the transfer of flows to the Canal. Indeed, Mr Perry confirmed his understanding that if there is a preference to take water out of Salteye Brook then “*that is what you should seek to do*”; and
          2. A scheme that meets the discharge requirements into the Canal (as the Order Scheme does) achieves the requirements. Anything that goes beyond that (e.g. improving on ammonia beyond the levels required by the EA for the Canal) is unnecessary and the additional expenditure “*would not be justified by environmental objectives*”.
16. Before the CPO tunnel comes into operation, an environmental permit will be obtained from the EA for the discharge. Discussions regarding the permit are already at an advanced stage and the EA have indicated that they are minded to grant the permit subject to a condition concerning monitoring. In this regard, Mr Perry agreed that:
    * + - 1. The EA would “*presumably not*” grant a permit subject to monitoring if they did not consider the modelling to show what is likely to happen;
          2. The EA did not object to the planning permission and it can therefore be fairly recorded that the EA does not consider that there is any fundamental objection to the proposal.
17. The ongoing environmental regulation means that no material detriment to the Canal and Salteye Brook arising from the Order Scheme would be permitted to continue to occur.
18. All of this demonstrates beyond challenge both the clear regulatory need for, and compelling public interest in the delivery of, the Order Scheme. This is now no longer in dispute.

**Powers to Implement the Order Scheme**

Generally

1. First, while s.159 of the 1991 Act authorises the laying of pipes etc, it does not authorise discharges from pipes laid after 1 December 1991 into watercourses such as the Canal: see *Manchester Ship Canal Ltd v United Utilities Water plc* [2014] UKSC 40. It is necessary, therefore, for sewerage undertakers to acquire new rights to discharge either by agreement, or by compulsory purchase: *ibid*., and *British Waterways Board v Severn Trent Water Ltd* [2002] Ch 25. Accordingly, in the absence of a reasonable agreement by MSCCL to such a discharge, the use of compulsory purchase is necessary to enable the Order Scheme to be implemented. In this regard, the 1991 Act made a significant change in the law, as before its commencement sewerage undertakers had an implied statutory right to discharge from pipes constructed using their statutory powers. They continue to enjoy that right in respect of pipes laid prior to 1 December 1991.
2. Second, whilst the need for a right to discharge necessitates the use of s.155 of the 1991 Act, it is relevant to bear in mind that, as a matter of law, there is a good case that all the physical works themselves required to implement the Order Scheme could have been carried out in reliance upon the powers under ss.159 and 168 of the 1991 Act (but for the need for the right to discharge). Powers to obtain access for future maintenance of the physical parts of the Scheme would have also existed (although not to create and maintain permanent routes to enable such access). If such powers had been exercised to construct the works in this case, they would have been subject to Schedule 13 of the 1991 Act in respect of MSCCL’s statutory undertaking, but no right of objection in principle to the exercise of the power.
3. Third, however, for the reasons which have already been indicated, but are summarised further below, the Acquiring Authority considers that the provisions of ss. 159 and 168 are insufficient to meet the particular demands of the case and so it is has been appropriate to promote the scheme’s delivery through a composite CPO.

Insufficiency of ss.159 and 168 of the 1991 Act

1. As explained above, in the absence of any reasonable agreement by MSCCL to allow the Acquiring Authority to discharge from the proposed new outfall structure into the Canal (notwithstanding the existence of an existing discharge in virtually the same location), the use of compulsory purchase powers becomes necessary and ss.159 and 168 are insufficient in themselves to obtain that new right to discharge. Indeed, it was MSCCL’s own argument in *Manchester Ship Canal Ltd v United Utilities Water plc*, supra, that the existence of such compulsory purchase powers explains why Parliament had done away with the implied right of discharge which existed prior to the 1991 Act, and which the Supreme Court held continued to subsist in respect of outfalls constructed or vested prior to the commencement of that Act.
2. There are also real practical benefits for both the Acquiring Authority, and the landowners in this case, for all the associated land and rights for delivery to be granted through a CPO, rather than for the Acquiring Authority to rely on its existing powers under ss.159 and 168 for all the other parts save for the right to discharge (without prejudice to the Acquiring Authority’s rights to fall-back on those rights if and where necessary). Granting rights under a CPO provides practical information to both parties as to how, where and when pipes would be laid, and how access to those pipes would be obtained for maintenance in future. They will inevitably be within the land limits of the Order itself. The benefits of such certainty are particularly marked in a case like this where, as the evidence of the objectors makes clear, the land over which the Order has been sought is more complex and subject to existing development and future development proposals.
3. Rights of access granted by a CPO would also follow a prescribed route. The landowner will know that it cannot obstruct such routes, and the Acquiring Authority would know it would always be able to access the land that way. By contrast, if the Acquiring Authority were to fall back on relying on s.168 alone in order to obtain access for construction, or for future maintenance, there would be no route prescribed in advance. Ss.159 and 168 do not empower the Acquiring Authority to create and maintain routes now for future maintenance. While s.168 gives the Acquiring Authority power to enter onto premises to exercise s.159 powers, it does not (in the way that a private easement would) allow the Acquiring Authority to restrain activities on prescribed routes that might restrict its access to the pipe in the future. The consequent uncertainty over how access might be obtained in future would have consequences which would be far more harmful for all concerned than the exercise of rights under a CPO.
4. This point can be illustrated by way of an example. In the absence of a CPO covering the route of the underground pipe, suppose that MSCCL constructed a building on a part of the land which the Acquiring Authority otherwise required access over for works of maintenance because of the absence of a CPO preserving that right of access for the future[[8]](#footnote-8). If that were to happen, and the Acquiring Authority required to exercise its ss.159 and 168 powers in a manner which was prevented by the existence of the building, the Acquiring Authority’s potential remedy would be by way of injunction to remove the building: see *Abingdon BC v James* [1940] Ch 287. The potential for such a remedy would have a serious impact on future developments. The possibility of it being granted would act as a practical impediment on such developments. It would also (i) be more time-consuming and (ii) be more expensive, for future maintenance to be achieved in this way as the Acquiring Authority would be obliged to pay compensation. In contrast, a CPO delivers greater certainty for the landowner and the Acquiring Authority as to where future maintenance is required to enable effective decision-making by the landowner.
5. The actual exercise of ss.159 and 168 powers also contains inbuilt uncertainties that are undesirable for the practical delivery of the Order Scheme in the public interest. For example, the procedure under s.159 requires notice, of at least 3 months in the case of a new pipe and of at least 42 days in the case of an existing one (in each case save in emergency), to be given to each affected landowner. In order to enforce entry under s.168 it is necessary to obtain a warrant through proceedings in the Magistrates’ Court under Schedule 6. The Acquiring Authority would not know in advance the extent to which these procedures might be challenged or by whom. If challenged, this would cause further delay to the Order Scheme and UU’s ability to discharge into the Canal to meet the requirements of the EA, and in undertaking any subsequent works of maintenance or improvement.
6. The Order (or agreement to the same effect) does not deprive the Acquiring Authority of its powers under ss.159 and 168. But in practice (save in unforeseen circumstances) the existence of a CPO (in the absence of agreement) means that the Acquiring Authority will not need, or be likely to have to rely on, ss.159 and 168 in preference. While in principle the Acquiring Authority’s powers under ss.159 and 168 might allow it to access the land by other routes in the future, in practice if the Acquiring Authority already has an extant right of way under the Order that allows it to achieve the same objective, the Acquiring Authority is unlikely to have reasonable grounds to exercise its statutory powers to obtain an alternative access under s.168. Accordingly, the Acquiring Authority would not ordinarily have any reason to try to enforce its rights under s.168 (over and above the agreed/CPO rights) by the statutory procedure of obtaining a magistrates’ warrant (see Schedule 6 paragraph 7 to the 1991 Act) unless the agreed/CPO rights were proving to be insufficient for whatever reason.
7. As already noted, ss.159 and 168 are subject to protective provisions under Schedule 13 for statutory undertakers’ land, whereas these do not apply to the exercise of rights acquired under s.155. The reasons for this, but also the ability to reflect the equivalent rights to Schedule 13 in the Order (as proposed by the Acquiring Authority), are dealt with in section 7 of the closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)].

**The Evidence**

1. Given the statutory and regulatory context described in section 3 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] and addressed above, it can be seen that it is not for the decision maker dealing with a CPO to subvert, second guess or contradict the regulatory decisions made under the statutory scheme by Ofwat and the EA. Nor is it appropriate for objectors to attempt to use the CPO process to prioritise their interests over those of others, or by seeking to impose their own different interpretation of the regulatory needs and requirements of those regulators. The need to avoid this is reflected in the clear statement of principles expressed by the House of Lords in *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66.
2. MSCCL’s objections in principle suffered from this vice. MSCCL witnesses sought to question the EA’s regulatory requirements for water quality discharges into the Canal. There is no basis for doing so. Moreover, MSCCL’s proposed alternatives were based upon promoting unnecessary, unapproved, and far more expensive schemes than those required to meet the regulatory requirements of the EA. Those objections in principle have now been withdrawn. It is therefore unnecessary to summarise all of the evidence which led to that withdrawal. However, the Acquiring Authority has addressed the elements that it considers to be key in demonstrating why the objections in principle were misconceived and these are provided in full in the closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)].
3. This is in a context where the evidence also demonstrated that the Order Scheme can be implemented without causing any serious detriment to the carrying on of MSCCL’s undertaking – indeed, it can be achieved without causing any material detriment at all, let alone serious detriment. Again, this is now common ground following the withdrawal of MSCCL’s objection in principle and its decision not to call oral evidence from Messrs Gavin, Blythe or Rhodes. The issue of the precise wording of the Order to be confirmed is addressed separately in section 7 of the closing submissions, and below.

**The Need for the Order Scheme and Alternatives**

1. The need for a scheme to address the regulatory requirements summarised above was not in doubt. It arises from the mandatory requirements to comply with the EA’s regulatory standards for water quality in Salteye Brook, along with the other EA regulatory drivers that have been set out above.
2. There is also no dispute that the Order Scheme meets the relevant regulatory standards that have been imposed by the EA. By the close of the Inquiry, it was also common ground that the Order Scheme does so at the lowest WLC.
3. Before they were withdrawn, MSCCL’s objections in principle to the Order Scheme therefore depended upon a claim that there were preferable alternative schemes which would meet the same regulatory requirements. The evidence demonstrates that this claim was flawed, as is now accepted by MSCCL through the withdrawal of its objections in principle to the Order Scheme itself.
4. The Acquiring Authority exhaustively explored a number of different alternatives and options to deliver the required regulatory improvements that would be secured by the Order Scheme.
5. As described in detail by Mr Haslett (see the proof of evidence of Mr Haslett [[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)], at para 11.6) and Mr Baron (see the proof of evidence of Mr Baron [[AA/2/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_2_A-Gary-Baron-Proof-of-Evidence.pdf)], at paras 6.3 and 6.4), key considerations in the optioneering process for a regulated business include:
6. Ensuring that the solution adopted is robust and flexible enough to meet or respond to future requirements. In particular, a selected option should not result in unnecessary abortive costs, such as the future imminent replacement of new wastewater treatment technology, with the associated risk of high write-off costs to the customer; and
7. Achieving the required environmental standard at the best (i.e. lowest) WLC for customers. Indeed, this was a view shared by Mr Perry, although not articulated in his written evidence, who confirmed that the option with “*the best / lowest WLC should be selected*”.[[9]](#footnote-9) As noted above, it is now common ground that the Order Scheme has the lowest WLC.

Background to the Order Scheme

1. As noted above, the need for Order Scheme arises because of the requirement to deliver the EA’s environmental standards for water quality set in NEP/WINEP, as regulated by the EA.
2. The development and assessment of various alternative options to meet those standards has occurred in a context that developed over time. In some cases, certain options were rightly discounted at a relatively early stage because it was considered that relevant factors ruled them out from being practical and/or viable; for example, owing to considerable CAPEX requirements.
3. As Mr Haslett[[10]](#footnote-10), Mr Baron[[11]](#footnote-11), Ms Rands[[12]](#footnote-12) and Mr Sephton[[13]](#footnote-13) have described, where and when appropriate, various options, and variations thereof, have been revisited and reassessed by the Acquiring Authority to ensure that the Order Scheme remains the most appropriate option.
4. The identified options have been considered and appraised by experienced experts on behalf of the Acquiring Authority. Those experts complete optioneering exercises on a regular basis as part of their roles, following robust business processes for the development of a solution that combines both an operational and capital investment in order to provide the lowest WLC. Indeed, during cross-examination Mr Perry acknowledged not only that the Acquiring Authority has “*a large body of expertise sitting behind it and a track record of delivering schemes in its area*” but also that he had no criticism to make as to the qualifications or expertise of the Acquiring Authority’s experts to make appropriate professional judgments.
5. Both Mr Haslett and Mr Baron explained how the Acquiring Authority’s governance process has various gateways for decisions to ensure that financial sanction for a project is only approved at each appropriate stage, throughout the lifecycle of a project. This is designed to ensure that the solutions selected represent best value for money for customers and achieve the necessary regulatory requirement. In this instance, the Acquiring Authority’s Capital Investment Committee (‘CIC’) process in particular included full assessment of the CAPEX and OPEX costs associated with the Full and Order Scheme. This assessment process has been completed using the Acquiring Authority’s WLC model. The Order Scheme has been considered in detail as part of the approval process at each finance gateway (from concept to full implementation of the project). Further explanation is provided in the proof of evidence of Mr Baron [[AA/2/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_2_A-Gary-Baron-Proof-of-Evidence.pdf)], at section 8.
6. In order to demonstrate its commitment to delivering the Full Scheme (including the Order Scheme), the Acquiring Authority completed Phase 1 of the Full Scheme in areas not affected by land identified in the Order. That demonstration of commitment to a solution was of particular importance to the EA, given the passage of time since the identification of a need to address certain environmental ‘drivers’. Phase 1 involved a substantial investment for the construction of large shafts and tunnels underneath and parallel to the M60 motorway. Internal reviews were undertaken prior to commencement of Phase 1 and then again in preparation for this Inquiry. However, and as Mr Fields conceded, there has been no bias in the decision-making process arising from the completion of Phase 1. Each of the various alternatives promoted by MSCCL (but since abandoned) would have made use of the same infrastructure completed under Phase 1. Each stage of review has merely served to confirm that the Order Scheme is the most appropriate option for the Acquiring Authority, its customers and in order to meet the regulatory requirement, as compared with any other alternative.

The Canal Water Levels

1. One unavoidable, physical, fact is that the water levels are at a significantly higher level in the Canal immediately adjacent to Eccles WwTW. This means that any alternative proposal that sought to position a new outfall into the Canal close to Eccles WwTW would require the pumping of the flows to achieve a discharge into the Canal, and in order to minimise any additional flood risk to the sewerage network. The flow rate and quantity of water that would have to be pumped would be very significant indeed as assessed in the evidence of Mr Haslett[[14]](#footnote-14) and Mr Sephton. Perpetual pumping involves inherently less sustainable energy consumption than the use of gravity (as Mr Perry conceded during cross examination). Any such pumping alternative would also inevitably carry with it potential reliability issues, especially in storm water conditions. In contrast to a gravity option, it would represent a less sustainable solution overall and would increase the flood risk from the upstream sewerage network.
2. It became common ground that a gravity solution should be considered in preference to a pumped system where practicable from an engineering perspective[[15]](#footnote-15); this is obvious, not least because pumped alternatives would have significant on-going operational and maintenance costs, as well as higher energy requirements. These costs are avoided and maintenance reduced through the use of a gravity pipeline route.
3. The gradient of the proposed outfall tunnel for the Order Scheme is 1 in 1,583. The existing 2300 nominal bore[[16]](#footnote-16) outfall sewer from the WwTW to Salteye Brook has a gradient of 1 in 1,272. Such gradients are not unusual for pipelines of this diameter.

Design flows and hydraulic capacity

1. The diameter of the outfall tunnel for the Order Scheme was selected in order to be able to convey the range of design flows that would occur, and to ensure that water levels in the Full Scheme and in the existing upstream sewer network fulfil the Acquiring Authority’s requirements in relation to level of service, operation of the overflows and compliance with the water quality and aesthetic requirements.
2. The outfall tunnel will in fact accommodate all required design flows, representing the vast majority of all flows, ranging from a minimum dry weather flow of 0.185m3/s to a peak 1 in 30 year return period flow of 13.684m3/s.
3. However, a back-up outfall into Salteye Brook is to be maintained to address storm flows in excess of a one in five year return period. This overflow requirement is met by retention of the existing 2300 nominal bore WwTW outfall pipe to Salteye Brook. This is to be retained and maintained for the purposes of intermittent discharge. The use of such an intermittent discharge for those extraordinary conditions is approved by the EA. It should be noted that at times of such extraordinary flows, any storm flows that actually occur will be extremely dilute because of the huge volume of stormwater that would be in the system.
4. As to the design flows, and MSCCL’s previously expressed concerns regarding the protection of its statutory undertaking, MSCCL itself provided its design guidance for flows of outfalls into the Canal, on 11 November 2013.[[17]](#footnote-17) The Order Scheme is designed to comply with that guidance, and so there can be no legitimate concern to MSCCL. In particular[[18]](#footnote-18):
5. Clause 1 of the guidance requires that the outfall level should be below the normal minimum Canal water level. The soffit of the 2.10m ID outfall pipes is below that level and the outfall is completely submerged. Therefore, the design complies with this requirement. Given this guidance, it was bizarre for MSCCL and Mr Perry to have pursued in principle objections to the Order Scheme based upon alleged concerns as to the creation of an “inverted siphon” by the use of submerged outfalls. Not only is an “inverted siphon” a false description of the design arrangement (as noted both by Mr Sephton[[19]](#footnote-19) and Professor Balmforth[[20]](#footnote-20) – the acknowledged expert in the design of sewers), but submerged outfalls are required by MSCCL in their guidance. The design issue is no longer pursued by MSCCL.
6. Clause 3 stipulates that the volumetric flow, in m3/s, that can pass through the outfall for the 1 in 30 year and 1 in 100 year return period events must be acceptable to MSCCL. The table of discharges previously issued to MSCCL details the 1 in 30 year discharge rate. It was the Acquiring Authority’s understanding when the discharge data was issued to MSCCL on 18 June 2015 and 29 October 2015 that this information would be used to determine the effects of the discharges within MSCCL’s own hydraulic model of the Canal. No issues regarding the volumetric flow have been raised by MSCCL or are pursued.
7. Clause 4 of the revised guidance requires that the discharge velocities are between 1.5m/s and 3.0 m/s, for the 1 in 30 year return period event, with a target velocity of 2.0 m/s.[[21]](#footnote-21) The outfall discharge velocities comply with the guidance in full.
8. Clause 9 of the guidance requires that the temporary and permanent works must allow free, continuous, unencumbered vehicular access along the edge of the Canal, for maintenance purposes. The proposal enables compliance with this requirement during both the construction and operational phases.
9. It should also be noted that the overall volume of flow discharging to Canal via the Full Scheme will not in fact be greater than the overall volume of flow from the existing Eccles WwTW and sewer network overflows that currently discharge to the Canal via Salteye Brook[[22]](#footnote-22). Given this central fact, it has always been difficult to understand the logical basis for any objection in principle by MSCCL to what is proposed.
10. By correspondence dated 27 November 2015, MSCCL itself confirmed that “*the discharge velocities from the proposed outfall are within the acceptable limits stated in ‘the MSC document discharges into the Manchester Ship Canal’*”[[23]](#footnote-23). There has been no change to that position and, of course, no objection in principle is pursued to the Order Scheme anymore.

Optioneering Solutions Report [[CD/OTH/33](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.OTH_.33-UU-Optioneering-Solutions-Report-09052018.pdf)]

1. In light of what were previously expressed to be objections in principle to the Order Scheme by MSCCL (but which have now been withdrawn), the Acquiring Authority conducted a comprehensive and up-to-date review of any alternatives for the purposes of the Secretary of State considering confirmation of the Order following this Inquiry. Any new, or alternative, technologies and options were evaluated alongside updated costings for the existing options and alternatives, so as to check the continued suitability of the Order Scheme. To this end, the Acquiring Authority produced the Optioneering Solutions Report dated 9 May 2018 [[CD/OTH/33](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.OTH_.33-UU-Optioneering-Solutions-Report-09052018.pdf)].
2. This updated assessment – applying an approach that during cross-examination Mr Fields accepted to be “*perfectly good practice*” - verified that the Order Scheme, as part of the Full Scheme, still represents the solution that provides the lowest WLC and long term sustainability.
3. A total of 12 different options (with variants) were reviewed in detail by professional engineers, scientists and other experts to ensure all possible scenarios have been considered in detail. In short, no stone has been left unturned by the Acquiring Authority. The 12 options were:
4. Option 1: Gravity Outfall Tunnel to MSC;
5. Option 2: Pumped Outfall to MSC;
6. Option 3: Biological Aerated Flooded Filter (‘BAFF’) (constructed at Eccles WwTW);
7. Option 5a: Nereda – a modified activated sludge process with a granular biomass (transfer all flows and construct at Davyhulme WwTW);
8. Option 5b: Activated Sludge Plant (‘ASP’) (transfer all flows and construct at Davyhulme WwTW);
9. Option 6a: Nereda (constructed at Eccles WwTW);
10. Option 6b: ASP (constructed at Eccles WwTW);
11. Option 7a: Nereda (constructed at Eccles WwTW + additional pass forward flow);
12. Option 7b: ASP (constructed at Eccles WwTW + additional pass forward flow);
13. Option 8: Nitrifying Submerged Aerated Filter (‘NSAF’) (constructed at Eccles WwTW) + storm flow pumping;
14. Option 9: ASP (constructed at Eccles WwTW) + storm flow pumping;
15. Option 10: existing site optimisation;
16. Option 11: Membrane Biological Reactor (‘MBR’) (constructed at Eccles WwTW); and,
17. Option 12: Integrated Fixed-Film Activated Sludge (‘IFAS’) (constructed at Eccles WwTW).
18. The optioneering process considered all the latest wastewater treatment processes available to the Acquiring Authority. The process confirmed that the gravity outfall tunnel remained the best option, with the lowest WLC and a number of significant advantages. The other options were not value for money. They also embodied a host of other substantial disadvantages.
19. MSCCL originally objected to the Acquiring Authority’s optioneering as either being overly reliant upon WLC assessments and/or on the basis that more expensive alternatives could be funded in any event (see, for example, the summary proof of Mr Fields [[MP/2/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP-2_B-Summary-Proof-of-Evidence-of-Leon-Fields.pdf)], at paragraph 1.12). Although these objections have now been withdrawn, both points ignored the relevant statutory context (set out above). The striking of an appropriate balance between need (to meet regulatory requirements) and funding is the responsibility of the combination of inputs from the sewerage undertaker itself, the EA and Ofwat. The EA sets the regulatory standards to be achieved. The sewerage undertaker is responsible for meeting those standards at the lowest WLC to protect the customers. Ofwat is responsible for regulating those decisions in the approval of the funding, protecting the crucial public interest component of not spending too much.
20. In addition, as Mr Fields accepted during cross examination (agreeing with the Acquiring Authority’s witnesses), in this regulatory context:
21. Once the need is identified, any solution has to meet that need;
22. When the necessary outputs and outcomes are known, the general principle is to meet them as cost efficiently as possible;
23. Customers should not be charged more than is necessary;
24. Where there is an ability to save money on one project, this means that there is more money to spend elsewhere, which “*is an important feature bearing in mind competing considerations*”;
25. Everything ultimately comes from charges to the customer, but the detail depends on the scheme and various retrospective funding mechanisms; and,
26. It is “*mathematically*” correct that “*if funds are diverted to a more expensive scheme then that money will not be spent elsewhere*”.
27. Overall, therefore, the Order Scheme is based on a detailed expert and professional assessment by the Acquiring Authority and its professional consultants. Its selection reflects a clear judgement, based on evidence collated during the initial phases of the project. This has subsequently been reassessed and confirmed through the latest optioneering appraisal, and again through the extensive testing of all relevant evidence during this Inquiry. The Order Scheme is undoubtedly the most appropriate option in light of i) the regulatory requirements of the EA; ii) the principles of sustainable development; and iii) best value for customers. The correct decision was, and remains, to proceed with the gravity option from Eccles WwTW to the downstream point of Barton Locks (i.e. Option 1 / the Order Scheme).

MSCCL’s proposed but now abandoned ‘alternatives’

1. MSCCL’s case on alternatives, before it was withdrawn, was advanced in its Statement of Case (see [[CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf)] at section 7). Once reliance upon Mr Perry’s evidence was effectively abandoned, it made MSCCL’s objections untenable, and this was confirmed following cross-examination of Dr Studds’ evidence.
2. It is therefore unnecessary for the Secretary of State to consider MSCCL’s evidence, but important to note that it no longer bears scrutiny in light of the oral evidence (for example, the many different versions of Mr Fields’ cost estimates or Mr Rhodes’ options matrix and his consequential analysis (neither of which were ever actually deployed in the end)). The same is true of MSCCL’s various attempts (on no fewer than three occasions) to provide revisions to its written evidence on alternatives in the form of ‘notes to the inquiry’. These can no longer be relied upon and it is unnecessary to address them because reliance on alternatives has been abandoned by MSCCL in line with the withdrawal of all of its objections in principle.
3. Detailed submissions on these matters, including the concessions made by MSCCL witnesses, is provided within section 4 of the closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)].

Summary on Need and Absence of Alternatives

1. After full consideration of all options, and having re-visited the optioneering exercise,[[24]](#footnote-24) the evidence unequivocally demonstrates that the gravity outfall proposed under the Order Scheme is the correct option. It is the lowest WLC solution that meets the environmental regulatory requirements set by the EA. All other options are substantially more disadvantageous in a host of different respects. Moreover, the Order Scheme has the great advantage of addressing Salteye Brook in full now. And should the EA require future discharge permits for FE into the Canal to be even more stringent at Eccles WwTW than they are at present (i.e. should the environmental drivers change) the Order Scheme provides the most flexible solution for further development because the Acquiring Authority:
2. Will not have used up land installing abortive, very expensive, tertiary treatment assets for a short term outcome, which would preclude phosphorus recovery and perpetuate discharge into Salteye Brook, rather than diverting such flows away from Salteye Brook;
3. Will not have replaced existing fit for purpose assets (i.e. the existing trickling filters) with high capital cost alternative technologies when they are not necessary now and may not be appropriate for the future; and
4. Will have provided an inherently sustainable gravity outfall solution, avoiding Salteye Brook, with a direct route to the Canal which also results in net benefits to the water quality of the Canal.
5. As MSCCL has abandoned reliance upon the costs estimates previously provided by Mr Perry (and relied on by Messrs Fields and Rhodes)[[25]](#footnote-25) and has agreed to “*assess those alternatives by reference to the cost estimates provided by UU*”,[[26]](#footnote-26) the relevant cost summary comparison is provided in the Cost Estimate Update (submitted 20 November 2018) [[AA/INQ/58](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_58-Cost-Estimate-Update-FINAL.pdf)].
6. As Mr Perry conceded (during cross-examination) in agreement with the Acquiring Authority’s witnesses, there is simply no justification for pursuit of tertiary treatment alternatives at Eccles WwTW (whether in terms of BAFF or NSAF). In addition, such options would fail to provide future-proof solutions that are achieved through the Order Scheme. There is a clear risk of wasted costs or being required to decommission a recently constructed treatment plant should consent levels change or new controls be imposed (e.g. in relation to Phosphorous).
7. The flexibility of the CPO tunnel and its inherent future-proofing reflects the point made by Mr Haslett in his oral evidence and his main Proof of Evidence, at paragraph 14.3:

“*The Full Scheme delivers a sustainable solution that will compliment any investment for a future permit set by the EA for the treated wastewater discharging from Eccles WwTW into the Canal. Any future upgrades will require enhancement to the wastewater treatment process that will discharge through the proposed gravity tunnel to the Canal.*”

1. The Cost Estimate Update [[AA/INQ/58](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_58-Cost-Estimate-Update-FINAL.pdf)] confirms that Option 1 (the Order Scheme) is the most flexible and appropriate way in which to address both the existing and any future regulatory outputs that may be required by the EA.
2. The gravity outfall under the Order Scheme is the most cost effective solution for the Acquiring Authority’s customers to meet the current environmental requirements, and also for the longer term development of Eccles WwTW as future regulatory requirements arise.

Sustainable urban drainage solutions (SuDS)

1. The Acquiring Authority’s Note to Inquiry on surface water separation opportunities [[AA/INQ/45](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_45-Eccles-Separation-Opportunities-23.10.18.pdf)] was prepared in response to MSCCL’s request regarding the consideration of surface water separation opportunities in relation to the Order Scheme.
2. As that note confirmed by way of background and overview, SuDS solutions have been considered by the Acquiring Authority. The Acquiring Authority has satisfied itself that SuDS solutions cannot provide a solution to remove, or reduce, the need for the Order Scheme, or to prefer any other option. The reasons for this include:
3. the practical difficulties in achieving significant impermeable area disconnections that would be required to achieve any meaningful reduction in the water through the combined sewerage network entering the treatment works;
4. the huge costs of any such disconnection required to achieve any meaningful reduction; and,
5. the interference with the land and rights that would be required.
6. For the avoidance of doubt, the Acquiring Authority continues to favour SuDS in the catchment area. It looks to achieve opportunities for water separation where practicable, as part of an Integrated Drainage Area Strategy (IDAS); but there are no solutions in whole or in part which affect the need for the Order Scheme, or the lack of any preferable alternative option.
7. The Acquiring Authority previously commissioned JRM (a joint venture between Atkins and RPS on United Utilities Modelling Framework) to use their SuDS StudioTM Toolkit to identify and quantify any SuDS opportunities within the Eccles catchment area. The outcome of that was reported and summarised in Mr Haslett’s Proof of Evidence ([[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)], at paragraphs 9.102 to 9.111) and oral evidence to the Inquiry. It was explained that the analysis demonstrated that a SuDS solution generally would be disproportionately costly as an alternative to the Order Scheme to meet a 1 spill per summer design standard.[[27]](#footnote-27)
8. As part of the JRM methodology, GIS data was assessed to identify where surface water sewers are connected into foul or combined sewers, so identifying potential separation opportunities in theory. The report identified 13 locations where the surface water network was connected to the combined network.
9. MSCCL requested that the Acquiring Authority provide further details of these opportunities and their potential ability to reduce the requirements in respect of the Order Scheme or of any of the alternatives. This information is set out in [[AA/INQ/45](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_45-Eccles-Separation-Opportunities-23.10.18.pdf)]. Indeed, once the 13 identified surface water potential opportunities were reviewed, only 7 were potentially viable and, even if one were able to implement all 7, it would only result in an overall reduction in the storage requirement for any alternatives to the Order Scheme of 300m3, in order to meet the regulatory requirement of 1 Spill Per Summer.
10. The costs of provision of storage that have been used in the assessment of alternatives by the Acquiring Authority equates to £914.72 per m3. The cost saving of reducing the storage provision by 300m3 would therefore be a maximum of £274,416. By contrast, just the design costs of investigating all 7 surface water potential opportunities would exceed this sum and implementation would far exceed it. It is not possible or necessary to provide any detailed costings, as each of the opportunities would require detailed investigation and individual works; but it is absolutely clear that the costs would be significant given the nature of the work involved. All of this also disregards the practical problems that each opportunity might present and (in a predominantly urban environment) the interference with land in the ownership of others.
11. It is therefore clear that the 7 potential surface water separation opportunities identified by JRM are incapable of either removing the need for the Order Scheme, or affecting the preference for the Order Scheme over any of the alternatives.
12. In light of the further assessment and conclusions, MSCCL confirmed by letter dated 8 November 2018 [[MP/INQ/41](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-8-November-2018.pdf)] that it no longer relied upon the scope for such opportunities as part of its case.

**Water Quality**

1. Detailed submissions on water quality matters are provided within section 4 of the closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)].

Summary of water quality evidence

1. The Order Scheme is hugely beneficial. It will remove all waste and storm water discharges from the Salteye Brook, apart from storm flows in excess of the 1 in 5 year flow; thereby significantly and immediately improving the Brook’s water quality by removing the large majority of its ammonia, BOD and nutrient load.
2. There is no risk of significant solids deposition from FE in the tunnel. MSCCL’s – now abandoned - analysis was always misleading, based on misconceptions such as the size of the suspended solids, their nature in terms of specific gravity, the presence of an “inverted siphon” and effects of solids such as gravel and sand which are not representative of the few suspended solids found in FE.
3. However, and notwithstanding the revision to MSCCL’s case following Mr Perry’s oral evidence, such flawed reasoning continued to distort MSCCL’s consideration of the Order Scheme as against alternatives right up until the withdrawal of its ‘in principle’ objection, not only because it grossly exaggerated the perceived ongoing maintenance costs of the Order Scheme, but it also placed an inherent bias upon its consideration of those other alternatives.
4. In addition to the sedimentation claims being flawed, so necessarily were the assertions that such deposits would anaerobically decompose and would then be flushed out in large quantities during storm events to the detriment of water quality in the Canal. In fact, it is very unlikely that there would be anaerobic conditions in the outfall tunnel because:
5. there will be no build-up of sediment of the sort alleged by Mr Perry;
6. there will be a residual dissolved oxygen concentration in the FE anyway; and,
7. in addition, the FE at Eccles contains a high concentration of nitrates, which are a by-product of the nitrification process (oxidation of ammonia) that takes place in the trickling filters.
8. As anaerobic conditions will not exist then there is no pathway for methane, hydrogen sulphide or other degradation gases to be produced in the pipe.
9. As the proposed new discharge point into the Canal is adjacent to where Salteye Brook currently enters, there will be no deterioration in the Canal compared to the current situation. Indeed, there are only significant benefits to Salteye Brook and additional net benefits to the Canal (as summarised in the next paragraph)
10. By also providing greater storm storage capacity in the pipe and providing for screening of such flows, there will in fact also be an overall net improvement in water quality of the Canal.
11. MSCCL’s now abandoned claims as to the assessment of the impact of the Order Scheme on the water quality of the Canal in terms of both continuous discharge and also during storm conditions by reference to an “*apparent WFD classification*”, was inherently flawed given that it failed to take proper account of the existing condition of the Canal and therefore started from the wrong baseline.
12. Direct discharge into the Canal is also preferable when the dilution offered by that waterbody is taken into account. This is widely accepted as a key component of effective treatment of final effluent. Therefore, it was always wrong in principle for MSCCL to assert the Order Scheme is a simple transfer of an existing problem from one watercourse to another.
13. Storm discharges currently enter the Canal via Salteye Brook. Under the Order Scheme the reduction in storm spills that will occur due to increased storm storage capacity will have a positive effect on the Canal’s water quality by reducing the frequency and contaminant load of storm discharges. Screening of storm overflows to remove solids will have a further benefit by removing solids that would otherwise be deposited in Salteye Brook and the Canal.

**Engineering and Construction, Including Ground Movement and Tunnelling**

1. Detailed submissions on engineering, construction and related matters are provided within section 4 of the closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)].

Summary of engineering and construction evidence

1. In summary, there was never any proper basis for an objection in principle to the CPO in relation to engineering construction or operation of the Order Scheme.
2. There were in fact extensive discussions between the Acquiring Authority and MSCCL to that effect before MSCCL decided to be uncooperative in consequence of seeking large sums of money from the right to discharge. These discussions and sensible and pragmatic acceptances of construction methodology are documented by Mr Sephton. The subsequent evidence from MSCCL witnesses ignores those discussions and is based on construction methodologies and assumptions which are unrealistic or simply wrong.
3. This is relevant when one comes to consider any residual differences between the Acquiring Authority and MSCCL in relation to the relevant protective provisions to include on the face of the Order (as dealt with in section 7 of the closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)]). MSCCL’s approach starts from a completely unrealistic assumption as to the Acquiring Authority’s approach to construction which simply fails to reflect that the Acquiring Authority and its contractors will be bound to construct the Order Scheme competently, and have a direct interest in minimising impacts on MSCCL assets in any event, just as would be the case if the scheme were being constructed entirely in accordance with pipe-laying powers (for which Schedule 13 protective provisions are considered acceptable).

**Navigation**

1. As noted above, MSCCL’s principal evidence on concerns about impacts on navigation stemmed from a false assumption that the construction of the Order Scheme would principally be carried out from the water. That neither reflects past discussions, nor the intention of the Acquiring Authority. And it was established by way of common ground that principally land-based construction was preferable (albeit MSCCL, from the cross-examination of Mr Clarke, consider that the Order Scheme could practically be constructed principally from the water if required). MSCCL acknowledges that construction of the outfall “from the land” is not only feasible (Mr Clarke [[MP/5/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_5_B-Summary-Proof-of-Evidence-Nicholas-Clarke.pdf)], at paragraph 1.14) but “*highly practical and has the benefit of a shorter construction programme*” (Mr Gavin [[MP/6/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_B-Steve-Gavin-summary-proof-of-evidence.pdf)], at paragraph 1.49). Moreover, MSCCL considers that landside construction would “*remove the difficulties for navigation arising from marine-side construction*” (Mr Gavin [[MP/6/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_B-Steve-Gavin-summary-proof-of-evidence.pdf)], at paragraph 1.49).
2. MSCCL withdrew its ‘in principle’ objection before calling evidence from Mr Blythe in relation to navigation impacts. By contrast, the Inquiry has heard tested evidence from the Acquiring Authority’s engineers and Captain Nicholson. In any event, many of the premises or points made in Mr Blythe’s written evidence have been abandoned.
3. There is also no basis for the claim made in MSCCL’s closing submissions that “*absent the modification of the Order so as to include the Schedule in the form it suggests, the Secretary of State will not be able to be satisfied as to the absence of serious detriment*” (MSCCL’s closing submissions [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)], at paragraph 16). This is nonsensical, given that (a) it is common ground that the Order Scheme can be constructed without such serious detriment (indeed without material detriment at all) and (b) the Acquiring Authority’s own proposal is to include protective provisions to reflect Schedule 13 of the 1991 Act (as set out in section 7 of the closing submissions). If there were any concern over navigation and navigational impacts of a more fundamental nature, MSCCL would (should) have called Mr Blythe to give evidence as to the same. It did not. As it stands, therefore, Captain Nicholson’s evidence is the only reliable and tested expert evidence in relation to navigation that is before the Inspector and Secretary of State. In any event, it is clear from the written evidence that it is Captain Nicholson who is a qualified navigation expert, having made a career of manoeuvring ships and obtaining the necessary qualifications to do so, which is in direct contrast to Mr Blythe’s experience.
4. Captain Nicholson’s evidence was also clear and uncomplicated: there will be no material impact on navigation in the Canal arising from the construction or operation of the proposed outfall. Basic and expected modes of operation, complying with well-established marine practices, would prevent any such impacts arising.
5. This is essentially an academic issue anyway, as the Acquiring Authority’s proposed schedule preserves the harbour master’s statutory powers in a manner so as to sufficiently address any residual practical concerns raised by MSCCL. Indeed, it already expands upon Schedule 13. We therefore deal very briefly with the evidence from Captain Nicholson on why there will be no material impact anyway.
6. In paragraphs 126 and 127 of its closing submissions, MSCCL alleges various respects in which it is said that the rights sought by the Acquiring Authority would authorise activities in areas in which the harbour master and harbour authority have jurisdiction. As explained in paragraph 7.87 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] and as addressed below, the Acquiring Authority’s proposed schedule accommodates all these points.

During construction

1. Captain Nicholson explained in detail why there would be no material effect on the navigable channel or operation of the Canal during the anticipated construction. Even to the extent that any works are carried out from the water using a barge, or so far as any other marine works are concerned,[[28]](#footnote-28) the construction phase effects identified by MSCCL would not occur. There are very limited vessel movements in the relevant section of the Canal (even assuming expanded operations in the future). Any such movements will be known in advance. It is a simple matter of scheduling to minimise any interaction with the construction works and ships can safely pass the cofferdam (which is outside the navigational channel) and use Barton Locks without impediment. There will be no material impact on construction works, even where it is necessary to move marine plant or employees when a ship is passing.

Outfall

1. The proposed outfall site lies to the north west of the navigable channel and clear of the lock approach/departure route.[[29]](#footnote-29)
2. As noted above, it is intended that most, if not all, construction will be land-based. There will be a need for a cofferdam to be created for the outfall during construction. There may also need to be a barge on location. The size of barge and tug necessary for this operation would not impinge upon the navigable channel and passing vessel traffic.[[30]](#footnote-30) However, even if one were to use a larger barge than necessary, it could be readily and easily moved whenever required.
3. The downstream approach to the lock allows for waterborne assets to be positioned in the recessed water area clear of the navigable channel. Again, even if, for some unlikely reason, the waterborne assets were ever to impinge on the navigable channel then Captain Nicholson’s clear evidence was that they could readily be moved prior to the arrival of passing traffic. This would not take anything like the length of time suggested by Mr Blythe at paragraphs 83 to 94 of [MP/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_7_A-Proof-of-Evidence-of-Joe-Blythe-V.2.pdf), (although not pursued in evidence at the Inquiry itself).
4. The relevant schedule of vessel movements through Barton Locks would clearly allow ample lock/canal downtime for any construction at the proposed site to go ahead largely unnoticed by the MSCCL and passing vessel traffic.[[31]](#footnote-31)
5. If, for any reason, it became necessary to shift the barge from the proposed outfall site then this could be easily achieved by shifting the barge to either Davyhulme berths or to the inner finger of the upstream lock. Either option would ensure that the barge could be safely and quickly cleared from the proposed site and moored.

Irlam Wharf

1. The scheme makes provision for Irlam Wharf to be used to provide shore based assistance for the logistic arrangements of the construction project. Irlam Wharf lies about 1 mile downstream of Barton Locks.
2. Given MSCCL’s recent uncooperative attitude to date, it is necessary to take compulsory powers to enable the use of Irlam Wharf on the assumption that MSCCL continue to refuse access by agreement. However, in practice, there is no reason why MSCCL cannot allow the Acquiring Authority to use Irlam Wharf by agreement.
3. Irlam Wharf could be used to launch a barge, a safety boat and potentially a standby boat/small tug, if delivered by road. The wharf could also receive alongside a barge and tug that had navigated the Canal from the Mersey.
4. Construction or maintenance equipment could be loaded at Irlam Wharf or simply towed to location on a pre-loaded barge and tug from the Mersey. If necessary, any additional equipment could readily be loaded at Irlam. All of this could be done by agreement if MSCCL were willing using their existing crane assets and berths. But if such agreement is not forthcoming, the compulsory powers enable the Acquiring Authority to do this compulsorily. As Captain Nicholson identified, all such limited activity could and would be done in a way which minimised any impact on Irlam Wharf operations anyway. Once again, there is no logical reason for supposing that the Acquiring Authority would do it in any other way, as of course it has a mutual interest in minimising interference given the potential for compensation.

Davyhulme berths

1. The Davyhulme berths lie to the south west of Barton Locks. The Davyhulme berths provide far greater depth than is required for the sort of barge and standby boat that might potentially be used in relation to the construction or maintenance of the outfall. Captain Nicholson has gone to the trouble of sounding the depths of these berths (see paragraph 1.6 of his proof of evidence [[AA/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_A-Peter-Nicholson-Proof.pdf)]). These berths could readily be re-activated to provide safe barge mooring facilities, if necessary.

Operational phase

1. Three potential risks to navigation during the operational phase were initially asserted by MSCCL[[32]](#footnote-32): i) vessels coming into contact with the outfall structure; ii) the impact of a sudden discharge of a large amount of sediment; and iii) the exercise of rights into perpetuity. In respect of all three, the risks were again without substance and artificial and have since been abandoned as objections in principle:
2. In respect of i), the proposed outfall will have no material effect on the operation of Barton Locks or Canal. All vessels that trade on the Canal will have no problem navigating past the proposed outfall during normal or the most significant flow conditions. The outfall structure is no more of an obstacle than the bank itself. As Captain Nicholson pointed out, any ship that is going to be making contact with the outfall will already be a ship out of control that would be contacting the Canal bank in any event and the outfall does not pose any additional risk. This objection was misconceived. In any event, it was abandoned even prior to the withdrawal of MSCCL’s objection to the Order[[33]](#footnote-33);
3. In respect of ii), as described above, the assumptions underlying the assertion as to a “*sudden discharge of a large amount of sediment*” have now been abandoned by MSCCL. They were fundamentally flawed. It will not occur. And it will not affect navigation of the Canal.
4. In respect of iii), it is inconceivable that the exercise of rights for the specific CPO purpose that has been identified could have any serious detriment, or indeed any material detriment at all to the MSCCL. Such rights are for maintenance and inspection in the future. These have to be viewed in the context of the powers that would exist anyway under s.159 of the 1991 Act, and have to deal with the future situation on the Canal when it is unknown how it might be in use by a canal undertaker.
5. In these regards, it is relevant to note that by letter dated 20 November 2018 [[MP/INQ/55](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-20-November-2018-1.pdf)], Mr Blythe’s evidence was narrowed with reference to UU’s proposed schedule as follows:

“*MSCCL accepts that the form of modification as proposed by UU addresses Mr Blythe’s concerns in respect of the exercise of the following rights:-*

*(a) rights to navigate and to pass and repass;*

*(b) rights to moor; and*

*(c) rights to carry out surveys and investigations on the Canal (insofar as the exercise of the rights to carry out surveys etc will necessarily involve the exercise of the rights to navigate and moor).*

*…*

*we further wish to advise UU that Mr Blythe will in addition no longer be pursuing the argument set out at paragraphs 163-166 of his Proof of Evidence (MP/7/A). Having reflected on the matter, it is accepted that the risk posed to vessels striking the outfall structure is unlikely to be greater than if they strike the adjacent wall*.”

1. The outfall will not have any adverse effect on possible future development. It was moved to a location to accommodate future development. To the extent that Port Salford may be developed at some time in the future (with it being planned that the Irlam Container Wharf will relocate to this new site[[34]](#footnote-34)), navigation at the new site will not be affected by an outfall sited upstream of it. Neither would such a development result in any necessary increase in movements through Barton Locks[[35]](#footnote-35).
2. Routine inspection and maintenance of the outfall will be necessary only once every 10 years, which should be able to be carried out from a small work boat. Inspection and maintenance is likely to be serviced from Irlam Wharf, assuming that the boat carrying out the works does not transit from the Mersey with all equipment already loaded on board[[36]](#footnote-36). During such inspection, even if a barge were required then its presence in the Canal could be easily managed in the same way as the construction barge and tug/standby boat. It would have no adverse effect on MSCCL’s operations.

**Negotiations with Land Owners, Including Technical Liaison and Engagement**

1. Before resorting to compulsory purchase powers, the Acquiring Authority embarked upon lengthy and detailed negotiations seeking agreement with the relevant land owners with a view to securing sufficient land or rights for it to be able to implement and operate the Order Scheme without recourse to those powers.
2. Despite the impression given in MSCCL’s written evidence, those discussions included extensive attempts to reach agreement with the Peel Group companies (which include MSCCL), including the consideration or compensation payable to the owners, the optimum form of the Order Scheme (including the route of the outfall pipeline, the location and form of the outfall and other structures, construction methodology and programme) for the landowners, and the interaction of the land owners’ and the Acquiring Authority’s respective projects, both during construction and operation. The detail of these extensive negotiations was set out by Mr Sephton in his written evidence[[37]](#footnote-37), with extensive appendices and by Mr Smith[[38]](#footnote-38). It was not the subject of any challenge by MSCCL. But equally, MSCCL’s witnesses have essentially ignored it ever having taken place.
3. As part of those efforts, the Acquiring Authority sought to design the Order Scheme so as to minimise the extent of land sought and any interference with third parties’ current and proposed land uses, including MSCCL.

Attempts to acquire by agreement, including the ‘outfall payments’ dispute

1. Matters of compensation are outside the purview of this Inquiry, but it is important to note that it was a difference of view on compensation which caused MSCCL to change its approach to the Order Scheme. A dispute of that kind ought to be left for resolution in the Upper Tribunal (Lands Chamber) and is not a proper basis for objection in principle to the Order Scheme.

Technical liaison and engagement

1. The Acquiring Authority has engaged in extensive discussions with representatives of the Peel Group (of which MSCCL are part, with the Peel Group also having a significant interest in CoSCSL, a joint venture with Salford City Council).
2. The Acquiring Authority’s personnel, including engineers, lawyers and their land acquisition surveyors, have been engaged in dialogue with Peel representatives regarding the Eccles project for many years, including as to the route of the tunnel, the interactions with development plans and positioning of the outfall. As already noted, the technical discussions and liaisons are summarised in section 12 of the proof of evidence of Mr Sephton and were the subject of no challenge. A number of interactions between the Acquiring Authority and MSCCL/the Peel Group are also reported in the document at Appendix A to the proof of evidence of Mr Smith. Again, these were not the subject of any challenge.
3. On the basis of that accepted timeline, it is important to note that the Acquiring Authority’s engagement with representatives of the Peel Group had commenced by November 2010 regarding a scheme to discharge FE and storm flows to the Canal. This engagement included options for gravity and pumped discharges to the Canal and continued through 2011 and 2012. The decision to pursue a solution to discharge by gravity to the Canal was confirmed at the Acquiring Authority’s CIC meetings held on 26 June 2012 and 29 June 2012. Therefore, it is clear that engagement with appropriate stakeholders began long before the preferred option was selected.
4. Furthermore, despite substantial liaison and numerous meetings with representatives of the Peel Group between 2010 and June 2012, no objection was received to the principle of a scheme which discharged to the Canal. Indeed, much of the content of that liaison related to working towards a mutually acceptable solution.
5. These discussions have led the Acquiring Authority to design and significantly alter the Order Scheme to seek to take account of land owners’ comments, including those of MSCCL. In those circumstances, it was impossible to understand Mr Clarke’s written assertion that there was “*insufficient detail to prove or demonstrate*” that the Order Scheme would be built “*with any consideration*”. Mr Clarke had no answer to this when confronted with the detailed discussions that had occurred and the meeting notes of those discussions.
6. The issue of protection of MSCCL’s assets is considered in more detail in section 7 below. However, it is relevant to note a number of key aspects of the evidence that is available in order to set that discussion in its proper context.
7. First, so far as any challenge to the degree of liaison that UU’s witnesses suggested would be undertaken with MSCCL in practice, there is no reason to doubt the Acquiring Authority’s evidence, given that it was:
8. Given by professional witnesses as to what they and other reasonable contractors would engage in;
9. Given on behalf of a statutory undertaker that regularly plans and constructs major infrastructure projects across its region; and
10. Given in a context of precisely that sort of liaison and engagement having been undertaken, long before the decision was taken to proceed with the proposed option or to make the Order; and,
11. Section D of MSCCL’s closing submissions [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)] purports to address that evidence with reference to two main elements: construction methodology and liaison. It also goes on to set out a number of “assumptions” that are set to have been made by Mr Parsons, Mr McKimm, Mr Sephton and Captain Nicholson.
12. In fact, as to those assumptions about the construction process (paragraph 58 of MSCCL’s closing submissions [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)]), there is no difference between the parties that it is the Acquiring Authority’s intention that:
13. Construction will principally be undertaken from the land, with only limited works undertaken from the water;
14. Construction of the tunnel will be carried out using a TBM with full face support;
15. Construction of the shaft would be undertaken by secant piling;
16. Construction of the twin pipes to the outfall will be undertaken by pipe-jacking;
17. The scheme can be constructed without dewatering;
18. A gap of c.7.5m would be maintained between the end of the cofferdam and the northern lock wall;
19. Cranes would not be permitted to oversail the navigable channel whilst a vessel was transiting close by and men would be removed from the cofferdam at the same time;
20. The previous construction contract imposed certain limits in respect of Barton Locks; and,
21. Continuous access for MSCCL to Barton Locks would be provided.
22. As the footnote references in MSCCL’s closing submissions identify, these were all assumptions upon which the Acquiring Authority’s written evidence was produced and upon which previous discussions had taken place. The vast majority also reflect the substance of long-running discussions with various Peel entities. They ought to have come as no surprise to MSCCL.
23. Nor were they the subject of any meaningful challenge from MSCCL as to their appropriateness, suitability and/or viability. They are all perfectly reasonable and proper assumptions that are likely to be reflected in any associated tender documentation.
24. The suggestion appears to be that because they have not been secured by reference to an agreement, or pursuant to a planning permission, those assumptions have no practical validity. That is both factually and legally incorrect. Factually it is incorrect because there is no basis for assuming that the underlying Scheme would be built by the Acquiring Authority and its contractors other than competently and in accordance with the Acquiring Authority’s own interests of minimising damage to third parties wherever reasonable to do so.
25. Likewise, it is absurd to ignore the evidence heard by the Inquiry from numerous professional witnesses as to the appropriate means of delivering the Order Scheme without giving rise to any serious detriment to MSCCL’s assets. As with any development project, these mechanisms do not have to be secured because the Acquiring Authority has its own incentives to build the project in that way. Why would a reasonable contractor adopt a practice which would cause damage, where it would be liable for such damage and when there is no need for it to occur?
26. MSCCL’s case appears to be premised on the basis of potential appointment of an unreasonable contractor, who would adopt practices that caused damage. This is not a reasonable basis upon which to approach the Order or its likely effects. The Inquiry heard no evidence whatsoever as to how or why MSCCL could have formed that view. It did not occur on Phase 1 and would not be expected to occur on Phase 2. As such, the Inspector and Secretary of State can place no reliance upon the inference MSCCL invites to be drawn as a matter of fact. It is also legally incorrect because the Acquiring Authority has, in any event, offered protective provisions equivalent to Schedule 13 (of the 1991 Act) in any event. Therefore, the Acquiring Authority cannot in fact proceed with such works causing injurious affection to MSCCL without consent from MSCCL. We address the purported differences between the Acquiring Authority’s incorporation of Schedule 13 protections and those proposed by MSCCL in section 7 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] and in text below.
27. The same point applies to the “assumptions” that MSCCL say have been made in relation to liaison between the parties by Mr Parsons,[[39]](#footnote-39) Mr McKimm,[[40]](#footnote-40) Mr Sephton[[41]](#footnote-41) (with the exception of sub-paragraphs c, e and g of paragraph 67 of MSCCL’s closing submissions [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)], which go to the issues of the ‘right to remain’ and the temporary acquisition of land and rights which are addressed in section 5 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] and below) and Captain Nicholson[[42]](#footnote-42). They are all assumptions that were either set out in the Acquiring Authority’s written evidence or which go to clarifying the same. There is nothing new.
28. Nor should any of this come as any surprise to MSCCL, given that throughout the lengthy discussions between the parties, the Acquiring Authority’s position has always been that any perceived risks can be mitigated satisfactorily through investigation, design, methodology and monitoring.
29. Nor can it reasonably be said to be anything other than construction of the Order Scheme is ‘business as usual’ for the Acquiring Authority. It is a sewerage undertaker itself, subject to health and safety obligations, and is an organisation that regularly plans and delivers successfully major infrastructure projects across the region. There is not a shred of evidence that it does so in a manner that causes any more disruption or inconvenience than is absolutely necessary, nor any explanation from MSCCL as to why it would be in the Acquiring Authority’s interests to do otherwise.
30. In any event, all aspects of those “assumptions”, whether accurately summarised by MSCCL or not, are secured in principle through the operation of the Acquiring Authority’s proposed schedule of protective provisions. Assumptions such as i) the adoption and observation of normal working disciplines, such as those common in the marine construction industry; ii) swinging cranes clear of passing traffic; iii) the management of competing access requirements; iv) minimising interference with canal traffic; v) removal of construction personnel from the cofferdam during passage of ships through Barton Locks; and vi) minimising any impact upon the normal commercial activities at Irlam Wharf, are all readily achievable (and can be imposed as conditions if MSCCL thought necessary and it reasonable to do so) through the consenting mechanism offered by the Acquiring Authority’s proposed schedule, just as is the case for the operation of Schedule 13 when the Acquiring Authority exercises its pipe-laying powers.
31. The same applies to ground investigation, testing and monitoring. Confirmation of the Order necessarily occurs prior to detailed design and construction of the project itself (as acknowledged by both Mr West and Mr Clarke during cross examination). There is nothing untoward about the Acquiring Authority having made the Order before concluding that detailed design. It is nothing more than an extension of standard practice for such projects.
32. When the detailed methodology is finalised just prior to construction, all necessary structural and geotechnical modelling of the outfall construction and its impacts on the wing wall and the Canal bank can be undertaken where required. Any risk of ground movement can be finally quantified and suitable monitoring and mitigation measures designed to minimise ground movements to ensure they do not reach the wing wall. None of this is precluded by confirmation of the Order. And in the consenting process offered by the Acquiring Authority, MSCCL will be able to withhold consent, or impose conditions, where reasonable if it considers that the methodology is not suitable, or inadequate information has been provided. There is, in fact, no basis for envisaging that there will in fact be any lack of information or concerns based on the expert way the Acquiring Authority undertakes these projects (see, for example, the completion of Phase 1). But MSCCL has the mechanism of protective provisions within the Schedule to the Order that the Acquiring Authority is proposing as a safeguard.
33. Furthermore, and as noted by Mr McKimm, when compared with structures such as the Barton High Level Bridge, the Barton Locks are not in fact an equivalently sensitive structure[[43]](#footnote-43). They are structures of differing design, function, construction and materials. But it is unnecessary to debate such points. If the MSCCL takes a different view and requires further assessment to be carried out beyond those undertaken by the Acquiring Authority by the time of detail design, on the basis that it is a “*historic and vulnerable structure*”[[44]](#footnote-44) or otherwise, it can identify that to UUWL as part of the consenting process.
34. Again, as described by Mr McKimm and Mr Parsons, the monitoring regime for a project of this kind is likely to include survey of surface targets set out in arrays across the line of the pipejacks, behind the wall of the cofferdam and across the canal bank. Their levels can be surveyed and recorded over time before, during and after construction to monitor changes in level due to construction activity[[45]](#footnote-45). Movement trigger levels can be based on the allowable ground movements determined during the detail design.
35. Further to the above, any additional mitigation measures sought by MSCCL can be considered if they were to become necessary, such as:
36. Ground treatment in the form of drilling and injection of grout in order to reduce the permeability and increase the stiffness of the ground thereby reducing ground movements.
37. Drilling and grout injection at the interface of the toes of the sheet piles and the sandstone rockhead[[46]](#footnote-46).
38. The design and construction of stiff supports to the cofferdam sheet pile walls to reduce the deflections which give rise to ground movements in front of the wall.
39. Excavation of the cofferdam in stages to allow ground movements to be monitored progressively.
40. None of the above was undermined – or even the subject of any meaningful challenge - by either of MSCCL’s witnesses that gave evidence as to construction-related issues. Indeed, and as noted above, both Mr West and Mr Clarke acknowledged at the outset of their oral evidence (before cross examination)[[47]](#footnote-47) that:
41. They were not suggesting that the Order Scheme could not be built;
42. They were not suggesting that the Order Scheme could not be built without inevitable damage to MSCCL’s assets.
43. The caveat that “*suitable agreements as to mitigation and control of works*” would be required ignores the practice of the Acquiring Authority in discussing such matters with MSCCL to date and, of course, the consenting mechanism that the Acquiring Authority is proposing by way of introduction of the protective provisions based on Schedule 13. As discussed below, none of the above requires any additional protection beyond the Acquiring Authority’s proposed schedule.

**Withdrawn Objections, Consequential Effects and Residual Points**

**CoSCSL, PSLL and PINL**

1. By letter dated 19 November 2018 [[PS/INQ/4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Let-CoSCoS-to-SoS-19.11.18.pdf)], CoSCSL withdrew its objection to the Order. By separate letters of the same date ([[PS/INQ/5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Let-PSLL-to-SoS-19.11.18.pdf)] and [[PINL/INQ/1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Let-PINL-to-SoS-19.11.18.pdf)]), PSLL and PINL also withdrew their objections to the Order.[[48]](#footnote-48)

**MSCCL**

1. By letter dated 4 December 2018 [[MP/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-December-2018-1.pdf)], MSCCL’s solicitors wrote to the Acquiring Authority’s solicitors setting out their proposals for resolving the outstanding issues remaining between the parties as follows (so far as is material):

“*Our client, the Manchester Ship Canal Company Limited (‘MSCCL’), is willing to withdraw its outstanding in principle objection to the Order, subject to an undertaking by your client, United Utilities Water Limited (‘UUWL’), that it will not apply to the Secretary of State for recovery of its costs from MSCCL in connection with the Order (‘the Offer’).*

*The Offer is also subject your agreement that the remaining aspects of MSCCL’s objection as to the scope of the protections that are required to avoid detriment to its undertaking can be dealt with by means of submissions to the Inquiry on alternative draft versions of the Order, in the event that the same cannot be agreed, along with any remaining issue as to the need for a right to remain to be included and the permanence of the retention of ownership by UU of plots 6Z and 6Q. MSCCL confirms that its submissions in these respects would be limited to the form in which the Order is confirmed, and not whether it should be confirmed as a matter of principle.*”

1. The Acquiring Authority’s solicitors responded on the same date confirming the Acquiring Authority’s acceptance of MSCCL’s proposals and its understanding that the objection was therefore withdrawn [[AA/INQ/79](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Laura-Thornton-United__-Utilities-Water-Limited-Ltr-dated-4.12.18....pdf)].
2. Therefore, the only residual points from MSCCL’s withdrawn objection are:
3. The right to “remain”;
4. The permanence of the retention of ownership by the Acquiring Authority of plots 6Z and 6Q; and,
5. The form of protective provisions within the Order.
6. In all three respects, the ‘terms’ of MSCCL’s withdrawn objection are such that those residual points are limited to the form in which the Order is confirmed, and not whether it should be confirmed as a matter of principle.

Proposed modifications to Order plots

1. Appendix DS43 [[AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf)] to the proof of evidence of Mr Sephton provides a ‘high level’ summary of the Order plots and their proposed uses. That summary is not repeated here.
2. The Acquiring Authority invites the Secretary of State to confirm the Order subject to only two minor alterations to the plots as detailed below. Those are the only plot changes that the Acquiring Authority is proposing. Both reflect reductions in the amount of land in the Order. Neither are controversial.

Plot 5T

1. The compound for the construction of the outfall would be situated on land to the east of Salteye Brook and to the north of the Canal. Further to advice received from the Acquiring Authority’s experts, and as part of the Acquiring Authority’s ongoing attempts to minimise the compulsory acquisition of land and rights where possible and appropriate, the Acquiring Authority has been able to limit the construction of the works (including any requirement to construct the Outfall Tunnel from Shaft 04) without needing to use the section of Plot 5T lying to the north-west of the projection of the north-western boundary to Plot 5L [see paragraphs 2.31 and 4.160, and section 5 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)].
2. In this regard, the extent of Plot 5T can be reduced as shown on Drawing No 7570/80023696/FIG 001 Rev A: see Appendix 2.5 to the proof of evidence of Mr Parsons [[AA/5/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_C-Anthony-Parsons-FINAL-Appendices.pdf)]. Such reduction arises as a result of detailed consideration as to how a contractor could most efficiently use the available space.
3. In light of the reduced impact that such a proposal would have, the Acquiring Authority considers that there can be a straightforward modification of the Order.

Plot 3

1. In consequence of the withdrawal of CoSCSL, PSLL and PINL’s objections, the Acquiring Authority invites the Secretary of State to confirm the Order subject to the deletion of Plot 3. [Inspector’s note: Plot 3 is shown on [CD/CPO/2.1](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/CD.CPO_.2.1-Order-Map-Plan-1.pdf)]
2. Plot 3 provides an access route across the stadium car park to a works site. One of the bases for the withdrawal of those objections was that the Acquiring Authority has reached agreement with those landowners to remove Plot 3 from the Order with an agreement in place for an alternative access route providing all of the same rights, but acquired by agreement. The alternative access route is shown for illustrative purposes on [[AA/INQ/81](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_81.pdf)].
3. The agreed alternative more closely reflects what is on the ground and avoids a piece of land that the objectors did not want the access route over. It also takes a more convenient (i.e. direct and straightforward) route, reducing the amount of the land in the Order.

Residual point 1: the right to “remain”

1. During the course of the Inquiry, MSCCL has suggested that where rights to “remain” on parcels of land are sought these rights either: (i) go too far (because in essence they amount to an acquisition of possession akin to freehold ownership); or (ii) are superfluous.
2. As set out in its Note to the Inquiry [Inspector’s note: this is understood to be [AA/INQ/29.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_29.5-Right-to-Remain-Note.pdf)], the Acquiring Authority submits that both suggestions are mistaken. That note applies the principles set out earlier to the present case at paragraph 8 of the Note to the Inquiry as follows:

“*8. Applying these principles to the present case:*

*(1) The context here is (a) the statutory provisions under the right will be acquired and (b) the other rights which are to be acquired under the CPO (and in particular the other rights specified in the paragraph in which the right to “remain” is specified).*

*(2) Given the statutory context, it is quite plain that what is intended to be acquired is a right over land not the acquisition of the land itself. The right is an entirely ancillary right to allow UU to ‘remain’ on the land for the purposes of undertaking the works it acquires the right to undertake. The right to “remain” only appears in the context of paragraphs giving a right of “entry”: it makes explicit that UU will have a right not only to enter but to remain for the purposes within each paragraph. This is both the literal and natural construction in the context.*

*(3) Given that this is what is intended it is also clearly intended that the right to remain is one to be exercised only for the same purposes as or in conjunction with the other rights to be exercised in the paragraph specifying the rights and that such a right cannot be used so as wholly to oust the owner (MSCCL) from ownership (see above).*

*(4) While it might be argued that such a right would be implicit in any event, it would be a mistake to leave it to future argument over whether this is so. In this case, rather than rely on the need in the future to interpret whether an ancillary right to remain in conjunction with the exercise of the other rights granted was intended by the Secretary of State, it has been decided to spell this out. This is good drafting practice.*”

1. MSCCL’s closing submissions list plots in its ownership over which the right to “remain” is proposed to be taken.[[49]](#footnote-49)
2. By letter dated 22 August 2018 [[MP/INQ/28](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-UU-22-August-2018-1.pdf)], MSCCL responded to the note.
3. Part of MSCCL’s response is by way of suggesting that: i) although the note states at paragraph 8(2) that a right to “remain” only appears in the context of other rights of ‘entry’ onto land, it does not explain why the Acquiring Authority has not sought a right to “remain” on plots 2, 2A, 2H, 2J, 2M and 2N; and ii) the note does not explain why compulsory acquisition of a right to “remain” was necessary in respect of Plot 2K, but not in respect of Plot 2J (with the same argument being said to apply “equally to Plots 2A, 2H, 2M and 2N”).[[50]](#footnote-50)
4. There are a number of points in this regard:
5. First, there is no ambiguity regarding the inclusion of “remain” on plots in MSCCL ownership. They all have “remain” as a right.
6. Second, it is curious that MSCCL is now taking a point in respect of land not in its ownership. Plots prefixed with “2” are not plots in MSCCL’s ownership. Rather, they are PINL plots, and in any event, PINL has withdrawn its objection without any further comment as to the right to “remain”. As such, the Inspector and Secretary of State can be reassured that PINL are content as to both i) the explanation provided for the inclusion of the right to “remain”; and ii) that the acquisition of said right is necessary in the context of the Order.
7. As to the suggestion that Mr Sephton “accepted that in terms of practical implications he did not identify anything that the right to “remain” added to the other rights that the Acquiring Authority seeks to acquire”, the Inspector will have his own note that demonstrates that this is not correct. The Acquiring Authority’s notes record that Mr Sephton did not, in fact, accept this. Rather, he suggested that the Acquiring Authority would “remain” to undertake the works.
8. As to the criticism of Mr Sephton’s Appendix DS43, it is misplaced. The Appendix does not form part of the Order. Rather, it provides a ‘high level’ description of the proposed works in each plot. Its purpose was not to justify the right to “remain”. That has been done through the Acquiring Authority’s submissions (as identified above). Although a legal matter (as MSCCL knows), in cross examination, Mr Sephton referred to the inclusion of remain as potentially being for two reasons: i) leaving monitoring in-situ; and/or ii) the length of time the plot would be occupied for an activity.
9. The points made by Mr Sephton are borne out by a consideration of those plots where the right to “remain” is sought and the associated activities. The right to “remain” has been omitted where the nature of the work in that area is very transient in nature and is not likely to be for a continuous period of more than a couple of days.
10. Applying this principle to the plots identified by MSCCL:
    * + - 1. Plot 2K is in the outer corridor of the tunnel and the right to “remain” right is consistent with the other outer corridor plots. 2K is split off from 2B (also outer corridor) because it encompasses the Barton High Level Bridge piers (the concrete piers and also the gap between them which can be used for access to the plots to the north).
          2. Plot 2J is not part of the outer corridor but does still include the Barton High Level Bridge pier (the northern extent of 2J is the northern extent of the pier).
          3. Looking at the southern side plots 2F, 2L and 2M this is a mirror of the northern plots; with 2F and 2L having a right to remain (as they are in the outer corridor) and 2M not having the right to remain as it is outside of the outer corridor but has the Barton High Level Bridge pier within the boundary (as per 2J).
          4. Plot 2 (to the north of 2J) and plot 2H (to the south of 2M) do not have the right to “remain”.
          5. Plots 2P and 2Q (to the north of Plot 2) do have the right to “remain”. In plots 2P and 2Q it would be the Acquiring Authority’s intention to occupy these plots for a period of time (to undertake the abandonment works).
          6. In Plots 2K and 2J it is possible that the Acquiring Authority would occupy these areas (the gap between the pier columns) for a period of time to undertake the trial trenches (for test piles) or other mitigation works and the Acquiring Authority would occupy for several weeks during the tunnelling for the extensive monitoring that would be required.
          7. Although 2J, 2M and 2H would be occupied by plant (mobile elevated work platform (‘MEWP’) and operatives) for fixing and maintaining the bridge monitoring it would be short duration (1 to 2 days at a time), intermittent and transient.
          8. Plot 2 again would be used for fixing and maintaining monitoring (as Plot 2H) and for access to 2P. Therefore, the occupation would be of a more intermittent and transient nature.
          9. Plots 2A and 2N; these are the abandonment works for the culverts below the WGIS road. There would be no surface access over these plots. Abandonment would be undertaken from Plot 2Q (has the right to “remain”) and from within Eccles WwTW by means of “pumping” grout into the culverts from the access points in 2Q and the WwTW.
11. Further to the above, buried within MSCCL’s submissions and correspondence on the point is an acknowledgement that in its own “*sample of recently confirmed compulsory purchase orders and development consent orders which contain compulsory acquisition powers show that in all but one no right to “remain” was included*”[[51]](#footnote-51). In other words, in that sample there was and is an example of a right to “remain” having been included; namely the London Borough of Hounslow (Land South of Brentford High Street) Compulsory Purchase Order 2017. This in itself demonstrates that such rights are properly included on compulsory purchase orders.
12. MSCCL’s response [[MP/INQ/28](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-UU-22-August-2018-1.pdf)] raised the following hypothetical question:

“*If, for example, UUWL acquires a right to enter MSCCL’s land to construct an access road, is it really UUWL’s case that such a right would be ineffective (or could properly be argued to be ineffective) if it were not accompanied by the grant of a right to “remain” on the land? The reasoning of the House of Lords in Moncrieff v Jamieson would seem to demonstrate the opposite.*”

1. If that is also MSCCL’s case, then the argument is somewhat academic. The Acquiring Authority considers that the right to “remain” does add something further as a matter of drafting. If MSCCL disagrees, MSCCL’s only point is a drafting one and there is no difference of substance between the parties. The matter then becomes a question of what constitutes best drafting.
2. This is essentially the point raised in Pinsent Masons’ letter of 20 November 2018 [[AA/INQ/54](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-54.pdf)] as follows:

“*It is our understanding from your letter of 22 August 2018 (MP/INQ/28) that MSCCL accepts that where a right to remain is sought as a right ancillary to other rights (such as access rights) that the right to remain is implicit within the order sought. We are happy to accept this position and do not dispute it but consider it a matter of good drafting practice to make such ancillary rights express wherever possible to avoid misinterpretation or dispute in future.*

*We do not intend to respond to your letter of 22 August 2018 beyond what is set out above as we believe this matter is now best left as a submission point*.”

1. Extraordinarily, MSCCL now describes this response as “*wholly inadequate*”. It is not explained why it is said to be “*wholly inadequate*”. It is not just adequate, but clearly sets out the Acquiring Authority’s position that there is common ground between the parties on what is meant by the right, but just a difference as to whether or not it is necessary to set it out expressly.
2. MSCCL’s closing submissions do not suggest that there is any misunderstanding or change of view that “*MSCCL accepts that where a right to remain is sought as a right ancillary to other rights (such as access rights) that the right to remain is implicit within the order sought*”.
3. It is, therefore, the very definition of a drafting point; not least because – as noted above - the ‘terms’ of MSCCL’s withdrawn objection are such that its submissions are limited to the form in which the Order is confirmed, and not whether it should be confirmed as a matter of principle.
4. The Acquiring Authority’s position remains the same. It is appropriate and better to avoid ambiguity by having the right to remain set out expressly, rather than (as MSCCL say) it already being implicit. It is very difficult to see what sensible argument MSCCL can have with such right being made explicit if they accept that it exists implicitly. If the Secretary of State were to remove express reference to it, it would have to be on the basis (as MSCCL submit) that such right is implicit.

Residual point 2: ownership of Plots 6Z and 6Q

1. The Order includes powers to acquire land and rights for the whole of the Order Scheme. Rather than seeking to acquire land outright, the Acquiring Authority has sought rights over land wherever possible in order to seek to minimise the interference with the land owners’ interests and to allow them to retain the freehold interest. However, there is no power to acquire land on a temporary basis (as is common with such compulsory purchase powers), so where land is required temporarily (rather than just rights), it is accepted practice that acquisition has to be made of it permanently.
2. Given the significant size of certain structures[[52]](#footnote-52) as well as the consequent scale of interference with the owner’s beneficial use of the land, the Acquiring Authority considers that the land in question is not a part of the Order Scheme which it can seek to secure through the compulsory acquisition of rights and MSCCL do not dispute this.
3. It is against that context that the Acquiring Authority seeks to acquire the freehold over Plots 6Z and 6Q, which lie adjacent to the wing wall structure of Barton Locks.
4. The 1991 Act does not permit the compulsory acquisition of a ‘licence to occupy’. Theoretically, certain areas could be occupied pursuant to a licence granted by the owners on appropriate terms rather than through exercise of its acquisition rights. If such a licence had been granted on appropriate terms and providing for reasonable compensation arrangements then the Acquiring Authority would have (and would still consider) undertaking not to implement the powers sought in the Order to permanently acquire the relevant area. However, MSCCL has not been prepared to grant such a licence, so to date the Acquiring Authority has not been able to secure such a licence. The Order therefore necessarily seeks the freehold interest in order to ensure that the Order Scheme can proceed if no appropriate agreement is reached.
5. In this regard, it is inaccurate to suggest that Mr Sephton’s evidence was to the effect that the land “*would need to be returned to [MSCCL]*”. Again, the Inspector will have his own note which contradicts this claim. The Acquiring Authority’s note is that Mr Sephton stated during cross examination that he had been informed that it was the “*intention*” that those plots “*would be returned upon completion*”, rather than that the land would “*need*” to be returned to them. That is and remains the Acquiring Authority’s intention.
6. MSCCL include provision dealing with surrender of such land or rights on the shopping list of items to be included in its scheme for approval. This is unnecessary in principle, for the reasons dealt with in more detail in Section 7 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)]. As part of the consent process already accommodated in the Acquiring Authority’s proposed schedule (reflecting Schedule 13), any necessary and reasonable conditions as to the use of such land or rights (including provisions for return of the land) can be dealt with as part of that consent process. It is unnecessary to include such matters on a shopping list.[[53]](#footnote-53) That is a complete answer to MSCCL’s concerns. MSCCL do not explain how or why they contend this mechanism does not overcome their concerns.
7. In addition, MSCCL now appear to criticise the Acquiring Authority’s reference at the Inquiry to the Access to Neighbouring Land Act 1992 (the ‘ANLA 1992’) and reference made to the Crichel Down Rules. Neither criticism is well-founded. The Acquiring Authority referred to both not as providing rights of return, but as additional protections in addition to those which are already being provided by the Acquiring Authority’s proposed schedule. Thus, the Acquiring Authority referred to MSCCL’s rights under the ANLA 1992 as part of the protections that already exist, not as a statutory mechanism that would give MSCCL the return of the land in question (that being a matter that will be dealt with as part of the consent process).
8. The ANLA 1992 provides a statutory process to enable MSCCL access over the land to be acquired by the Acquiring Authority under the Order (pending its return) for carrying out works to any of their land. This would enable them to seek access over the land acquired where necessary for it to obtain access to other parts of the bank or Canal bed that remained in its ownership.
9. Likewise, reference was made to the Crichel Down Rules in oral submission to reflect the general principles applicable to disposal of land no longer required after compulsory purchase. However, it is agreed and recognised that does not supplant the statutory provisions under the 1991 Act, and s.156 of the 1991 Act in particular. However, that statutory provision adds a specific layer of statutory protection for MSCCL, rather than weakening the position. The Acquiring Authority will be unable to dispose of the land in question without authorisation from the Secretary of State. This therefore ensures (for example) that the Acquiring Authority does not dispose of the land to any other party without authorisation, which ensures that MSCCL’s interests will be properly considered. There is therefore a clear and unambiguous protection for MSCCL in s.156 of the 1991 Act against the Acquiring Authority disposing of the land in question to a party other than MSCCL as and when it comes to dispose of the land in question.
10. Accordingly, MSCCL’s interests are fully protected in respect of the acquisition of Plots 6Z and 6Q that will occur under the Order. That acquisition can only take place pursuant to the Order itself, which is therefore to give effect to the stated purposes of the Order. In order to carry out the necessary works to the bank, consent will be required from MSCCL under the consent process that reflects Schedule 13 that the Acquiring Authority has set out in its schedule. MSCCL is able to withhold consent on any reasonable grounds, or impose conditions on such consent. Return of Plots 6Z and 6Q on appropriate terms post construction are clearly matters that are capable of being addressed in that consent process (and indeed the Acquiring Authority has already been in discussions with MSCCL on that basis). MSCCL has rights under the ANLA 1992 and is protected against the Acquiring Authority’s disposal of Plots 6Z and 6Q to any other party because of the authorisation process required of any such disposal under s.156 of the 1991 Act.
11. Accordingly, whilst MSCCL has included the question of return of land as part of its shopping list of items for a scheme, it is completely unnecessary to do so given the position summarised above and set out in more detail in section 7 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] and below.

**No Impediments to the Scheme and the Availability of Finance**

1. There are no impediments to the Order Scheme proceeding, subject to confirmation of the Order.

No remaining objections

1. The Order Scheme now faces no remaining objections.

Planning permission

1. The Acquiring Authority has been granted all necessary planning consents to construct the Order Scheme. All other parts of the Order Scheme are either not ‘development’ (as defined in the Town and Country Planning Act 1990, therefore not requiring planning permission) or the Acquiring Authority can carry them out under its permitted development rights.
2. The relevant parts of the Order Scheme have the benefit of planning permission reference 17/70871/FUL, dated 7 June 2018. As such, those relevant parts have been fully – and recently - assessed against and found to be in accordance with national and local planning policy, and the current and proposed uses for the Order Lands.
3. It is noteworthy in this respect that MSCCL objected to the most recent grant of planning permission (in contrast to its previous attitude when it was being cooperative). However, planning permission was granted after detailed consideration of those objections, which were therefore found not to be well-founded. Despite threatening legal action (including that based on environmental impact assessment grounds) and having the ability to challenge any such permission, MSCCL did not bring any legal challenge to the grant of such permission. It is clearly now well out-of-time for doing so. There is therefore a lawful, extant, planning permission for the necessary development to proceed which has properly addressed the necessary environmental considerations and which MSCCL clearly recognise as lawful.

Highways England

1. Discussions with Highways England on the implementation of the Order Scheme and its potential effects through ground movement on the M60 motorway have been on-going for a number of years. Where relevant, these discussions were held jointly with representatives of the Peel Group, given the construction of the WGIS Road, also close to the M60 motorway.
2. Following initial discussions with Highways England in 2011 it was agreed Outline Approval In Principle (‘O/AIP’) would be obtained for the two distinct work areas that had the potential to affect Highways England assets: i) the shaft and tunnelling works at M60 junction 11 (these parts of the Full Scheme have already been carried out); and ii) the proposed tunnelling works to cross below Barton High Level Bridge between piers M and N (part of the Order Scheme).
3. In respect of the proposed tunnelling works to cross below Barton High Level Bridge, the Acquiring Authority presented a “zero impact” solution (i.e. no movement of the bridge foundations was predicted as a result of the tunnelling works). The Acquiring Authority’s O/AIP submission also contained proposed monitoring location points and protocols for data capture and reporting.
4. Highways England (or the Highways Agency as it was then) issued its acceptance of the O/AIP on 30 October 2013. The O/AIP constitutes outline technical approval of the Acquiring Authority’s proposed Order Scheme and its method of works. Although the original O/AIP lapsed through passage of time, it was resubmitted for approval and re-issued on 28 June 2018 [[AA/INQ/21](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_21-BHLB-OAIP-BD2-12-FINAL-rev-6-with-cert.pdf)].
5. The O/AIP approach (and Highways England’s acceptance of the Order Scheme as part of that approach) provides the Acquiring Authority with the confidence that Highways England would in due course approve the Detailed Acceptance in Principle (‘D/AIP’) providing the principles and conditions of the previously accepted O/AIP are followed.

Flood Defence Consent

1. Under s.109 of the Water Resources Act 1991 all works within eight metres of the top of a bank of a watercourse require a Flood Defence Consent. The EA granted a permanent Flood Defence Consent for the works adjacent to Salteye Brook (the retaining wall and Shaft 04) on 8 September 2014. This consent was extended by 12 months. Although a new Flood Defence Consent (now known as a Flood Risk Activity Environmental Permit) would now be required, there is no reason to consider that this will not be granted at the appropriate time as previously; not least because neither the EA nor the Lead Local Flood Authority objected to the relevant planning applications, nor did they in relation to the previous, almost identical, schemes.[[54]](#footnote-54)

Environmental Permits

1. The Environmental Permit process pursuant to the Environmental Permitting Regulations is a separate one to the compulsory purchase process. It is not one that is usually completed in advance of the physical completion of the works.
2. Without prejudice to that general point, a discharge permit will be required from the EA to permit the discharge from the following into the Canal at the new outfall point:
3. the Eccles WwTW Final Effluent;
4. the Eccles WwTW Inlet Overflow;
5. Eccles WwTW Storm Tanks Overflow; and
6. SAL0018 (Winton Outfall).
7. The Acquiring Authority will also need a variation to the permits which cover discharges to Salteye Brook from overflows to cover the continued intermittent discharge during large rainfall intensity and duration events.
8. The Acquiring Authority has submitted details to the EA explaining flows and storage volumes in the system, together with the new grid reference for the proposed new outfall location. For the Eccles WwTW final effluent output, only a new grid reference will be required. For each of the outputs referred to above, the EA is entitled to request additional information when considering the Acquiring Authority’s request for a new discharge consent.
9. In respect of these outputs, the Acquiring Authority has already submitted a report to the EA (the Manchester Trunk UIDs Change Protocol C Study Solutions Report – February 2013 [[CD/EA-RFI/24](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.EA_.RFI_.24-UU-Manchester-Trunk-UIDs-Change-Protocol-C-Study-Solutions-Report-version-1.2-dated-February-2013.pdf)]) with all the information it requires, and with details of the Order Scheme solution selected by the Acquiring Authority. The Solutions Report was approved by the EA.
10. Since that time, the EA has been kept fully informed as to developments in relation to the Order Scheme’s delivery. Indeed, part of the Acquiring Authority’s motivation for completing Phase 1 of the Full Scheme was in order to provide the EA with reassurance as to its ongoing commitment to delivering the solution for Salteye Brook.
11. Further to the above, MSCCL has engaged with the EA on a number of occasions in order to advocate for reconsideration of the solution and/or in an attempt to persuade the EA as to the merits of a number of its technical objections to the confirmation of the Order.[[55]](#footnote-55) In particular, as part of its objection to the Acquiring Authority’s application for planning permission, MSCCL forwarded to the EA all of its process engineering and water quality evidence. It did so in an attempt to persuade the EA that there was some merit in Mr Perry’s – now abandoned - ‘sludge in pipe’ theory (which the Inquiry heard was in fact based upon significantly misleading material from Mr Perry). Despite having been bombarded with these objections in this wholly disproportionate manner, the EA did not object to the application.
12. Of its own accord, the Acquiring Authority has also updated the EA as its own evidence to the Inquiry has been refined as part of its pre-application discussions: see [[AA/INQ/28](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_28-PM-L-Mr-Sproule-16072018.pdf)] and the documents thereafter, which follow on from the EA’s request for some further modelling work related to storm flows.
13. As part of that submission, the Acquiring Authority provided the further modelling work requested by the EA along with all advice received from Professor Balmforth (who separately addressed the different issue that MSCCL/PINL attempted to argue regarding FE sediment in [[AA/3/R2/](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_3_R-Appendix-2-Eccles-CPO__-Outfall-Tunnel-DB-Technical-Memo-v02.pdf)Appendix 2], which neither the Acquiring Authority nor Professor Balmforth considers will arise). It will be recalled that this information was provided to the Inquiry for the sake of completeness, whilst recognising that this process is not strictly material to the CPO at all.
14. As will be seen from that correspondence, the EA accept the validity of the Acquiring Authority’s modelling, and that it demonstrates there will be no adverse effect on the Canal. The EA is proposing a temporary post-implementation monitoring condition to measure the predicted performance of the tunnel. In principle, the Acquiring Authority would be prepared to accept such a condition on the prospective environmental permit, having satisfied itself of the validity of the predicted performance of the tunnel itself. In doing so, the Acquiring Authority would work constructively with the EA in order to explore the technical and practical means of undertaking any monitoring associated with the operation of any such condition.
15. Further correspondence then followed until October 2018 [[AA/INQ/55](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_55-UU-EA-Correspondence.pdf)], when the Acquiring Authority provided the EA with:
16. A copy of its “*Eccles CPO, Storm Sediment Water Quality Assessment and Sedimentation Supplementary Report, Date: 24th October 2018 Version: 01*” [[AA/INQ/50.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Sediment-Report-FINAL.pdf)]. This report provides further information which will support future pre application permitting discussions in respect of the point raised by the EA regarding uncertainty associated with the settlement and re-suspension of sediment and therefore the likely consideration of a requirement for time-limited post operational monitoring of sediment depth in the tunnel.
17. A copy of a further opinion prepared by Professor Balmforth [[AA/INQ/50.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/DJB-Opinion-Final.pdf)], in which he concluded that sedimentation “*is very unlikely to be a problem in the tunnel*”, even from a maintenance perspective.
18. In light of the above, therefore, the Inspector and Secretary of State can be reassured that the EA is fully informed as to developments. There is no reason to believe that the EA will not grant the necessary discharge consents in advance of flows being conveyed to the new discharge point to the Canal. To the contrary, the EA has indicated such permit is likely to be issued. The Acquiring Authority will inform the EA of the dates on which they expect to be discharging at the new outfall to the Canal, and it would be normal practice for the EA to issue the revised permits shortly before the expected date when fluids will be discharged from the new outfall.
19. Of course, it is also relevant to note that MSCCL no longer advances any objection in principle to the Order on the grounds of impediments.

Finance and funding

1. If the Order is confirmed, there will be no impediment to the Acquiring Authority raising the funds for the compulsory purchase of the land and completing the project delivery of the Order Scheme. The Acquiring Authority has sufficient funds available to acquire the necessary land and rights and to carry out the Order Scheme. The Acquiring Authority is ready to engage contractors to construct the Order Scheme as soon as it has acquired the necessary land and rights.
2. Finance for the Order Scheme is to be provided in its entirety by the Acquiring Authority and the funding for the Scheme was approved in June 2013 via the Acquiring Authority’s CIC acting under delegated powers from the company’s Board. The Full Scheme has already been presented before CIC on numerous occasions.[[56]](#footnote-56) This approval has been periodically reviewed and updated since June 2013, for example at the CIC meeting in October 2017 and, very recently, full Board approval was obtained on 22 May 2018.[[57]](#footnote-57) The latest best estimate of the cost to complete the Scheme remains within the Company Business Plan and as such is available immediately.
3. As such, the CIC are fully aware of the current situation with regards to the delivery of the project. The Board of the Acquiring Authority have also been kept fully abreast of the current position regarding the delivery of this scheme. In accordance with normal procedure, each time the Full Scheme has attended the CIC, the Acquiring Authority has both requested financial sanction and provided an update on the latest best estimate to complete the project.
4. Upon confirmation of the Order, the remaining work to complete the project will be commercially tendered. At this point, the project will return to CIC for its final sanction approval to complete the project.
5. Again, it is relevant to note that no objector has contended that there is any impediment to the funding of the project to be secured by the Order.

**Special Considerations Affecting the Order Lands**

The statutory position

1. The Order Lands includes land, or apparatus belonging to another statutory undertaker, namely MSCCL.[[58]](#footnote-58)
2. As noted above, s.155(1) of the 1991 Act enables the Secretary of State to authorise the acquisition of rights by the Acquiring Authority as a relevant undertaker where this is “*required by the undertaker for the purposes of, or in connection with, the carrying out of its functions*”. S.155(4) of the 1991 Act provides that the Acquisition of Land Act 1981 (‘the 1981 Act’) shall apply to any compulsory purchase order made under s.155 (1) and that Schedule 3 to the 1981 Act applies to the compulsory acquisition of rights by the creation of new rights.[[59]](#footnote-59)
3. The 1981 Act contains the procedure through which the confirmation of a compulsory purchase order is obtained from the Secretary of State, as the confirming authority.
4. S.16 of the 1981 Act and Part II of Schedule 3 of the 1981 Act apply where land is comprised in a compulsory purchase order, or new rights are proposed to be acquired over land, that has been acquired by statutory undertakers for the purposes of their undertaking respectively.
5. S.16 of the 1981 Act applies where land comprised in a CPO includes land acquired by a statutory undertaker for the purposes of their undertaking, and a representation has been made by that statutory undertaker to the appropriate Minister which satisfies the appropriate Minister that any of the said land is used for the purposes of that statutory undertaking or any interest in the land is held for those purposes, and the representation is not withdrawn.[[60]](#footnote-60)
6. In such a case, the CPO shall not be confirmed to authorise the purchase of such land except for land where the appropriate Minister is satisfied that its nature and situation are such that it can be purchased without serious detriment to the carrying on of the undertaking (or replaced by other land without serious detriment) and the Minister certifies accordingly.[[61]](#footnote-61)
7. Paragraph 3 of Part II of Schedule III of the 1981 Act applies with like effect to the acquisition of new rights over statutory undertakers’ land on the acceptance of a relevant representation.
8. By letter dated 20 September 2017, the Secretary of State for Environment, Food and Rural Affairs stated that MSCCL’s objection was considered to be a representation pursuant to s.16 of the 1981 Act. Accordingly, the Secretary of State is satisfied that MSCCL’s land which is comprised in the compulsory purchase order is used for the purposes of the carrying on of MSCCL’s undertaking, or an interest in that land is held for those purposes. The compulsory purchase of that land cannot be confirmed unless the Minister is satisfied that the nature and situation of the affected land are such that the land can be purchased and not replaced without serious detriment to the carrying on of MSCCL’s undertaking and the appropriate Minister certifies accordingly.
9. In this regard, it is relevant to note that MSCCL have only raised the point in relation to operational land to be acquired (i.e. s.16 of the 1981 Act), rather than rights (i.e. Paragraph 3 of Part II of Schedule III of the 1981 Act). As such, the Acquiring Authority considers that the substantial detriment certification procedure only applies to land that it is seeking to acquire and not to any of the rights that it is seeking to acquire. This is not a point raised or addressed at all by MSCCL in evidence or submissions. But in any event there is no substance to any of its previous concerns in respect of detriment upon the taking of land; not least because there is no longer any objection ‘in principle’ or, therefore, any evidence to support its assertions as to the same. However, the Acquiring Authority’s submissions and evidence have in fact covered the position as if both s.16 and Schedule III provisions were engaged and demonstrated to material detriment at all (in terms of either), let alone serious detriment (in terms of either).[[62]](#footnote-62)

The evidential position

1. MSCCL has now withdrawn any objection in principle to the making of the Order over land used for its undertaking. It therefore accepts that the acquisition of its land and acquisition of the various rights can be included without causing serious detriment to its undertaking, subject only to the securing of what it considers to be appropriate protections. The only remaining issue in dispute is as to what protections are justified.
2. The Acquiring Authority notes that a significant proportion of MSCCL’s closing submissions are devoted to providing a purported account of negotiations between the parties in relation to i) a protective provisions schedule, and ii) an asset protection agreement (‘APA’). There are three short points to be made in this regard:
3. First, the account provided is tendentious and partial. It is neither a full, nor accurate summary. Most of the relevant correspondence is before the Inquiry.[[63]](#footnote-63) The remaining ‘open’ correspondence is appended to these closing submissions. The Inspector and Secretary of State will – so far as it is considered to be of relevance – be able to see what was, and what was not, being offered and/or discussed at each relevant point. It is both unhelpful and misleading for MSCCL to seek to provide its own tendentious summary of those aspects that it considers assists the submissions that it seeks to make[[64]](#footnote-64).
4. Second, MSCCL’s account fails to recognise the fundamental difference between past negotiations with reference to the parties’ positions at a certain point in time as compared with what is relevant for the Order and the present decision. The negotiations covered in the relevant correspondence were being conducted against a backcloth of MSCCL’s detailed and vigorously pursued objection in principle to any CPO and any scheme at all. MSCCL has, very belatedly, now withdrawn that objection as at the close of the Inquiry. This is relevant in two regards:
   * + 1. The withdrawal of MSCCL’s objection is clearly relevant to the absence of any serious detriment to MSCCL’s undertaking at all. It is, for legal purposes, determinative that there will be no detriment as there is now no evidential basis for suggesting to the contrary.
       2. The Acquiring Authority’s repeated attempts to reach reasonable agreement with MSCCL can now be seen against the true context of MSCCL’s strenuous efforts to frustrate such agreement by pursuit of technical objections, each and every one of which has been belatedly abandoned as capable of founding an objection in principle. For example, the early weeks of the Inquiry and the bulk of the evidence was taken up with the Acquiring Authority having to respond to MSCCL’s objection based upon the risk of sedimentation in the CPO tunnel and a multitude of alleged consequential effects on water quality and maintenance. The Inspector will now be reporting that objection to be groundless, based as it was upon the misleading evidence on behalf of MSCCL. The Inspector will also be reporting that MSCCL eventually abandoned that central part of its case in October 2018, after the misleading evidence was exposed through cross-examination. Thereafter, MSCCL persisted in pursuing other central parts of its objection (such as in relation to water quality and ground movement) for a further two months, before – on day 28 of the Inquiry – withdrawing those as a basis for in principle objection as well. As the relevant correspondence and the inquiry demonstrate, MSCCL did not make such concessions freely; each had to be extracted like a stubborn tooth, against MSCCL’s will. The negotiations properly reveal the many attempts by the Acquiring Authority to address what would be reasonable concerns on the part of a statutory undertaker, whilst at the same time having to respond to the unreasonable and unfounded objections along with the moving target of MSCCL’s case.
5. Third, any detailed account is unnecessary for a decision on the Order. The Acquiring Authority’s proposed schedule provides all that is required for the genuine protection of MSCCL’s undertaking. MSCCL does not explain why it does not. But MSCCL has put forward its own schedule anyway. Debate about the course of the negotiations is therefore academic.
6. At an earlier point in time MSCCL’s position may well have been that “*in the absence of an asset protection agreement to secure and regulate these matters…the implementation of the Order Scheme pursuant to the Order would cause serious detriment to MSCCL’s undertaking*”. However, it cannot properly adopt that position now. After some seven weeks of evidence, MSCCL has withdrawn its ‘in principle’ objection to the Order and abandoned that stance. It now accepts that an asset protection agreement does not need to exist before the Order is made. Any necessary protection can be articulated on the face of the Order. In any event, the evidence emphatically shows that no serious detriment will be caused to the carrying on of MSCCL’s undertaking through the confirmation and implementation of the Order. The Secretary of State has conclusive reassurance that MSCCL’s land or interests (and/or rights over them) can be purchased and not replaced without any material detriment at all. Indeed, if MSCCL still considered that serious detriment would be caused in the absence of an asset protection agreement now then it would (should) not have withdrawn its objection. In the same vein, had MSCCL considered that there remained related issues potentially giving rise to issues of detriment in the absence of an asset protection agreement, then it would (should) have proceeded to call oral evidence from Messrs Gavin, Blythe and Rhodes. It did not.
7. On the facts, it is not difficult to see why it took that decision as anything else would have been patently unreasonable. Take, for example, the statutory functions and duties that MSCCL lists in describing its statutory undertaking.[[65]](#footnote-65) None relate to issues of process engineering, water treatment, water quality or – properly considered – engineering matters relating to the construction of an outfall. Even more pertinently, not a shred of evidence was heard from MSCCL’s witnesses as to how the issues raised in its objection interacted with, let alone affected, those functions and duties.
8. The closest that the written evidence came to expressing any meaningful interaction at all was in Mr Rhodes’ acknowledgement that MSCCL relies upon the discharges from WwTW to provide water for navigation of the Canal.[[66]](#footnote-66) Yet as the outfall will continue to provide water for the Canal, it is impossible to see how the Order Scheme could be detrimental in anyway – it is beneficial. In fact, presentation of the oral evidence from MSCCL’s witnesses was very different to the impression that would have been gained simply from having their evidence in writing (as section 4 of the Acquiring Authority’s closing submissions illustrates). For example, all of the engineering witnesses accepted that – provided that MSCCL could avail itself of a Schedule 13-type mechanism – its undertaking would be adequately protected.
9. The Acquiring Authority notes that the summary of evidence relied upon by MSCCL is not only partial (in both senses of the word, as section 4 of the Acquiring Authority’s closing submissions illustrates), but also flawed. This undermines the basic premise of MSCCL’s submissions as to the required level of protection on the face of the Order itself. MSCCL’s submissions in this respect are at odds with the evidence given by its own witnesses and the withdrawal of its ‘in principle’ objection. It is nothing more than an attempt to breathe life back into that objection. In suggesting that “*absent the modification of the Order so as to include the Schedule in the form it suggests, the Secretary of State will not be able to be satisfied as to the absence of serious detriment*”,[[67]](#footnote-67) MSCCL is acting contrary to the evidence given by its own witnesses and now trying to lock the stable door long after the horse has bolted. MSCCL’s own engineering witnesses accepted that the basic principles embodied in the Schedule 13 protection would provide them with the necessary protections, as is obviously the case on legal analysis (as set out further below).
10. Similarly, MSCCL’s argument that “*the existence of* [asset protection] *agreements is typically the basis for statutory undertakers either (a) not objecting to and or (b) withdrawing any earlier or holding objection*”[[68]](#footnote-68) is simply not correct. It also sets up another straw man.[[69]](#footnote-69)
11. MSCCL’s objection in principle was expressly withdrawn **in the absence** of any such agreement being in place and without any requirement that it be in place. Therefore, its claim as to what can occur with other statutory undertakers has no relevance. There is no valid comparison. But it also has no practical substance in fact. Statutory undertakers are often content with the statutory protections afforded by Parliament in the statutory schemes and do not require asset protection agreements. The problem here is that MSCCL’s objection has been tainted from the start by its particular interest in making money from discharges into the Canal, rather than protection of its statutory undertaking.
12. Moreover, in those instances where MSCCL say the existence of an asset protection agreement is said to have been the basis for a statutory undertaker either i) not objecting to; and/or ii) withdrawing any earlier or holding objection, the bare logic of the sequence of events undermines MSCCL’s reliance upon the same on the facts of this case. In **those** examples, reassurance may well have been provided as part of any overall reasonable discussion between two undertakers. Where that reassurance consisted of a concluded asset protection agreement, objections in principle were withdrawn **after** the agreement was reached. In **this** case, that is not the relevant sequence of events. MSCCL pursued in principle objections to the Order regardless of the Acquiring Authority’s attempts to reach agreement. Those objections in principle have now belatedly been withdrawn after comprehensive testing. MSCCL has now withdrawn its in principle objection without an agreement being reached or being considered necessary. That is because the evidence for any such objection has been thoroughly tested and found to be misconceived. MSCCL has therefore withdrawn that objection after the evidence given by its witnesses failed to substantiate any basis for concern.
13. Accordingly, the examples provided are irrelevant to the circumstances here. The fact that asset protection agreements are sometimes in place in relation to some schemes and sometimes not in relation to some other schemes tells one nothing. It is a blind alley for present purposes. There is, of course, nothing of precedential value. The examples appended to MSCCL’s closing submissions are incapable of adding any substance to MSCCL’s assertion that any equivalent protection is required here.
14. It is also obviously incorrect to assert, or to imply, that – as a matter of principle - an asset protection agreement (or equivalent protection) is always required before a compulsory purchase order can be confirmed. If that were the case, then the compulsory purchase powers that Parliament has provided for sewerage undertakers would effectively be rendered meaningless. Applied to the facts of this case, MSCCL would essentially have a veto over the entire process by refusing to enter into an agreement, or by imposing terms in such an agreement which are unacceptable. Such a conclusion would be at odds with the statutory scheme.
15. Moreover, that position would be entirely contrary to the position adopted by MSCCL before the Supreme Court when it argued that the existence of CPO powers meant that there was no need to imply into the 1991 Act a statutory right of discharge from any outfalls, including those already in existence. The Supreme Court accepted this submission holding that there was no implicit right to discharge into watercourses where outfalls where constructed after privatisation. In doing this the Supreme Court followed the earlier Court of Appeal decision in *British Waterways Board v Severn Trent Water Ltd* [2001] EWCA Civ 276. There was no suggestion that it was necessary for sewerage undertakers to enter into asset protection agreements as a pre-condition to the making of a CPO, notwithstanding that both the Supreme Court in the case between these parties and the Court of Appeal in the *British Waterways* case were considering rights to discharge into canals vested in “statutory undertakers” for the purposes of the 1991 Act.
16. It is also instructive to note that the consideration provided by the Acquiring Authority for MSCCL’s withdrawal of its objection in principle was the agreement the Acquiring Authority would not apply for its costs of and occasioned by MSCCL’s objection. MSCCL clearly wanted such a reassurance because it knows full well that the unreasonable nature of the evidence that it presented would have been the proper basis for both an application and an award of costs. To cite just a few examples – i) a witness’s acknowledgement that he had misled the Inquiry; ii) another witness’s apparent lack of awareness of the full and proper scope of his professional duties; and iii) MSCCL’s engineers having all acknowledged that there is no ‘in principle’ reason why the Order Scheme cannot be constructed without any material harm whatsoever being caused to MSCCL’s assets, let alone its undertaking.
17. At paragraphs 75 to 82 of MSCCL’s closing submissions, there is an unevidenced assertion that MSCCL has been the subject of some sort of “*differential treatment*”[[70]](#footnote-70) from the Acquiring Authority as a result of what it describes as “*an ongoing commercial dispute*”.[[71]](#footnote-71) Part of that assertion appears to be based upon the facts that an asset protection agreement has been concluded between the Acquiring Authority and Highways England in relation to works in and around the Barton High Level Bridge.[[72]](#footnote-72) Moreover, MSCCL then relies upon the contents of that agreement between Highways England and the Acquiring Authority to purportedly justify the inclusion of certain matters within its own ‘shopping list’ of requirements which it invites the Secretary of State to include on the face of the Order. This is misconceived and fails to appreciate the following:
18. First, the Highways England asset protection agreement is an agreement between different parties, concluded in a different context. It was concluded as part of the required preliminaries to the Approval in Principle (‘AIP') process. As noted in sections 4C and 6 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)], discussions with Highways England on the implementation of the Order Scheme and its potential effects through ground movement on the M60 motorway have been on-going for a number of years. Where relevant, these discussions were also held jointly with representatives of the Peel Group, given the construction of the WGIS Road, also close to the M60 motorway. The strategic importance of the M60 means that Highways England has always maintained that it will require reference to extensive monitoring records that ground movements are as anticipated and within acceptable limits, to ensure a “zero impact” on Barton High Level Bridge, prior to the TBM being advanced below Barton High Level Bridge. Highways England were prepared to enter into an appropriate agreement prior to the Order being made. Had this not occurred, this would not have been a proper reason for refusing the Order given that O/AIP had been obtained.
19. Second, the Acquiring Authority has been able to carry out all necessary testing and consideration of the Barton High Level Bridge as a structure that is known to be very sensitive to differential movement. Indeed, its acute sensitivity was identified by the Acquiring Authority itself as part of its preliminary investigatory work relating to Phase 1. It is an evidence-based assessment of its sensitivity. Therefore, not only is the structure itself very different from any of MSCCL’s assets as a matter of fact, but the relevant ground conditions and consequent risks arising from works in and around that structure are substantially different to those relating to work near the Barton Locks wing wall (the only apparent remaining concern of MSCCL from a structural perspective) as a matter of evidence and the necessary testing work has been possible prior to any CPO being confirmed. By contrast in relation to the wing wall, the oral evidence of MSCCL’s own witnesses simply did not support the assertions made by those same witnesses in writing (as to which see section 4C of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)]).
20. Third, and in any event, Highways England entered into an APA with the Acquiring Authority in a context intimately bound up with its AIP process and in circumstances where Phase 1 of the Full Scheme has already occurred. It is therefore essentially at a different and later stage. It is far more akin to the sort of detailed agreement that reflects the consequences of a subsequent consent process of the type that the Acquiring Authority are building into its proposed schedule by incorporating provisions similar to those in Schedule 13. It has, in effect, become a condition on the grant of its AIP which is akin to the obtaining of a consent equivalent to that under Schedule 13. MSCCL’s reliance upon the Highways England asset protection agreement to argue that similar terms must be imposed on the face of the Order is therefore completely misplaced and puts the cart before the horse. Under the terms of UUWL’s proposed schedule, there is nothing to stop MSCCL – if acting reasonably – requiring UUWL to enter into a similar agreement before it gives consent for certain aspects of the works.
21. In light of the above, it is difficult to understand how or why MSCCL considers that it has been subjected to any differential treatment whatsoever. Or, even if it had, how that has any relevance now given what the Acquiring Authority is offering by way of its proposed schedule.
22. Likewise, the same points can be made in respect of MSCCL’s assertions as to the agreement that the Acquiring Authority has entered into with PSLL, CoSCSL and PINL. Agreement has been reached with those other parties where it has been reasonable to do so, and upon terms that were also reasonable and appropriate. The fact that this has been possible to do before the Order was confirmed is good, but had no such agreement been reached it would not have affected the principle that the compulsory purchase order could be confirmed anyway. None of which goes to support the claim that the terms that MSCCL might seek during the negotiation of any asset protection agreement in the future ought to be imposed on the face of the Order now. It is clumsy and unnecessary to do so.
23. Thus, the only proper basis for the Inspector and Secretary of State to approach the consideration of protective provisions is upon the basis that i) there is no remaining ‘in principle’ objection to the Order; ii) there was no substantiated evidence that the Order Scheme will give rise to any serious detriment to MSCCL’s undertaking; and, therefore, iii) no proper basis upon which to find that there will be any such detriment.

Protective provisions: the principle

1. In light of the above, it is first important to stand back to consider whether any such additional protection on the face of the Order is actually required or not. Proper analysis of the statutory scheme demonstrates that it is not for any, or all of the following reasons.
2. First, it is important to note that the Acquiring Authority already has the power under s.159 and s.168 of the 1991 Act to lay pipes and to construct all the physical infrastructure necessary to implement the Order Scheme. Whilst these powers, however, might not enable the Acquiring Authority to use the Order Scheme, this is only because it would have no right to discharge into the Canal. It is only this fundamental point that makes a CPO for the acquisition of the right to discharge necessary in any event, not the works and consequential effects on the land and rights of MSCCL.
3. Whilst one could therefore separate out the works into those for the laying of pipes (covered by s.159 and s.168 powers) and the right to discharge (a right acquired compulsorily under s.155), given the nature of the Order Scheme and the interaction with several landowners,[[73]](#footnote-73) the acquisition of land and rights under a CPO (following scrutiny by the Secretary of State of the Scheme as a whole) is a far more satisfactory way of defining the respective entitlements of the Acquiring Authority and the various landowners as a whole. Indeed (and in any event), there is now no objection to the principle of a CPO for the acquisition of the right to carry out works by the Acquiring Authority.
4. MSCCL has now withdrawn its in principle objection to the Order for the whole scheme. The only question, therefore, is whether additional protective provisions are appropriate. Because in the ordinary course of things the works which the Acquiring Authority will be authorised to undertake by the Order could also be authorised using s.159 and s.168, the Acquiring Authority is willing to provide equivalent protections for MSCCL as a statutory undertaker equivalent to those which would apply under s.159 and s.168. This, however, goes beyond that which is required by the statute where compulsory purchase powers are exercised. Indeed, it goes beyond that which is required on the evidence before the Inquiry. On the evidence as it has turned out, the Inspector and Secretary State can properly conclude that there is no need for this additional protection because (i) as explained above MSCCL has withdrawn the entirety of its case suggesting that the Scheme poses a risk to the Canal and (ii) the Acquiring Authority is a statutory undertaker and as such, it can be – and frequently is - relied upon to conduct such works in a responsible and careful manner. It is certainly not in the Acquiring Authority’s interests to do anything other than that in relation to the Order Scheme.
5. As noted in section 3 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] and above, however, although ss.159 and 168 import the protective provisions under Schedule 13, those provisions conspicuously do not apply to the exercise of rights acquired under s.155. As a matter of principle, therefore, it is not necessary to include protective provisions on an order of this kind. They are not provided for in the 1991 Act for compulsory purchase powers. Given the context, this is unlikely to have been anything other than a deliberate drafting choice by Parliament; not least because where the exercise of compulsory purchase powers is being contemplated, any concerns as to impact on other statutory undertakers can be resolved and adequately guarded against by virtue of the many safeguards offered by the Inquiry process. Those safeguards include the manner in which statutory undertakers – such as MSCCL – have the ability to object to the order and to test, through detailed and expert evidence, the extent of any alleged impact.
6. MSCCL has now suggested that the absence of specific protective provisions relating to s.155 powers “*reflects the fact that the serious detriment test applies*” and, therefore, that Parliament can “*safely assume either that (a) compulsory acquisition will not be permitted; or (b) that bespoke provision will be made where this is proposed in order to make such acquisition acceptable*”.[[74]](#footnote-74) This is flawed logic. MSCCL’s submissions conspicuously leave out of account the obvious reason why there is no need for additional protective provisions. Parliament will have had in mind the fact that where a statutory undertaker asserts that serious detriment will arise, there will be the opportunity to test that assertion with evidence and that evidence may be found to be lacking. That is precisely what has occurred here. By virtue of this Inquiry, the Order Scheme has gone through a lengthy process of testing objections. Those objections have all been withdrawn.
7. In stark contrast, the pipe-laying powers under ss.158 and 159 can be exercised simply on notice, without any independent scrutiny. It is for that reason that Parliament has dictated that protective provisions apply to those powers but not to the Acquiring Authority’s compulsory purchase powers. CPO powers can only be exercised after extensive scrutiny as has occurred at this Inquiry.
8. Where, as here, an Inquiry has tested not just the underlying rationale for the Order but also its detailed operation and effect, one would not normally expect the need for protective provisions to be expressed. The Acquiring Authority will be implementing the Order Scheme for the statutory purposes that have been identified and tested in evidence. Furthermore, the rights that flow from interference with land and compensation mean that the Acquiring Authority will be doing its best to minimise interference anyway. It is simply not in the Acquiring Authority’s interests to interfere any more than it needs to with anyone’s land, still less the land of another statutory undertaker, because if it does then such interference will result in compensation payable to MSCCL.
9. In addition, it should be remembered that the Inquiry heard seven weeks of detailed evidence, which culminated in MSCCL withdrawing its ‘in principle’ objection to the Order. This is precisely what the Acquiring Authority described in its Opening Submissions when MSCCL’s objections were characterised – accurately as it turns out – as a “*huge sideshow of smoke and mirrors*”.[[75]](#footnote-75) Having been bombarded by requests for information, bombarded by objections to its application for planning permission, bombarded by objections to its pre-application permit discussions with the EA, and then been bombarded by technical objections in evidence before the Inquiry, the Acquiring Authority is now faced with a situation – some seven months later – in which all of those objections have now fallen away.
10. As the summary of the evidence in section 4 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] (and above) shows, those objections were tested. Then they were withdrawn because they did not stand up to scrutiny. In circumstances where many were acknowledged by MSCCL’s own witnesses to have been positively misleading or just plain wrong, it is risible for MSCCL to now try and suggest that Mr Smith’s evidence supports MSCCL being entitled to advance whatever case it saw fit.[[76]](#footnote-76) Clearly, that suggestion was made in the reasonable expectation of (i) points of objection being appropriately taken, (ii) appropriately kept under review, and (iii) appropriately pursued. In light of the concessions ultimately made by MSCCL’s witnesses, MSCCL and its advisors repeatedly failed in each of those three respects.
11. The simple fact remains that it is inconsistent with the withdrawal of MSCCL’s objection in principle for confirmation of the Order to in some way be found to cause material prejudice to MSCCL’s undertaking. MSCCL raised the spectre of such prejudice in its evidence. That evidence did not stand up to scrutiny. It is not entitled to re-introduce it via the back door.
12. MSCCL has made a number of points which they suggest support a contention that more extensive protective provisions are required than even those offered by the Acquiring Authority. These points do not stand scrutiny either.
13. First, they suggest that the Order far exceeds what Parliament has authorised to be done via use of s.159.[[77]](#footnote-77) This does not assist. As explained above, the protections under the s.159 process are required precisely because the safeguards of the CPO procedure are not in place before the exercise of s.159 powers. So, even if what is sought under the Order exceeds what could be achieved using s.159, this does not justify the imposition of additional protective provisions (quite the reverse).
14. Second, MSCCL attempt to rely on the position that Parliament has decided that the statutory powers such as s.159 should not be available where a right to discharge needs to be acquired.[[78]](#footnote-78) This takes the matter no further. As explained already, since the CPO process provides adequate scrutiny, protective provisions of the sort suggested by MSCCL could not as a matter of course be expected where (as here) the evidence shows that the Order Scheme will not cause substantial detriment. Since MSCCL no longer adduces any evidence that the Order Scheme will cause substantial detriment to its undertaking, the protective provisions which it seeks are neither reasonable nor necessary.
15. Third, MSCCL say that the Acquiring Authority’s Statement of Case asserts that there is very real doubt about whether certain specific elements of the Order fall within the scope of s.159. In the absence of any decided authority on s.159 there is inevitable doubt about the true extent of its application. However, on its proper construction in this case all the rights necessary to *construct* the physical infrastructure fall within ss.159 and 168. However, given the history of the behaviour of MSCCL, the Acquiring Authority could not wait for the inevitable Court proceedings and appeals while this construction was tested. In any event, this does not affect the question of what protective provisions might be necessary. As explained above, this must depend on the evidence before the Inquiry. Again, it is important to note that MSCCL no longer seeks to adduce any evidence that the Order Scheme will have any substantial detriment to its undertaking.
16. Fourth, MSCCL say that the Acquiring Authority is seeking to acquire freehold interests beyond those which it might acquire under s.159. They refer to *Taylor and Taylor v North West Water*.[[79]](#footnote-79) The Inspector will recall that it was in fact the Acquiring Authority which drew attention to this case to correct MSCCL’s misunderstanding of how s.159 operated. Reference to this case in the way MSCCL now seek to make is nothing to the point. Now that the in principle objection to the making of the Order has been withdrawn, the only point remaining is what protections are appropriate to protect the Canal from the physical consequences of the works undertaken. The other legal points raised by the *Taylor* case do not assist in answering this question.
17. Fifth, MSCCL say that the logical conclusion of the assertion that all the works can be constructed under s.159 is that there is no compelling case in the public interest for the acquisition of the rights in question (paragraph 102 of [MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)). This stance from a statutory authority exercising a public function such as MSCCL is nothing short of perverse. In particular:
18. Since MSCCL has in terms withdrawn its in principle objection to the making of the Order it cannot now properly seek to assert a new ‘in principle’ objection that a CPO should not be made. Such a stance is, with respect, at best self-contradictory and at worst disingenuous.
19. As MSCCL’s closing submissions make clear, MSCCL does not accept the proposition that the infrastructure can be constructed using s.159 powers. Accordingly, it inevitably follows that, were the Acquiring Authority to seek to rely solely on these powers, MSCCL would be saying that a CPO was necessary.
20. In any event, as explained above, the acquisition of CPO rights is a more appropriate method of implementing a detailed scheme involving a number of different interests such as this.
21. Sixth, MSCCL assert that because the works go beyond the scope of s.159 it is wrong to proceed on the basis that Schedule 13 provides adequate protection.[[80]](#footnote-80) As explained more fully above, Schedule 13 in fact provides more protection than is needed: (i) given the safeguards provided by the CPO procedure itself and (ii) given the evidence as it has emerged. However, given that MSCCL and the Acquiring Authority must in practice work together in relation to their respective undertakings, it is considered appropriate to provide a structure to enable this to take place in the unlikely event (given the evidence as it has emerged) that there will be interference with MSCCL’s undertaking which causes injurious affection.
22. Seventh, the gist of MSCCL’s stance is that they require protections over and above those which would be available, even in respect of those aspects of the Order Scheme which even they would accept fall within s.159 (e.g. the tunnelling of the pipe itself). Given the additional scrutiny and fact-finding exercise undertaking through this Inquiry, there can be no justification whatsoever for the imposition of additional protective provisions applying to those aspects of the works which the Acquiring Authority can carry out under s.159.
23. Finally, however, and notwithstanding that Parliament does not consider such protection to be necessary, there is nothing to preclude the drafting of rights to provide equivalent protection. This is precisely what the Acquiring Authority offered at the very outset of the Inquiry in response to the concerns raised by MSCCL, and without prejudice to the Acquiring Authority’s primary position, which is that such protections are unnecessary [[AA/INQ/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_7-Letter-from-Pinsent-Masons-to-BDB-regarding-MSCCLs-statutory-undertaking-with-enclosure-dated-13%25.pdf)].[[81]](#footnote-81)

Protective provisions: the ‘Rochdale Envelope’ approach

1. MSCCL now invites the Inspector and Secretary of State to apply what it describes as a ‘Rochdale Envelope’ approach in their assessment of the effects of the Order Scheme.[[82]](#footnote-82) This is misconceived as it is based upon a number of misguided premises.
2. MSCCL itself accepts that “*there is no specific legislative or policy requirement to apply the ‘Rochdale’ approach to the assessment of effects upon a statutory undertaking of the acquisition of broadly defined private law rights over its land*”.[[83]](#footnote-83) This is a square peg in a round hole. It is an approach which is inapplicable in principle.
3. In suggesting that the ‘Rochdale’ approach is “*applicable by analogy because the underlying principle is the same in both cases*”,[[84]](#footnote-84) MSCCL misrepresents the proper context of the Secretary of State’s decision and what the Rochdale approach is actually concerned with. The Rochdale approach is specifically and only concerned with compliance with European law in relation to the EIA Directive in the context of granting planning permission for development which falls within the definition of EIA development. It relates exclusively to ensuring compliance with the EIA Directive in terms of assessment of significant environmental effects for the purposes of that EIA Directive. It has absolutely no relevance to the situation here. The proper context for this decision is far removed from any context in which the ‘Rochdale’ approach has been, or should be, used as a decision-making guide. Indeed, not only is this not a decision about granting planning permission - planning permission has been granted and has not been challenged by MSCCL – but the development for which planning permission has been granted was determined not to constitute EIA development.
4. The cases from which the ‘Rochdale’ approach emerged[[85]](#footnote-85) were cases dealing with the grant of development consent for the purposes of the EIA Directive (so not applicable to this context) and, in particular, in which the development proposal was for outline planning permission for a proposed business park in Rochdale which fell within the definition of EIA development. Quite apart from these basic factual and legal differences, as the name implies, outline applications for planning permission are necessarily ‘outline’. They contain – and seek - a great deal of flexibility in terms of what the final proposal will comprise of. The differences with the current scheme are too numerous to mention. Amongst other things, (i) this is not an application for development consent at all, so the EIA Directive has no application from the outset; (ii) to the extent that the Order Scheme does require planning permission, it has already been granted; the Acquiring Authority has the benefit of full planning permission for its outfall and MSCCL has had the opportunity to challenge that permission, but chose not to do so; (iii) the development was determined not to be “EIA development” and again that decision was not challenged by MSCCL; and (iv) the planning permission is not in outline.
5. The Order itself is not tied to a planning permission, but that is obviously irrelevant. It is not purporting to be a planning permission. If any development occurs in the implementation of the Scheme, then the planning legislation will apply to any necessary development consent. So, for example, were the Acquiring Authority to seek materially to deviate from the planning permission it already has for the outfall structure then, plainly, it would be required to seek an amendment to that permission or, potentially, an entirely new permission to which the separate planning legislation (and so EIA to the extent that it was applicable) would apply. In that scenario, MSCCL’s interests would be then protected by virtue of it having the ability to object to that proposal at the relevant time (as it did with great vigour in respect of the current permission). The same applies in principle to the level of agreement that the Acquiring Authority has now secured from Highways England, the EA, CoSCSL and the other Peel entities that previously objected to the Order. It is agreement secured by reference to the delivery of a particular scheme. It is agreement secured in the face of competing interests and tensions. It would fly in the face of the effort expended to secure that agreement for the Acquiring Authority to then complete a *volte face* to pursue an entirely different scheme within the bounds of the land and rights taken by the Order.
6. MSCCL refer to the ‘Rochdale’ approach inviting consideration of worst case scenarios. This is in the context of the EIA Directive which has no application to this decision in principle, or on the facts (for all the reasons given above). Moreover, it is in the context of seeking development consent (i.e. planning permission) for schemes and projects where flexibility is sought by developers or promoters to address uncertainty in relation to those details that have not been confirmed at the time the relevant application is submitted. In cases of that kind, where a development constitutes “EIA development” (which this scheme does not), and there is a degree of uncertainty in relation to the relevant scheme to enable its effects to be assessed for EIA purposes (which is not what this decision is about), the Rochdale approach is applicable in that planning context. There is simply no proper basis for seeking to apply that approach to a CPO decision on acquisition of land and rights.
7. Quite apart from all the basic differences above, there has in fact already been detailed engagement between the Acquiring Authority, Highways England, the EA, MSCCL, CoSCSL and other Peel entities over a number of years. This has given rise to a high degree of certainty in relation to the relevant scheme and its likely impacts (albeit that this is not EIA development anyway). The detailed engagement with MSCCL, as summarised at section 12 of the proof of evidence of Mr Sephton, was detailed engagement about a detailed proposal. It was not the subject of any meaningful challenge whatsoever. To the extent that the Order Scheme has been through an iterative process, it has been an iterative process that has already taken on board many of the concerns, or requests, of MSCCL. Any uncertainty has long since gone. Full planning permission for that part of the project which requires additional planning permission has been sought and granted. It is not an outline permission. It is also not EIA development. Securing the necessary land and rights is a separate process to which the EIA Directive, and the ‘Rochdale’ approach, has no application whatsoever.
8. All of the above points explain the very different application of the ‘Rochdale’ approach in the very different context of DCOs under the Planning Act 2008. Such DCOs give the necessary “development consent” and so are subject to the EIA Directive where the development meets the necessary definition of EIA development. None of this has any application to the present context and MSCCL are inviting the Secretary of State into fundamental error. As the PINS Advice Note Nine makes clear, the ‘Rochdale’ approach in a development context for a DCO is of particular relevance to two stages of that consenting regime: consultation and environmental impact assessment. In relation to the first, flexibility is an essential prerequisite during any consultation process in order that there is “*a genuine possibility of influencing the proposal*”.[[86]](#footnote-86) In relation to environmental impact assessment, the relevant flexibility may arise owing to i) the early stage of the process at which the Environmental Statement will be produced; and/or ii) the scale of the proposal for which the Environmental Statement (and DCO) is required. Neither of those features apply here, whether in combination or alone. The analogy is an absurd one. In any event, the surrounding detail of the evolution of the Order Scheme’s design and operation has also been the subject of detailed evidence, which has been tested during this Inquiry. MSCCL cannot genuinely be suggesting that it is in any doubt whatsoever as to what the ‘proposal’ is.
9. Furthermore, even had the ‘Rochdale’ approach been of any relevance or application, it is simply one of ensuring that a realistic worst case scenario is considered and tested for the purposes of development consent. The entire premise of PINS Advice Note Nine is to urge upon developers and promoters the need to adopt flexibility only where is it genuinely required. Where it is not required, the advice is that robust assumptions should be made; for example, “*the description of the development in the ES must not be so wide that it is insufficiently certain to comply with requirements of the EIA Regulations*”.[[87]](#footnote-87) In doing so, account should be taken of “*any proposed mitigation measures*”[[88]](#footnote-88) and “*at the time the application is submitted, the parameters within the DCO should not be so wide ranging as to represent an effectively different Proposed Development from that which was consulted on and assessed in the ES*”.[[89]](#footnote-89) The advice is not to consider unrealistic worst case scenarios without any consideration of the surrounding circumstances or interaction with other relevant regimes. Even though the CPO process has nothing to do with the EIA Directive, the reality is that every “worst case” scenario has been explored in detail in this Inquiry anyway.
10. Similarly, in the context of DCO, sections 4 and 5 of PINS Advice Note Nine highlight the need for consistency across application documents, with the overarching advice being that “*applicants should take particular care to ensure that any flexibility requested would not (if granted) result in materially different options which could in itself constitute a different Proposed Development from that assessed in the ES*”.[[90]](#footnote-90) Therefore, even if it were possible or relevant to apply the ‘Rochdale’ approach here, it would not give rise to a need to consider the land and rights sought under the Order in isolation. Far from it. Instead, any assessment of a realistic worst case scenario would have to take account of the scope of the many other elements that constrain what the Acquiring Authority is proposing to do notwithstanding the scope of the land and rights being taken on the face of the Order. Elements that include the full planning permission, the detailed evidence heard by the Inquiry as to the likely construction methodology and the pre-application discussions between the Acquiring Authority and the EA.
11. In that context, MSCCL’s purported reliance upon the Order Scheme not being tied to any particular planning permission or specific scheme of works is misconceived. The Order has to be used for the purposes for which it has been identified. This includes the construction of an outfall structure into the Canal which is the subject of a specific and full planning permission. As noted, material deviation from that permission will require amendment to that planning permission or a new planning permission.
12. Moreover, the Acquiring Authority is a statutory undertaker. It will have to appoint a responsible contractor that will adopt an appropriate and suitable construction methodology. Any suggestion to the contrary did not feature in evidence. Whereas the Inquiry did hear detailed evidence from Mr Parsons as to the approach he would take if his company were awarded the contract. That approach was not the subject of any sustained challenge from MSCCL nor, specifically, from Mr Clarke.
13. In any event, the final approach will be informed by detailed design in the manner described by Messrs Parsons, McKimm and Sephton. The Acquiring Authority’s proposed schedule provides MSCCL with the means to be involved in, and informed by, that process. Once construction finally commences, it will also commence in a context in which it is not in the Acquiring Authority’s interests to interfere with MSCCL’s undertaking to any material extent. There is not a shred of evidence to suggest that any of those assumptions are anything but reasonable and capable of being relied upon by the Inspector and Secretary of State. Speculating as to alleged unrealistic worst case scenarios in the way that MSCCL does is unjustified and simply obscures the reality, which is all the more surprising given the level and nature of the concessions offered by its technical witnesses in this regard.[[91]](#footnote-91) Furthermore, the fact that those very same witnesses themselves put forward – and assessed – unrealistic worst case scenarios in their written evidence[[92]](#footnote-92) seriously damages their credibility to inform the Inspector and Secretary of State reliably as to what is a reasonable and realistic set of assumptions going forward.
14. Therefore, the ‘Rochdale’ approach simply does not apply. But even if it could apply by analogy, it would be incapable of supporting MSCCL’s suggested approach. It could not support the “*imposition of conditions upon the authorisation of the development to ensure that its effects do not stray beyond the parameters assessed*”,[[93]](#footnote-93) if those conditions have been designed to address a proposal that is not based upon a realistic worst case scenario. Moreover, the only way to assess a realistic worst case scenario is with reference to the full surrounding circumstances and context, which – on the facts of this case – clearly align with the evidence given by the Acquiring Authority’s witnesses as to construction methods, duration and impacts, informed as it was by full knowledge and consideration of the background and development of the Order Scheme.

Protective provisions: MSCCL’s proposals

1. From the above, it can be seen as a matter of principle, therefore, that MSCCL’s proposed schedule is drafted to address an unrealistic worst case scenario. It starts from entirely the wrong place.
2. In any event, in proposing such complexity, MSCCL’s schedule of protective provisions unnecessarily attempts to be all things to all persons, but conspicuously fails. It provides far more detail and complexity than is necessary, but also does so in a manner that undermines its substance and practical operation. Indeed, and despite the protestation,[[94]](#footnote-94) it is hard to see MSCCL’s proposed schedule as anything other than a final throw of the dice to obstruct the scheme, consistent with MSCCL’s longstanding pattern of behaviour reflecting a desire to extract large sums of money for its own profit from the discharge.
3. A good starting point for assessing the position is that if MSCCL’s proposals look too complicated then they are very likely to be too complicated. They present a whole raft of unnecessary procedural hurdles which will only have the effect of slowing up the actual construction process in no-one’s interest. To be justified, they must actually be necessary to protect MSCCL’s statutory undertaking. There is simply no good reason for setting up unnecessary hurdles over which the Acquiring Authority will be required to jump, particularly where the evidence already establishes that the Order Scheme presents no material threat of any kind to MSCCL’s undertaking.
4. The Acquiring Authority refers to the evidence summarised in section 4 of its closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] (and above) as to the question of what is truly ‘necessary’ in terms of the Order for it to be confirmed in order to authorise the Order Scheme to proceed.
5. The unnecessary complexity of MSCCL’s proposed approach is also underlined by the fact that the Inspector was initially presented with two alternative versions of its proposed schedule. One is said to arise if an asset protection agreement was concluded (‘With APA’, [MP/INQ/70](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_70-BDB-Draft-Schedule-WITH-APA.pdf)]), and one in case it was not (‘Without APA’, [[MP/INQ/69](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_69-BDB-Draft-Schedule-WITHOUT-APA.pdf)]). The supposed logic of this was a ‘shopping list’ of issues imported into the ‘Without APA’ version were said to be of particular importance to the protection of MSCCL’s undertaking; yet, all of this fails to appreciate the critical fact that – if seeking such protections was reasonable – then they could be imposed under the Acquiring Authority’s proposed schedule in any event, but in a manner that responded appropriately to the particular facts and context being addressed at the relevant time. To the contrary, both of MSCCL’s draft schedules, and now the final version as well [Inspector’s note: within [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf)], fall foul of being rigid, inflexible and inapt to respond to any particular need(s) that may arise at any particular time(s).
6. Furthermore, the scope of MSCCL’s proposed schedule is far too broad. It neither reflects Schedule 13 substantively, nor procedurally. The requirement for consent in paragraph 1 of Schedule 13 is only engaged when the carrying out of works would interfere with an undertakers’ works or property or the use of them so as to affect injuriously the works or property or the undertaking. MSCCL’s paragraph 2(1) limits the application of that requirement for interference. [Inspector’s note: Taken to be “paragraph 2(1)” of Schedule 1 in [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf)] Further, making the exercise of the Acquiring Authority’s rights under the Order subject to *all* the statutory powers, authority, and jurisdiction both of MSCCL and of the harbour master risks undermining the rights granted by the Order, and MSCCL provides no justification as to why this is necessary to protect its undertaking. In doing so, it also goes considerably beyond Schedule 13, which does not apply to rights of access, and does not make sewerage undertakers’ powers subject to the powers, authority, or jurisdiction or other undertakers, but simply prevents them from doing anything that might prejudice such powers, authority, or jurisdiction.
7. In terms of the list of enactments, the Acquiring Authority has sought to identify and preserve those provisions granting the harbour master authority over matters which may be impacted by the Order Scheme. In particular, the Acquiring Authority has sought to ensure that the harbour master maintains his authority to direct any navigation on the Canal required in order to implement the Order Scheme. The Acquiring Authority has included all those provisions which are relevant to the protection of MSCCL’s statutory undertaking. MSCCL has not indicated how inclusion of reference to additional provisions is necessary for that purpose. Indeed, for instance, MSCCL’s proposed Schedule 1 paragraph 4 would appear to allow MSCCL to charge for the use of the Canal. The additional provisions which MSCCL seeks to introduce are so wide that they appear not to be for the purposes of protecting its undertaking from the consequences of the CPO Works, but with a view to extracting a commercial advantage during the implementation and use of those works.

Protective provisions: the Acquiring Authority’s proposed schedule

1. By direct contrast, the Acquiring Authority’s proposed schedule is a simple, overarching consenting mechanism which ensures that MSCCL has all necessary protection for its statutory undertaking. It is both secure, but also flexible for both parties, rather than imposing unnecessary hurdles. It can be responsive, without weakening any of the required protection.
2. As a matter of substance, the Acquiring Authority offers in full the protective provisions that would have applied under Schedule 13 had this been a pipe-laying (i.e. s.159) case.
3. This is done in the Acquiring Authority’s proposed schedule by modifying the rights acquired under the Order so as to require MSCCL’s consent (not to be unreasonably withheld or delayed) for all activities in respect of which Parliament has thought it appropriate for sewerage undertakers to obtain the consent of other undertakers.
4. In that process, it will be open to MSCCL to attach reasonable conditions to the granting of any consents. Accordingly, any reasonable concerns that MSCCL has about the works associated with the Order Scheme can be addressed by the parties as part of the process of obtaining consent and the imposition of conditions by MSCCL, or refusal of consent as appropriate.
5. The withdrawal of MSCCL’s ‘in principle’ objection confirms that there is no need for the Inspector or Secretary of State to resolve potential disagreements in the future which may never occur. If the parties consider it helpful, further discussions will continue after the Order is confirmed. If disagreements remain, the Acquiring Authority’s proposed modifications provide for independent arbitration applying a standard of objective reasonableness. This will ensure that there is no serious detriment that can occur to MSCCL’s undertaking.
6. The Acquiring Authority has then gone further by making certain rights subject to the harbour master’s direction, as to prevent any detriment to MSCCL’s undertaking.
7. Recalling again that the only real point of distinction between those pipe-laying powers (s.159) and the powers being exercised here (s.155) relates to the right to discharge, it is clear that such protection is more than sufficient.
8. The sufficiency of protection offered by the Acquiring Authority’s proposed schedule can be tested by the following practical example that was put to Mr West during cross-examination: if the Acquiring Authority, using its powers under s.159, were to dig a pipe from Eccles WwTW to Davyhulme along and then under the Canal, the level of protection that Parliament has deemed necessary would be that found in Schedule 13. No more than that. The same would be true if that involved open excavations, tunnelling under the Canal with a particular technique or, perhaps, a different technique (any or all of the Acquiring Authority’s choosing). Why would anything more be necessary? Of course, as Mr West fairly agreed, there is no reason for anything more.
9. It is also relevant to consider the statutory language. The Schedule 13 mechanism is naturally concerned only with those works that interfere so as to affect injuriously MSCCL’s undertaking. There is no reason to be concerned with works that do not affect injuriously because they are of no material concern. That same statutory language is reflected in the Acquiring Authority’s proposed schedule, which requires that consent be sought and obtained where works are such as to cause injurious affection. In the event of dispute as to the same, the issue falls to be determined by an arbitrator. Everything else that might lie behind that process of consent is just that; detail, which is not necessary to prescribe on the face of the Order itself. Indeed, once detail is prescribed (as by MSCCL’s proposed schedule), it has the undesirable effect of tying the hands of the parties in a bureaucratic way that may not actually be necessary in a given case.
10. Two further illustrative examples vividly demonstrate this point:
11. Under the Acquiring Authority’s proposed schedule there is no time period, or specified form for the seeking or giving of consent. The Acquiring Authority will need to exercise appropriate judgment when seeking consent to ensure that MSCCL is given the necessary information and the necessary time to consider whether to give consent. In some circumstances, the circumstances might simply call for an email with a small amount of necessary information to enable MSCCL to respond with an appropriate consent in short order (for example, a change in a previously agreed specification which might represent a beneficial improvement for MSCCL). However, if MSCCL reasonably considered that it did not have enough time, or enough information, to give such consent it could withhold it and the Acquiring Authority could not then proceed. It is obviously in the Acquiring Authority’s interests to ensure that sufficient time and sufficient information is given for each and every consent in order to enable consent to be forthcoming. In other circumstances, it may be reasonable to require considerably more time and detail. The Acquiring Authority’s proposed schedule therefore builds in that flexibility, whilst ensuring that MSCCL has the necessary protection to refuse consent in the absence of sufficient information or time to consider that information. Neither party’s hands are tied, nor is either party prejudiced. Where for example, MSCCL considers – acting reasonably – that it has not had sufficient time to consider an application for consent, or some further report or detail is required, then it will not grant consent until it has had enough time. If there were to be a dispute as to whether MSCCL was taking too long, or seeking unnecessary information, this is a matter covered by the scope of the arbitration provision as to whether consent is being unreasonably withheld. Therefore, the consent process is dynamic in a way that MSCCL’s proposed schedule(s) can never be. It allows either party to act quickly and efficiently. The efficacy of what the Acquiring Authority is proposing can hardly be surprising. It is what Parliament has already identified as an appropriate mechanism under Schedule 13.
12. In the same way, the Acquiring Authority’s proposed schedule does not purport to impose artificial constraint now on what details may be necessary by way of an application. The detail will have to be up to the task. This obviously does not diminish the protection. It secures it. The Acquiring Authority will submit whatever information it considers necessary to achieve the consent, depending on the work in question. MSCCL will then have the opportunity to consider that information and to make a decision. If it disagrees with the Acquiring Authority and considers more information is required, it can withhold consent. Again, it is in the Acquiring Authority’s interests to provide sufficient information to meet MSCCL’s needs. Again, the efficacy of this can hardly be surprising given that it reflects what Parliament identifies on the face of Schedule 13. The Acquiring Authority will want to get consent and will provide the information required in order to do so. Provided that it acts reasonably, MSCCL can grant consent, grant consent subject to conditions, or refuse consent. It is not prejudiced in any way by the Order not specifying in great detail what is required.
13. On any analysis, there is nothing in, or lacking from, the Acquiring Authority’s proposed schedule that means that it does not provide MSCCL with the required level of protection on any given application. There is nothing in the approach of the Acquiring Authority’s witnesses to the construction methodology and liaison between the Acquiring Authority and MSCCL[[95]](#footnote-95) that will not be secured by MSCCL through the operation of the Acquiring Authority’s proposed schedule. That is unsurprising given that it was an approach informed by what the Acquiring Authority’s proposed schedule was capable of delivering by way of information and reassurance to MSCCL. It was evidence given in support of the offer of the Acquiring Authority’s proposed schedule, which is strengthened – rather than undermined - by MSCCL’s submission that the effect of testing through an Inquiry is “*only effective as a means of answering the question of serious detriment if those safeguards and measures are secured*”[[96]](#footnote-96)
14. Indeed, it is instructive to note that none of the summary elements of the evidence of Mr Parsons, Mr McKimm, Mr Sephton or Captain Nicholson listed at paragraphs 64 to 70 of MSCCL’s closing submissions are cited as examples of what could *not* be secured through the operation of the Acquiring Authority’s proposed schedule. Again, that is unsurprising, given that it was evidence given by the Acquiring Authority’s witnesses in full knowledge of what was being offered by the Acquiring Authority by way of protective provisions. Therefore, where MSCCL attempts to provide such examples later, it is restricted to abstract examples, not borne out of the evidence heard by the Inquiry.[[97]](#footnote-97)
15. The same analysis demonstrates the misconceived nature of MSCCL’s submission that the questioning of MSCCL’s technical witnesses was based upon an allegedly false premise that: i) works would be carried out in the manner that the Acquiring Authority’s witnesses described; ii) the Acquiring Authority would be able to do works comparable to those proposed pursuant to the Order Scheme under s.159 in the ordinary course of things; iii) MSCCL would enjoy protections equivalent to those contained in Schedule 13; and iv) MSCCL would receive adequate notice of the proposed works.[[98]](#footnote-98)
16. MSCCL attempts to draw together a number of their assertions about the adequacy of the protective provisions proposed by the Acquiring Authority at paragraph 73 [Inspector’s note: paragraph 594 of this report] of their closing submissions. These are dealt with in turn.
17. First, they assert that there is nothing in principle to prevent the Acquiring Authority from undertaking the works in any manner they choose (paragraph 73). This is a nonsensical objection. The short and complete answer to this is that:
18. the Acquiring Authority is a sewerage undertaker that can only use the Order for the purposes identified and for its statutory purposes;
19. the Acquiring Authority can only implement works for which it has planning permission;
20. If and to the extent that interference causing injurious affection to MSCCL would be caused, the protective provisions suggested by the Acquiring Authority give proper and adequate protection.
21. Second, MSCCL say that the Acquiring Authority cannot undertake the works pursuant to s.159. There is nothing in this, as has already been explained above.
22. Third, MSCCL assert that the provisions are not equivalent to those contained in Schedule 13. As explained above, these provisions are more wide ranging and more protective than Schedule 13 because the exercise of the rights are subject to the harbour master’s authority.
23. Fourth, MSCCL assert that the Acquiring Authority is resistant to providing clear and reliable notice periods. That is simply not the case. Under the Acquiring Authority’s schedule, MSCCL has the ability to determine when it gives consent, so if insufficient notice is given, it works against the Acquiring Authority. This is more beneficial to MSCCL than the inclusion of a fixed period of notice. Moreover,
24. Fixed notice periods are artificially constraining for both parties, given the very different sorts of works with very different lead times and very different consequences that would be embraced. For example, in the future the Acquiring Authority may have to undertake repairs as a matter of urgency or may seek to undertake very minor repairs. In both such cases, the fixed notice periods suggested by MSCCL are plainly inappropriate.
25. MSCCL’s stance is unreal. It is plainly in the Acquiring Authority’s interest to ensure that sufficient notice, appropriate to the factual circumstances is given. If the Acquiring Authority does not provide sufficient notice, it will not get the necessary consent in the timescales it requires to enable it to proceed.
26. MSCCL therefore has everything it needs to withhold consent for whatever reason it considers appropriate, provided it is reasonable for it to do so. MSCCL’s closing submissions do not answer this point – that is because it is unanswerable. It is the undermining flaw in MSCCL’s ‘Without APA’ schedule submissions.
27. Plainly, parties can (and sometimes do) decide upon more detailed procedural arrangements in relation to certain bilateral consenting mechanisms. Those arrangements might choose to describe in more detail how the parties elect to work together and alongside one another. But, crucially, none of that is necessary for the Order to be made, as MSCCL now accepts. Nor is it necessary for the Secretary of State to become involved at all in the detail of such an agreement, let alone trying to lift certain aspects of such an agreement onto the face of the Order.
28. MSCCL has suggested that it should be given notice no less than 42 days before the relevant rights are exercised. It is said that such a period “*strikes a fair balance, and is considerably shorter than the three month notice period that features in the statutory scheme UUWL purports to emulate in its provision*”.[[99]](#footnote-99) The associated footnote reference reveals that this purports to be an analogy drawn from ss.158 and 159. It is a false one. The notice period in those sections is required and necessary in order to tell the relevant landowners that a scheme is coming their way. That, of course, is entirely unnecessary where a CPO is confirmed, as the CPO does that task along with the relevant statutory notice that comes with exercising the rights under the CPO. The notice to which they refer is not a notice as to whether or not it is likely that there is going to be an injurious effect, which is what MSCCL appear to be trying to build into the Order and which is, in effect, an attempt to require the Secretary of State to impose an obligation to enter into some sort of asset protection agreement (or equivalent) where there is no obligation (or need) to do so. Given MSCCL’s apparent desire to rely upon precedent to support its approach, it is instructive to note that an obligation to submit any such scheme has no precedent in s.158, s.159 or Schedule 13. That is not surprising. It is not necessary. A procedural hurdle is being set up for the Acquiring Authority to have to jump over, which would not apply under Schedule 13. It may also be completely unnecessary in practice. It is nothing more than a requirement to submit a scheme that, once agreed, tells the Acquiring Authority how to submit its proposal. It is like entering an agreement to agree. It adds nothing of material benefit to either party.
29. Indeed, and as the Acquiring Authority has expressed previously,[[100]](#footnote-100) the imposition of a minimum notification period before the Acquiring Authority could exercise any rights is cumbersome, potentially dangerous, and unnecessary. It is cumbersome because there may be some works of a minor nature where it is simply not necessary for MSCCL to have 42 days to consider whether to grant consent, and where the delay caused as a result may unnecessarily prolong building works to both parties’ detriment. It is potentially dangerous as there may be situations, where work has to be undertaken in a much shorter time frame. Although MSCCL’s proposed schedule purports to make an exception for emergencies,[[101]](#footnote-101) the suggested drafting is only likely to give rise to disputes over its operation. It is unnecessary because it is implicit in the need for the Acquiring Authority to obtain consent, not to be unreasonably withheld, that the Acquiring Authority must give MSCCL proposed notice of works falling within the Schedule, and must give sufficient notice to allow MSCCL acting reasonably to form a view as to whether or not it consents. It is in the Acquiring Authority’s interests to give as much notice as is reasonably practicable, in order to increase its chances of obtaining the necessary consent or showing that a refusal of consent was unreasonable.
30. The suggestion by MSCCL that this makes the Acquiring Authority ‘sole arbiter’ is equally absurd. The Acquiring Authority will have to make a decision whether or not to inform MSCCL of proposed works. But the consequences of it making the wrong decision, and failing to seek consent, would be that the carrying out of those works will be unauthorised and the Acquiring Authority will have committed a trespass. It will be at risk of an injunction and of having to pay damages. In the real world, the Acquiring Authority will have every reason to cooperate with MSCCL to establish whether intended works are subject to the consent requirement, and to obtain such consent if they are. The Acquiring Authority clearly has no interest in attempting to deliver a major infrastructure project clandestinely in an unlawful way. The implicit suggestion otherwise is nonsensical.
31. The Acquiring Authority therefore has adopted the comprehensive formula and mechanism set out by Parliament in Schedule 13. That was what Parliament considers proper and appropriate to deal with similar contexts to the works under the Order on statutory undertakers’ land. By contrast, MSCCL’s proposed drafting of notice provisions as explained at paragraph 144 of its closing submissions [Inspector’s note: paragraph 667 of this report] is a recipe for confusion and for future disputes. To introduce a test of whether something “*might*” interfere with the Canal would mean that notice would need to be given even if there would be no actual interference. And this simply raises the question of the arbiter who decides what “*might*” interfere that MSCCL consider to be objectionable. Moreover, reliance upon planning legislation in this context is of no assistance, contrary to the suggestion in paragraph 145 of MSCCL’s closing submissions. There is no evidence that the drafting of Schedule 13 has caused any difficulties in practice. For the reasons above, in practice the Acquiring Authority will have every incentive to engage with MSCCL about works where there is any doubt as to the applicability of the protective provisions.
32. Insofar as both proposed schedules address the issue of consent, it is to be welcomed that MSCCL recognises that it could only impose conditions which are reasonable for the purposes of protecting its statutory undertaking.[[102]](#footnote-102) Giving effect to that in express wording is appropriate and proportionate. Similarly, in relation to the withholding of consent, although MSCCL asserts that the inclusion of the words “*or delayed*”, is “*entirely unnecessary because to unreasonably delay the giving of consent is also to unreasonably withhold it*”,[[103]](#footnote-103) it is clearly not “*poor drafting*” to confirm that intention through the inclusion of the words “*or delayed*”. It is good drafting to avoid disputes. In any event, to the extent that MSCCL accepts the inclusion of the wording that “in both cases the consent has been unreasonably withheld”, there is nothing between the parties.
33. MSCCL asserts that because the Acquiring Authority’s proposed schedule is “*confined to rights “to carry out works”*” it “*offers no protection at all to MSCCL’s undertaking from any injurious affection caused as a result of the proposed compulsory acquisition of other rights within the Order*”.[[104]](#footnote-104) This overlooks the fact that Schedule 13 only applies to powers to carry out works and only applies where those works will “*directly or indirectly…interfere*” with works or property vested in an undertaker. There is no justification for providing – as MSCCL invites the Inspector to recommend - that any right over any works or property should be subject to the consent of MSCCL (not to be unreasonably withheld). It would be contrary to the statutory scheme to do so because it would substantially broaden the scope of the protections when compared to Schedule 13. It would make all rights conferred by the Order (save for the right to discharge) subject to MSCCL’s consent, and would do so regardless of whether or not they in fact interfere with MSCCL’s works or properties.
34. Furthermore, the Acquiring Authority’s proposed schedule preserves the harbour master’s statutory powers in a manner so as to sufficiently address the practical concerns raised by MSCCL. This expands upon Schedule 13 to the extent that is appropriate. There is simply no justification for expanding this scope yet further so as to make the Acquiring Authority’s rights subject to the statutory powers, authority, and jurisdiction both of MSCCL and the harbour master. There is no evidential justification for this in terms of any alleged substantial interference with MSCCL’s statutory undertaking. As noted above, Schedule 13 does not make sewerage undertakers’ powers subject to the powers, authority, or jurisdiction of other undertakers, but simply prevents them from doing anything that might prejudice such powers, authority, or jurisdiction. A practical point also arises on the facts in this regard, namely that - despite repeated requests[[105]](#footnote-105) - MSCCL has yet to properly explain any particular statutory powers, authority, and jurisdictions that would be necessary for MSCCL to maintain in order to avoid potential prejudice. Its closing submissions still do not address this. As such, the risk of perverse consequences arising from such a broad expression of MSCCL’s undertaking and the preservation of powers, authorities or jurisdiction remains unidentified.[[106]](#footnote-106)
35. In paragraphs 126 and 127 of their closing submissions, MSCCL allege various respects in which it is said that the rights sought by the Acquiring Authority would authorise activities in areas in which the harbour master and harbour authority have jurisdiction. The Acquiring Authority’s proposed protective provisions accommodate all these points:
36. **Tethering of boats and barges**. The Acquiring Authority agrees with MSCCL that these are rights of mooring, and as such will remain subject to the harbour master’s powers under the Acquiring Authority’s proposed provisions.
37. **Right to compel operation of the lock**. The Acquiring Authority agrees with MSCCL that these rights are incidences of the right of navigation, and as such will remain subject to the harbour master’s powers under the Acquiring Authority’s proposed provisions.
38. **Right to carry out dredging**. The Acquiring Authority considers that this will be subject to the harbour master’s authority under its proposed provisions. That is because dredging necessarily involves navigation, and navigation under the Acquiring Authority’s protective provisions is subject to the harbour master’s authority. The Acquiring Authority would not object to the inclusion of an express reference to ‘dredging’ in paragraph 2 of the protective provisions however, so that it applied to “*UUWL’s rights of navigation, mooring, and dredging*…”
39. **Rights to assemble and disassemble plant and pontoons (at Irlam Wharf)**. The Acquiring Authority agrees with MSCCL that any pontoons when in the Canal are subject to the statutory authority of the harbour master, and that pontoons when loaded into the Canal at Irlam Wharf will be engaged in either mooring or navigation and hence within paragraph 2 of the Acquiring Authority’s proposed schedule.
40. **Works to support, repair, remove or reinstate the ground and structures**. The Acquiring Authority agrees that these works will *not* be caught by its proposed preservation of the harbour master’s powers (although any navigation or mooring necessary to effect such works will be). That is not however problematic. As, unlike the right of navigation, these are rights to carry out works, they are subject to the protection provided by paragraph 1 of the Acquiring Authority’s proposed schedule. That gives MSCCL adequate protection. If the carrying out of the works will interfere with MSCCL’s works or property, or its use of those works, so as to affect injuriously the works or property or carrying on of its undertaking, MSCCL’s consent will be required before the works can be carried out. MSCCL may attach reasonable conditions to that consent, and it may be that such reasonable conditions will include conditions regarding the preservation of the harbour master’s authority and power with respect to the works. But the only basis for preserving the harbour master’s authority with respect to any works is if that preservation is necessary to stop the carrying out of those works from injuriously affecting the undertaking. If, therefore, the carrying out of the works will not in any event interfere with MSCCL’s works or property or its use of those works so as to affect injuriously the carrying on of its undertaking (and so paragraph 1 is not engaged), there is no reason for the authority of the harbour master to be preserved in those circumstances. It is too early to determine whether the works will interfere in this way or whether any condition relating to the harbour master might reasonably be imposed: that is a matter to be addressed at the detailed design stage, and one which can be resolved by arbitration in due course under the Acquiring Authority’s proposed provisions. The point is that the Acquiring Authority’s proposed schedule gives MSCCL all the protection they reasonably require in respect of such works.
41. **Registration of vessels**. The Acquiring Authority considers that it would be open to the harbour master to require any vessels it uses to be registered before permitting them to navigate, and (unless the harbour master indicates otherwise) will register all vessels exercising rights acquired under the Order. This point is therefore adequately addressed by the Acquiring Authority’s proposed schedule.
42. **Cranes oversailing the navigable channel**. The Acquiring Authority considers that this is inherent in the control of navigation and therefore a matter that is capable of being addressed by the harbour master. However, the Acquiring Authority is content that if there is considered to be any ambiguity in this respect, the following wording can be added to the end of its paragraph 2 to the following effect: “*and UUWL’s rights to oversail cranes shall, so far as they permit oversailing which may obstruct the navigable channel of the Canal, be subject to the statutory power of the harbour master to direct the removal of obstructions to the navigable channel*”.

The proposed discharge proviso

1. MSCCL also wrongly seeks to include the following ‘discharge proviso’ on the face of the Order:

“*Any right to discharge “water soil and effluent” under this Order shall be subject to the following provisions of the Water Industry Act 1991 (or any re-enactment, replacement or amendment of those provisions), which shall apply as conditions to* *which the right to discharge is subject in the like manner as if the right arose impliedly under section 116 of the Water Industry Act 1991:*

*(a) Section 117 (5) (a) and (b)*

*(b) Section 117 (6)*

*(c) Section 186 (1), (3), (6) and (7)*

*(d) Schedule 12 paragraph 4”*

1. The inclusion of such provisions on the face of the Order is not only unnecessary, but it is unwarranted on proper construction of the 1991 Act. The stated provisions in the purported proviso that MSCCL lists conspicuously do not apply to compulsory purchase orders under s.155.
2. The assertion that the Order would give rise to “*an entirely unfettered private law right for UU to discharge, in perpetuity, whatever it sees fit into the Canal, including (by way of example) unlimited quantities of entirely untreated raw sewage*”[[107]](#footnote-107) is obviously misconceived. As acknowledged by MSCCL, “*where the operator of a WwTW wishes to discharge sewage effluent into a watercourse, it will require an environmental permit* *pursuant to the Environmental Permitting (England and Wales) Regulations 2016*”.[[108]](#footnote-108) This applies equally to the discharge here, notwithstanding that the associated right will have been acquired by compulsion. Therefore, the Acquiring Authority will not be able to discharge whatever it sees fit into the Canal. MSCCL’s submission to the contrary is clearly wrong. The Acquiring Authority will only be able to discharge that which is permitted by the EA. The proviso is therefore unnecessary and based upon a clear misstatement of the law. MSCCL is properly protected against the risk of any damaging effects of breach of the provisos in ss.117 and 186 because of the Environmental Permitting (England and Wales) Regulations 2016 and the role of the EA, in turn giving effect to other legal obligations.
3. It is also claimed that the discharge proviso is somehow “*independent of the evidence that has been heard on matters such as the specific water quality impacts and implications of the Order Scheme, in the sense that the protections that MSCCL seeks already apply to relevant discharges as a matter of general law, and the public interest justification for them is universal in that respect”[[109]](#footnote-109)* and that *“in the absence of a CPO, the creation and use of a new outfall would require the consent of the owner of the receiving private watercourse*”.[[110]](#footnote-110) These claims are without any merit. There are two preliminary points to note in this regard.
4. First, the suggestion that the purported ‘discharge proviso’ is somehow required in a way which is divorced from the evidence that the Inquiry has heard is illogical. MSCCL may wish to wash its hands of that evidence, because it demonstrates that there is no water quality issue with which MSCCL is concerned and the EA exercises control over water quality in any event. But the fact that evidence demonstrates unequivocally that the discharge proviso is not required is obviously not a reason for ignoring it.
5. In particular, and as summarised in section 4 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] (and above), the water quality evidence is a complete answer to why, on the facts of this particular discharge, but also for discharges regulated by the EA, there is no need to go behind the express statutory provisions and to impose some unjustified additional proviso for no good reason.
6. Furthermore, MSCCL attempts to explain an alleged need for consent under the proviso in terms of regulating “*carefully the parameters of the outfall and discharges from it, by reference to the location and dimensions of the outfall and the flows, total volumes and constituency of the discharges through it*”. This is fanciful. The location and dimensions of the outfall are already fixed by the planning permission. In any event, the flows and total volumes and constituency of the discharges through it are controlled by the environmental permitting process, itself regulated by the EA. In addition, the explanation fails to consider the (unchallenged) evidence of Mr Sephton to the effect that all of the suggested means by which MSCCL may otherwise have sought to regulate the outfall (i.e. choosing the best location), have already been facilitated by the Acquiring Authority in any event through its extensive negotiations and dialogue with MSCCL.
7. Second, the fact that the evidence has been heard at all provides a clear rationale as to why Parliament has not applied those provisions to the exercise of compulsory purchase powers under s.155. As with the issue of serious detriment more generally, the extensive testing of that evidence before this Inquiry provides the Inspector and Secretary of State with all necessary reassurance that the discharge proviso is not required. The testing of the evidence itself has already provided an additional layer of statutory protection, rendering unnecessary that which MSCCL asserts is provided by s.117(5)(b). That is before one even considers the environmental permitting regime that will apply anyway. Therefore, if it is really an “*additional layer*” of protection that MSCCL seeks (at paragraph 232 of MSCCL’s closing submissions) [Inspector’s note: at paragraph 756 of this report]; it has been provided by the testing of this evidence at this Inquiry, and is fully covered by the environmental permitting regime that will apply to the discharge. MSCCL fail to identify, and are unable to identify, what this additional proviso can in fact add to these measures already. The suggestion by MSCCL that “*there is no precedent that can be relied upon to justify such differential treatment*” is a truism which exposes the artificiality of their position; it is like saying that there is no precedent that can be relied upon to justify compulsory acquisition under s.155. Of course there is no precedent. There have been no such orders. But that does not justify inventing and imposing additional provisos to be added to the Order which are unnecessary, not required by the statutory scheme and would only duplicate other measures of control that have already been applied and will continue to apply anyway through the environmental permitting regime.
8. As to s.117 (5) and (6) of the 1991 Act:
9. They provide as follows:

“*(5) Nothing in sections 102 to 109 above or in sections 111 to 116 above shall be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall—*

*(a) in contravention of any applicable provision of the Water Resources Act 1991; or*

*(b) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake.*

*(6) A sewerage undertaker shall so carry out its functions under sections 102 to 105, 112, 115 and 116 above as not to create a nuisance.*”

1. This statutory proviso only applies to rights exercisable under ss.102 to 109 and 111 to 116 of the 1991 Act, not those under s.155 of the 1991 Act. Sections 102 to 109 and 111 to 116 include the right to discharge from outfalls that have already been constructed before 1 December 1991. The rights under those sections are conferred automatically by the statute, without further public scrutiny. Hence the statute includes a proviso to address private rights with protection from potential interference. The proviso, however, clearly and deliberately does not apply to rights acquired under s.155. Parliament understandably considered that there is no need for it to do so. That is because rights under s.155 are acquired only after independent scrutiny where the potential interference with private rights (or lack thereof) can be fully considered.
2. In any event, as noted above, there is no need for the proviso for the reasons alluded to above. The Acquiring Authority’s discharges will be constrained by the environmental permitting regime already identified. If it does not comply with that regime, it faces enforcement, up to and including criminal prosecution. There is no suggestion that the EA will not carry out its functions appropriately, and that is more than sufficient protection for MSCCL, particularly in circumstances where it has failed to identify how its statutory undertaking is directly concerned, let alone materially affected, by the water quality of the discharge itself.
3. MSCCL’s suggestion that any private right should be constrained as they suggest is therefore unnecessary in practical terms.
4. What is more, the evidence before the Inquiry shows that the imposition of such a proviso is both unreasonable and unnecessary not simply because there are adequate safeguards through the environmental permitting regime, but because in light of the abandonment of its evidence on water quality issues, it is clear that operation of the Order Scheme will not have an adverse impact on the water quality of the Canal. Indeed, the evidence demonstrates it can only have a net beneficial effect.
5. As to s.186 (1), (3), (6) and (7):
6. They provide for “Protective provisions in respect of flood defence works and watercourses etc” as follows:

“*(1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—*

*(a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or*

*(b) with any such works used by any person for irrigating any land.*

*(2) Without prejudice to the construction of subsection (1) above for the purposes of its application in relation to the other provisions of this Act, that subsection shall have effect in its application in relation to the relevant sewerage provisions as if any use of or injury to any such works as are mentioned in paragraph (a) or (b) of that subsection were such an interference as is mentioned in that subsection.*

*(3) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—*

*(a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or*

*(b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream,*

*without the consent of any person who would, apart from this Act, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.*

*…*

*(6) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.*

*(7) Any dispute—*

*(a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;*

*(b) as to whether any consent for the purposes of this section is being unreasonably withheld;*

*(c) as to whether any condition subject to which any such consent has been given was reasonable; or*

*(d) as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions,*

*shall be referred (in the case of a dispute falling within paragraph (d) above, at the option of the party complaining) to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers*.…”.

1. S.186(9) provides expressly that the provisions of s.186 “*shall be without prejudice to the provisions of Schedule 13 to this Act*”.
2. S.186(3) only applies to the “*relevant sewerage provisions*”, and s.155 is not one of those provisions. Thus Parliament has deliberately chosen not to extend that provision to rights acquired by compulsory purchase. The reason is the same as in the case of s.117(5), and for the same reasons such a limitation should not be introduced.
3. The assertion that s.186(1) has any applicability, or any possible interrelationship with the rights which the Acquiring Authority seeks under the Order is completely misconceived both in fact and in law:

(a) Storm discharges currently enter the Canal via Salteye Brook. Under the Order Scheme a reduction in storm spills would occur due to increased storm storage capacity. This will have a positive effect on the Canal’s water quality by reducing the frequency and contaminant load of storm discharges. Screening of storm overflows to remove solids will have a further benefit by removing solids that would otherwise be deposited in Salteye Brook and the Canal.

(b) The suggestion that s.186(1) applies to discharges into the Canal and to MSCCL is misconceived for the following reasons:

(i) First, s.186(1) must be read in the context of s.186 as a whole. Another sub-section of the same section, s.186(3), specifically protects canals. On the face of things it is s.186(3) (not s.186(1)) that applies to canals generally and to the Canal in particular. Under s.186(3) before canal undertakers are entitled to such protection, however, there must have been injurious affection.

(ii) Second, for s.186(1) to be engaged it is necessary to identify:

(1) A sluice, a floodgate, groynes, sea defences, or some other works;

(2) A person using that for draining, preserving, or improving any land or for irrigating any land;

(3) A ‘local statutory provision’ (defined in s.219(1)) under which the works in question are used *by that person*.

Once those elements are identified, it is the person using the works for that purpose under that provision whose consent must be sought. It is not the consent of the owner or operator of the works themselves.

(iii) Third, MSCCL has failed entirely to identify any of these elements even to make out a prima facie case that it is entitled to the benefit of these provisions. It has not identified any works which it says it uses for any of the functions set out, let alone a local statutory provision under which it does so. All it has done is make a reference in the footnote to the case of *R (on the application of The Manchester Ship Canal Company Ltd) v Environment Agency* [2013] EWCA Civ 542 [2013] KPL 1406, paras 4 and 5, and to the 1885 Act in general terms without identifying any provision of it which imposes a drainage function on MSCCL.

(iv) Fourth, on analysis of that case, far from providing support for MSCCL’s position, in fact it undermines it. It was MSCCL’s argument in that case that although the Canal provided de facto flood defence functions – inevitably, as the body of water taking drainage from the surrounding lands – that was incidental to its actual function, which was for navigation. In other words, in direct contrast to the submission that it attempts to make in relation to s.186(1) to this Inquiry, MSCCL’s position was that its statutory use of the Canal was for navigation, not drainage. The Court of Appeal accepted this submission, at paragraph [27]:

“*The operation of the Canal creates and at the same time attenuates the risk of flooding. It makes no sense to describe the Canal as a formal flood defence: it is designed and operates so as to permit sea-going ships to be navigated inland. The operation of the sluices is integral to the operation of the Canal. The sluices and their associated locks enable the Canal to achieve its purpose. It makes no more sense to describe the sluices as formal flood defences than the Canal itself. The Canal and its associated structure cannot operate unless it controls the flow of water from rivers and any other source. It controls the flow of all the water with which it is fed, whether it is water which would otherwise flood or not. The mere fact that it controls and regulates the flow of water cannot be a basis for placing either the Canal or its associated structure within the category of formal flood defence.*”

(v) It is true that paragraph [4] of that case refers to various provisions of the 1885 Act which relate to drainage. None of these however require **MSCCL** to **use** any infrastructure to drain land. Rather, they require it to **construct and maintain** infrastructure for **others** to use in order to drain land.[[111]](#footnote-111) None involve any works for MSCCL’s use. They are for the use and benefit of others. There may be a question as to whether s.186(1) generally requires the consent of those others (not to be unreasonably withheld) to discharges, but there is no basis on which the consent of MSCCL can be said to be required nor that there is any basis for suggesting that any rights acquired by the Acquiring Authority under the CPO should be qualified by reference to this plainly inapplicable provision.

(c) In any event, even if this section were applicable to MSCCL in relation to any part of the Canal in the vicinity of Eccles WwTW, no evidence was led at the Inquiry that discharges from the outfall would cause any interference with any works that have any function of draining land. There is therefore no practical reason whatsoever to apply s.186(1) to the right of discharge. Again, the real reason behind MSCCL’s desire to impose this provision appears to have nothing to do with the protection of MSCCL’s undertaking, and everything to do with its desire to erect further hurdles to the exercise of the Acquiring Authority’s rights as part of its attempt to extract a ransom value.

1. As to Schedule 12(4) of the 1991 Act:
2. It provides as follows:

“*4(1) Subject to the following provisions of this paragraph, a sewerage undertaker shall make full compensation to any person who has sustained damage by reason of the exercise by the undertaker, in relation to a matter as to which that person has not himself been in default, of any of its powers under the relevant sewerage provisions.*

*(2) Subject to sub-paragraph (3) below, any dispute arising under this paragraph as to the fact of damage, or as to the amount of compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the Director.*

*(3) If the compensation claimed under this paragraph in any case does not exceed £5,000, all questions as to the fact of damage, liability to pay compensation and the amount of compensation may, be referred to the Director for determination under section 30A of this Act by either party.*

*(4)* *…*

*(5) No person shall be entitled by virtue of this paragraph to claim compensation on the ground that a sewerage undertaker has, in the exercise of its powers under the relevant sewerage provisions, declared any sewer, lateral drain or sewage disposal works, whether belonging to that person or not, to be vested in the undertaker.*”

1. MSCCL has previously stated that it does not “*consider that Schedule 12 will apply in this case to the exercise of compulsory powers under the Order (if confirmed) and MSCCL would not therefore benefit from its protections*”.[[112]](#footnote-112) Indeed, at that stage, it was MSCCL inviting the Acquiring Authority to “*explain [the] rationale for referring to Schedule 12*”. Therefore, it is somewhat surprising and wholly inconsistent that MSCCL now seeks for reference to Schedule 12(4) to be included on the face of the Order.
2. Again, this paragraph in Schedule 12 does not apply to s.155. That section is not one of the relevant specified sewerage provisions. The reason again for that is clear. Damage sustained as a consequence of the exercise of rights acquired under the Order are matters for compensation under the CPO regime. The CPO regime provides the necessary protection for landowners, and so there is no need to apply, and the statute does not apply, the protections that attach to the implied right of discharge.
3. The assertion at paragraph 252 of MSCCL’s closing submissions that MSCCL will be “*in a worse position that it is at present*” is therefore wrong. MSCCL will be entitled to full compensation under the Compensation Code.
4. The real reason that MSCCL wishes to include this provision again appears to have nothing to do with protecting its undertaking. By a letter dated 28 July 2016, MSCCL commenced a statutory arbitration to determine compensation for discharges under the implied right. MSCCL did not purport to be able to identify any actual damage in respect of which it was entitled to be compensated: rather, its case in that arbitration was that compensation should be assessed on a ‘*negotiating basis*’, or, in other words, as what MSCCL says is the ‘commercial value’ of the right being exercised. The Inquiry has heard that MSCCL says that the ‘*commercial value*’ of the right to discharge from Eccles is now c. £860,000. While MSCCL has neither pursued nor abandoned the arbitration, it seems it may be attempting to use the insertion of reference to Schedule 12, paragraph 4, as another way to seek to extract this ransom value from the Acquiring Authority and its customers.
5. In conclusion, therefore, the inclusion of such provisions on the face of the Order is not only unnecessary, but it is unwarranted on proper construction of the 1991 Act.

**Compulsory Purchase Considerations, Including the Public Interest**

1. Sewerage infrastructure is essential. It is in the public interest that such infrastructure is fit for purpose and functioning effectively. Such infrastructure is needed to support existing homes and business, but also in order to facilitate and support future growth. Growth, of course, that includes that of entities such as the Peel Group, who – without such infrastructure – would not be able to realise their development proposals for the area.
2. The EA would not be requiring the environmental improvements delivered by the Full Scheme (of which the Order Scheme is an essential part) unless there was a clear environmental need for the same. Similarly, given the uncontroversial evidence that the Inquiry heard about competing needs and pressures, the Acquiring Authority would not be pursuing the Full Scheme unless there was a clear regulatory need for it to do so.
3. No objector now disputes the need for the Order, nor the compelling case in the public interest for it to be confirmed.[[113]](#footnote-113) The only residual dispute is as to the precise terms of the Order (as dealt with above).
4. In the context of operations of a regulated business such as the Acquiring Authority, the fact that those environmental needs and regulatory requirements transpose almost directly onto the wider public interest is something that was simply ignored by MSCCL before withdrawing its objection in principle (see for example Mr Rhodes’ written evidence when he suggested that “*a solution in the public interest would look beyond the cheapest way of meeting the regulatory requirements*”[[114]](#footnote-114)). Not only is “*cheapest*” a crude oversimplification of “*lowest WLC*”, which sits incongruously alongside the evidence given by Mr Perry and Mr Fields, but, as described by Mr Haslett and Mr Baron, key considerations in the optioneering process for a regulated business are:
5. To ensure that the solution is robust and flexible for meeting any future requirements and does not result in abortive costs, which may include replacement of wastewater treatment technology and associated risk of high write off costs to the customer; and
6. To achieve the required environmental standard at the best (i.e. lowest) WLC for customers.
7. Indeed, it is instructive to note that the importance of the latter was not lost on either Mr Perry or Mr Fields in oral evidence, who agreed respectively that the option with “*the best / lowest WLC should be selected*”[[115]](#footnote-115) and the Order Scheme is the most cost effective option before the Inspector and Secretary of State.
8. The EA sets the regulatory standards to be achieved. The sewerage undertaker is responsible for meeting those standards at the lowest WLC to protect the customers, and Ofwat is responsible for regulating those decisions in the approval of the funding, protecting the crucial public interest component of not spending too much. That same public interest is very much at the forefront of each decision taken at each of the various steps and gateways involved in progressing a solution from concept design through to implementation. Each regulatory ‘driver’ or need and the provision of sufficient funding to deliver the infrastructure associated with each of those needs is required to be negotiated.
9. As Mr Fields acknowledged (during his cross-examination), everything ultimately comes from charges to the customer. Hence why, contrary to what Mr Fields might have earlier asserted in writing, he accepted that the costs of each scheme do matter. They matter precisely because it is the customers who will ultimately pay. It was never an answer to suggest that more expensive alternatives should be pursued just because the Acquiring Authority will not necessarily feel the direct ‘pain’ of those increased costs[[116]](#footnote-116). That conspicuously missed the point.
10. The same was true of questions that were bizarrely put to Mr Baron during cross examination as to the materiality of latest best estimate increases on the Full Scheme when compared with the Acquiring Authority’s overall capital expenditure budget and/or dividends to shareholders. This is one scheme of a great many. Spending more here on an (unjustified) alternative would have meant that there was less to spend on other (justified and/or required) schemes that already form part of the wider programme of works for which the Acquiring Authority is responsible, and which the appropriate regulators have sought, approved and facilitated the funding of. Not only would this fly in the face of clear authority that logically applies by analogy (see, for example, *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66, but it would also be unfair and detrimental to the wider public interest.
11. Thus, there is an overwhelming weight of evidence to support the existence of a compelling need for this significant investment in essential sewerage infrastructure. Indeed, there is an urgent and immediate need given the passage of time since the regulatory requirement was imposed. Confirmation of the Order would facilitate implementation of the Order Scheme and in turn lead to the required regulatory improvements and benefits to Salteye Brook, along with the wider capacity improvements within the foul drainage infrastructure at Eccles WwTW. It will bring multiple environmental benefits and the scheme is supported by, and reflects the stated preference of, the EA.
12. In this regard, it is the Acquiring Authority’s clear evidence that the Order Scheme will provide significant and immediate water quality benefits to Salteye Brook. It will also have an overall beneficial effect on the Canal. None of this is now controversial in light of the concessions made by Mr Perry and Dr Studds during cross examination, and now the withdrawal of any objection in principle to the Order. Furthermore, those same concessions now place MSCCL’s previous reliance upon treatment alternatives in an entirely new light. They were misguided, being based upon: i) an interpretation of policy that Dr Studds himself acknowledged as giving rise to “*absurd*” results; ii) a simple mass balance assessment based upon dry weather, low flow conditions, rather than the range of flows and conditions that the EA states ought to be considered for permitting decisions; and iii) evidence given by a witness who acknowledged that he had failed to draw to the Inspector’s attention the fact that they plainly were not the preferable alternative.
13. Applying a WFD approach, as the Acquiring Authority says one must, Option 1 / the Order Scheme is head and shoulders above any other proposal. It avoids precisely the sort of wasted expenditure (i.e. unnecessary spending on large scale infrastructure that might need to be decommissioned in the future should a phosphorous requirement be imposed on Eccles, as seems likely), that would directly frustrate the public interest that the Order Scheme serves.
14. Further to the above, the Acquiring Authority would not be pursuing the Full Scheme (of which the Order Scheme is an essential part) if there was another viable solution that would avoid the need to utilise third party land. The Optioneering Solutions Report [[CD/OTH/33](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.OTH_.33-UU-Optioneering-Solutions-Report-09052018.pdf)] and the evidence heard from Mr Haslett, Ms Rands and Dr Hendry confirms that the Order Scheme represents the most sustainable and resilient solution to address these existing issues.
15. It is also of prime importance to note that – but for the need to acquire a right to discharge - the Acquiring Authority would already have constructed this very scheme, without the need for this Inquiry (or, indeed, the hearing of MSCCL’s – now withdrawn - objections at all). But for that quirk, the Acquiring Authority would have been able to rely upon powers under section 159 of the 1991 Act. The relevance of that fact is clear, because in granting those pipe-laying powers to the Acquiring Authority the government has already considered and struck the balance as to the general public interest in their exercise.
16. Similarly, in so far as a large proportion of the works within the Order Scheme benefit from planning permission granted pursuant to the 2015 General Permitted Development Order (or earlier versions thereof) then Parliament has similarly considered the public interest in providing those powers.
17. It is essential that this context is fully appreciated, acknowledged and weighed into the assessment of the public interest case for the confirmation of this Order.

The CPO Guidance

1. Relevant guidance as to the making and confirmation of CPOs is contained in the Ministry of Housing, Communities and Local Government guidance entitled “*Compulsory purchase process and The Crichel Down Rules (February 2018)*” [Inspector’s note: as updated July 2019] (‘the CPO Guidance’).
2. Paragraph 2 of the CPO Guidance provides that:

“*Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.*

*The confirming authority will expect the Acquiring Authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to / arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.*

*Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an Acquiring Authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the Acquiring Authority to:*

*- plan a compulsory purchase timetable as a contingency measure; and*

*- initiate formal procedures*

*This will also help to make the seriousness of the authority’s intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.*

*When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected*…”

1. These elements are reinforced by paragraph 12 of the CPO Guidance, which reiterates that:

“*A compulsory purchase order should only be made where there is a compelling case in the public interest*”; and

“*An Acquiring Authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected*”

1. In relation to the public interest element, paragraph 13 notes (amongst other things) that:

“*If an Acquiring Authority does not:*

*- have a clear idea of how it intends to use the land which it is proposing to acquire; and*

*- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale*

*it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.*”

1. Although the importance of the rights being balanced is emphasised in the consideration above, the critical point is the weighing of the public interest as against private rights. This balance is very straightforward in this case for the following prime reasons:
2. There is a clear proposal for the Order Lands; namely, the Order Scheme that forms part of a wider scheme which has been partially implemented.
3. There are no remaining objections in principle to the Order. There is no longer a single person, party or objector advancing a positive case to suggest that this scheme is anything other than in the public interest. That is compelling in and of itself.
4. The case for the Order is self-evident for all the reasons set out above.
5. Paragraph 14 of the CPO Guidance considers both i) sources of funding; and ii) timing of that funding. Mr Baron’s clear evidence was that funding is available and committed to deliver the balance of the Full Scheme, including the Order Scheme. The implementation of Phase 1 of the Full Scheme is a firm reflection of the Acquiring Authority’s financial and practical commitment to deliver the balance as soon as the necessary land and rights have been acquired. Indeed, the benefits of the Full Scheme can only be realised by the construction of the Order Scheme.
6. The funding of the Order Scheme was approved in June 2013 via the Acquiring Authority’s CIC (as authorised to do so by the Acquiring Authority’s Board). This decision has been reviewed periodically by the Acquiring Authority and the latest estimated costs to complete the scheme remains within the committed funding streams of the Acquiring Authority and as such is immediately available.
7. The Acquiring Authority has sufficient funds both to acquire the necessary rights and to construct the Order Scheme. The Acquiring Authority is ready to engage contractors as soon as those rights have been secured.

Alternatives

1. No objector now pursues any case of a preferable alternative, so this issue has become academic. It can be dealt with very briefly.
2. In respect of the exercise of compulsory purchase powers under section 226(1)(a) of the Town and Country Planning Act 1990, the CPO Guidance advises on consideration as to:

“*Whether the purpose for which the Acquiring Authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.*”

1. No directly equivalent guidance is available in respect of the powers being exercised here under the 1991 Act. However, the Acquiring Authority considered it relevant to consider alternatives to the Order Scheme.
2. Such alternatives must be true alternatives, in that they must achieve the same regulatory output within the constraints of the regulatory context that was described at length in evidence by Mr Haslett and Mr Baron. There was never any justification or basis for the ‘blank cheque’ approach originally seemingly advocated by Messrs Perry, Fields or Rhodes; an approach that was – belatedly but inevitably – abandoned by MSCCL.
3. In any event, the fact that an alternative proposal may give rise to different or lesser effect does not erode the public interest test in the submitted scheme. As Maurice Kay LJ stated in *R. (Clays Lane Housing Cooperative Ltd) v. Housing Corp* [2005] 1 WLR 2229 at [25]:

“*If ‘strict necessity’ were to compel the ‘least intrusive’ alternative, decisions which were distinctly second best or worse when tested against the performance of a regulator's statutory functions would become mandatory. A decision which was fraught with adverse consequences would have to prevail because it was, perhaps quite marginally, the least intrusive. Whilst one can readily see why that should be so in some Convention contexts, it would be a recipe for poor public administration in the context of cases such as* ***Lough v First Secretary of State*** *and the present case.*”

1. Therefore, and as has been borne out on the facts here, even if where were alternative proposals they may not provide the basis for proper objection to a CPO if, for example[[117]](#footnote-117):
2. They are less certain in the delivery of the objectives which underpin the public interest basis for confirming the Order, e.g. because they do not secure certain delivery of the objectives of the Scheme in the public interest, or lack the relevant permissions or consents, or generally lack certainty in the delivery of relevant proposals in the public interest;
3. Will delay the implementation of the Order Scheme where a timely delivery of the proposals is in the public interest; or
4. Will not deliver the public interest benefits of the Order Scheme as well or as effectively as that scheme, or in the timely manner of the scheme, where those differences in delivery of benefits and timing are material ones having regard to the public interest.
5. In *Bexley LBC v. Secretary of State* [2001] EWHC Admin 323 at paragraphs [44], [47] and [48] the Judge made it clear that the Secretary of State and the Courts consider that the creation of delay and uncertainty in considering alternative proposals put forward in support of CPO objections is a highly material consideration in rejecting the objections and confirming the CPO. If there are compelling public reasons for the delivery of the Scheme, the delivery of alternatives may cause delay and uncertainty in the delivery of the scheme and its public benefits which may not be considered to be acceptable.
6. In terms of alternatives, the Acquiring Authority has explored at various times a number of different alternatives and options to deliver the improvements that are to be secured by the Order Scheme. There are no preferable alternatives, as all parties now accept. The Order Scheme meets the water quality improvements required by the regulator at the lowest WLC. The other options would require greater CAPEX and OPEX, as well as significantly higher maintenance requirements. Furthermore, dependency on a reliable power supply also make alternatives less resilient for the long term. Dr Hendry’s – and ultimately Dr Studds’ - evidence also identified why such alternatives are inferior in terms of delivering water quality improvements.
7. Moreover, MSCCL’s case as to alternatives first narrowed significantly during the Inquiry, becoming limited to consideration of three alternatives,[[118]](#footnote-118) before ultimately being withdrawn.
8. Interestingly, save for a minor tweak so as to swap NSAF for BAFF, none of the heralded ‘alternatives’ advocated by Mr Perry and others on behalf of MSCCL were pursued beyond the end of Mr Perry’s oral evidence. They were based on many errors and misleading assumptions. Their inclusion served no purpose other than simply to confirm – by the testing that has occurred, that the Acquiring Authority’s optioneering has been robust and sound from all relevant perspectives.
9. The gravity solution proposed by the Order Scheme would also be compatible with any future process improvements that may be required to facilitate any future improvements to Eccles WwTW.

Water Quality

1. MSCCL’s written evidence originally asserted that the Order Scheme: i) “*perpetuates, rather than minimises, unacceptable pollution*”; and ii) “*actively hinders any positive improvement to the environment*”,[[119]](#footnote-119) but this must necessarily have been withdrawn with the withdrawal of the objection in principle. It was obviously wrong anyway.
2. Far from achieving a “*better outcome*”[[120]](#footnote-120), MSCCL’s witnesses (as advocates of treatment and storage options) failed to deal with the basic fact that, in this instance, the Order Scheme futureproofs Eccles WwTW in a manner that none of the alternatives (including the tertiary treatment options now promoted by MSCCL) would have done. In particular – far from providing flexibility – those options would give rise to a very clear risk of wasted costs or the Acquiring Authority being required to decommission a recently constructed treatment plant in the near future should consent levels change or new controls be imposed (e.g. in relation to Phosphorous).
3. In this instance, it is not the diversion of flows from Salteye Brook into the Canal that would “entrench and exacerbate”[[121]](#footnote-121) an unsatisfactory situation, but the tertiary treatment options themselves. This is why, when put under any meaningful scrutiny, such assertions were abandoned by MSCCL’s witnesses. Mr Perry was clear in this regard: there is simply no justification for tertiary treatment alternatives at Eccles WwTW, whether that alternatives is based upon the use of BAFF or NSAF. As noted in section 4B of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] (and above), Dr Studds was equally clear in conceding during cross examination that:
4. In his professional judgement, the “*preferable option involves diversion away from the Salteye Brook*” and that Option 1 (the Order Scheme) “*does not preclude any additional improvements to the Canal if [they are] considered necessary*”;
5. The treatment “*debate*” is “*separate to the CPO tunnel itself, which achieves a diversion*” and that Option 1 “*does not preclude [MSCCL] arguing for additional treatment at Eccles*”;
6. “*If there is any merit to that argument*” then the “*EA has the ability to require it by way of a change in the permit*”, which is “*not a matter for the Inspector to resolve*” (“it is for the EA”);
7. Option 1 (the Order Scheme) does not:
8. Preclude the delivery of any of those benefits; or
9. Prejudice the WFD status of either waterbody.
10. Option 3 prejudices the status of Salteye Brook because based on what he has put forward “*it lowers its upstream status and builds in a state of poor water quality*”.
11. Overall, Dr Studds agreed that as to the relevant WFD objectives “*Option 1 is the preferable option*”, before then accepting that he “*knew that the option being put forward was not the preferred option but [he] failed to draw it to anyone’s attention*”.[[122]](#footnote-122)
12. The reality, therefore, is that the Order Scheme offers significant improvements to the water quality in Salteye Brook. Under normal conditions, there will be no material change to the water quality in the Canal as the wastewater from Eccles WwTW will continue to discharge into the Canal at the same broad location that it does currently via Salteye Brook.
13. However, there will be an added benefit of a reduction in the annual stormwater spill incidents and volumes (a 20% reduction) as a result of the Full Scheme. There will also be additional improvements in the aesthetic quality of the Canal which come from the introduction of additional screening of stormwater flows for solids over a certain size.
14. In this context, it is also relevant to note that the main pillar of MSCCL’s case as to water quality was abandoned long before its objection was withdrawn: Mr Perry’s evidence as to the build-up of sediments within the tunnel from suspended solids in the FE. In this regard, Dr Studds also acknowledged that the unrealistic assumptions used as inputs to his biogeochemical modelling were such that the outputs could not be relied upon. Consequently, it is no longer controversial that the quantity of any settled sediment re-suspended during storm events will be very small, and will not result in a deterioration of the water quality within the Canal.
15. Overall, there will be a net benefit to water quality in the Canal, as well as significant and immediate improvements to Salteye Brook.

Planning Considerations

1. There is no statutory requirement to have regard to the development plan, planning permission and other material considerations in considering the confirmation of the Order; nonetheless planning policy remains a material consideration in the determination of whether there is a “*compelling case in the public interest*”.[[123]](#footnote-123)
2. In this regard, and as noted above, the Acquiring Authority has been granted all necessary planning consents to construct the Order Scheme.[[124]](#footnote-124) As dealt with in the evidence of Mr Pemberton ([[AA/11/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_11_A-Simon-Pemberton-Planning-Proof-of-Evidence.pdf)] and [[AA/INQ/46](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_46-42062-Barton-Locks-Revised-NPPF-Note-17-August-2018.pdf)]) delivery of the Scheme is in fact fully compliant with development plan and national policy (as recognised by the local planning authority when granting planning permission for the outfall structure).

Flood Risk

1. The evidence on flooding has confirmed that the risk of flooding is not materially increased as a result of the operation of the proposed outfall. The discharge rates and volumes will not be significantly higher than those currently experienced via Salteye Brook. Furthermore, neither the EA nor the Lead Local Flood Authority have objected to the applications, nor did they in relation to the previous, almost identical, schemes.

Impact on the Operation of the Canal

1. The Acquiring Authority has provided evidence including drawings and calculations demonstrating that the outfall will not affect vessels entering or leaving Barton Locks.[[125]](#footnote-125) The Acquiring Authority’s proposed schedule provides the Inspector and Secretary of State with all the necessary reassurance that the construction operations and permanent operational access requirements do not adversely affect the operation of the canal.

Access

1. The lack of objection from CoSCSL, PSLL and PINL means that the Inspector and Secretary of State can be reassured that access for construction and operational purposes will not affect stadium operations.

Negotiations

1. As noted in section 4E of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] (and above), the Acquiring Authority has negotiated at length with the landowners to acquire the rights to implement the Order Scheme. In particular, the Acquiring Authority has changed its plans on a number of occasions in order to accommodate the requests of MSCCL.
2. In order to provide certainty regarding its ability to implement the Order Scheme, the Acquiring Authority adopted a proper approach to the Order Scheme in terms of how it secures the necessary land and rights.
3. In this regard, it is important to note that although the CPO Guidance emphasises the importance of negotiation with those whose interests are to be affected, paragraph 2 states that a pragmatic approach may be justified:

“... *if an Acquiring Authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the Acquiring Authority to:*

*- plan a compulsory purchase timetable as a contingency measure; and*

*- initiate formal procedures*

*This will also help to make the seriousness of the authority’s intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations*.”

1. The Acquiring Authority has sought the necessary permissions to construct the outfall by agreement with MSCCL and other landowners. However, these discussions became protracted and were unsuccessful. As a consequence, the Acquiring Authority had little option but to commence compulsory purchase proceedings in September 2016. The Order is necessary to acquire all the necessary rights to construct and operate the outfall.
2. In any event, all remaining objections to the Order have now been withdrawn.

Human Rights

1. A compulsory purchase order should only be made where there is a compelling case in the public interest. The CPO Guidance makes it clear that an Acquiring Authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected.
2. In making this Order, the Acquiring Authority has carefully considered the balance to be struck between individual rights and the wider public interest. All those affected have been notified and have had an opportunity to make objections to the Order, and to be heard at a Public Inquiry, before a decision is made on whether or not the Order is to be confirmed. There are no remaining objections.
3. Interference with Convention rights, to the extent that there is any, is justified in order to secure the benefits which the Order Scheme will bring, including: necessary and important improvements to Salteye Brook; upgraded sewerage infrastructure adjacent to a regionally significant strategic site; and benefits for the area. Appropriate compensation will be available to those entitled to claim it under the relevant statutory provisions.
4. Any interference with interests otherwise protected by Convention rights is considered to be justified in order to secure the physical and environmental improvements that the Order Scheme will bring. Realistic alternative approaches have been considered but discounted for various reasons, as summarised in the Optioneering Solutions Report [[CD/OTH/33](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.OTH_.33-UU-Optioneering-Solutions-Report-09052018.pdf)].

Equalities Act

1. Section 149 of the Equality Act 2010 sets out a public sector equality duty that is applicable to all the functions of public sector bodies, including compulsory purchase.
2. The Acquiring Authority has carefully considered the possible effects of the Order Scheme and has concluded that the proposals will not give rise to differential impacts on groups with protected characteristics. The Acquiring Authority has acted in a manner consistent with the need to devise a process which promotes equality of opportunity and the overarching requirement to act in accordance with the equalities duty set out in Section 149 of the 2010 Act. There is no adverse effect. Therefore, mitigation is not necessary.

**The Acquiring Authority’s Conclusions**

1. There is a compelling case in the public interest for the making and confirmation of the Order. Confirmation of the Order will provide certainty that the Order Scheme can deliver the wider public benefits that it will provide and realise the obligations and statutory objectives of the Acquiring Authority and the EA.
2. There are no remaining objections to the confirmation of the Order.
3. There are no impediments to the construction of the Order Scheme. All the necessary consents have or can be readily secured. The proposals are necessary and required by the EA in order to improve the water quality of Salteye Brook. The evidence demonstrates that the Order Scheme results in no demonstrable harm to the Canal and, in fact, will result in water quality and aesthetic benefits.
4. The Acquiring Authority has the funds available for construction and operation of the Order Scheme. It is ready to tender for the works as soon as it has secured the necessary land and rights.
5. The Acquiring Authority considers that the alleged serious detriment to MSCCL’s undertaking would be avoided:
6. The lack of any remaining objection to the Order is clear evidence that the implementation of the Order Scheme will not have a detrimental impact on MSCCL’s statutory undertaking. It would be inconsistent with the withdrawal of MSCCL’s objection for confirmation of the Order to in some way be found to cause material prejudice to MSCCL’s undertaking. MSCCL raised the spectre of such prejudice in its evidence. That evidence did not stand up to scrutiny;
7. The evidence before the Inquiry is more than sufficient to satisfy the Inspector and Secretary of State that the implementation of the Order Scheme will not have a detrimental impact on (let alone cause a serious detriment to) MSCCL’s statutory undertaking; but in any event,
8. As a matter of law, the rights which the Acquiring Authority seeks will be framed adequately to protect MSCCL’s statutory undertaking going forward if modified in the manner indicated in the Acquiring Authority’s proposed schedule. In particular, but not exclusively, to the extent that it is alleged that detriment will arise out of MSCCL’s inability to control or influence the design of the proposal through the grant of an engineering licence. However, under the operation of the Acquiring Authority’s proposed schedule, in the event that proposed works would injuriously affect MSCCL’s undertaking, the Acquiring Authority would in effect have to go through a process analogous to that of obtaining an engineering licence under Paragraph 1 [Inspector’s note: That is, Paragraph 1 of Schedule 1 to the Order as supplied in Appendix 1 of the Acquiring Authority’s closing submissions ([AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf))]. The only difference would be that under Paragraph 1, MSCCL would not be entitled to refuse consent for the works or to impose conditions on the works in an unreasonable manner. It would be perverse to suggest that it would be a serious detriment to a statutory undertaker for it to lose the ability unreasonably to prevent the works of another statutory undertaker. The drafting proposed by the Acquiring Authority sufficiently protects MSCCL in the exercise of its statutory functions. In the event that proposed works would not injuriously affect MSCCL’s undertaking, there can be no serious detriment to MSCCL.
9. In contrast, MSCCL’s schedule of protective provisions provides more than is necessary and does so in a manner that undermines its substance and practical operation. However, if the Secretary of State considers any or all of those provisions to be necessary or appropriate, then they can be included on the face of the Order. It is obviously critical that an Order is confirmed to enable the Scheme to proceed in the public interest.
10. For the above and other reasons, which have been explored during the course of the Inquiry, the Acquiring Authority requests that the Order, with the proposed changes identified by the Acquiring Authority, be confirmed.

**The Acquiring Authority’s Response [**[AA/INQ/84](http://www.hwa.uk.com/site/wp-content/uploads/2018/11/UU-Note-in-response-to-MSCCL-8-February-2019.pdf)**] to MSCCL’s closing submissions [**[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)**]**

Introduction

1. By its “Note in Response” dated 25 January 2019 (the **“MSCCL Response”**), MSCCL seeks to raise seven points that it claims arose further to the Acquiring Authority’s closing submissions. This brief note provides the Acquiring Authority’s response to these.
2. In summary, the MSCCL Response does not take any of the few remaining issues about the form of the Order any further. Somewhat curiously and improperly, it seeks to add a gloss to the withdrawal of MSCCL’s ‘in principle’ objection that did not exist and was not communicated at the time of that withdrawal.
3. As correctly identified by the Acquiring Authority in its closing submissions, there is no ‘in principle’ objection by MSCCL to the making of the Order. The only remaining dispute relates to the precise wording of the protective provisions.

Prospect of Additional Written Submissions From MSCCL

1. It is unclear why MSCCL seeks to raise a question as to whether the Inspector requires any additional written submissions from MSCCL. It was a matter entirely for MSCCL in the presentation of its case as to what it wanted to say as to the Order. Consistent with its withdrawal of any ‘in principle’ objection to the Order, its submissions should be confined to those matters relating to the question of protective provisions. There is no basis for MSCCL now seeking to raise any question of making further submissions, nor seeking to put any onus on the Inspector to make a decision on this point.

The Withdrawal of MSCCL’s ‘In Principle’ Objection and its Implications for the Determination of the Remaining Issues in Dispute

1. Notwithstanding the basic point above about MSCCL’s withdrawal of any ‘in principle’ objection, MSCCL appears in paragraphs 6 to 22 of its Response to make submissions that go beyond this scope and to make comments on why it withdrew its objection. To take just one example, MSCCL now appears to suggest that the withdrawal of its objection ‘in principle’ was “*simply a recognition by MSCCL that the evidence it was able to adduce in support of some crucial elements of its ‘in principle’ case was not sufficiently strong for that case to succeed*”. A similar submission is made at paragraph 22 (a hitherto uncommunicated claimed “*pragmatic recognition*…”).
2. The Acquiring Authority makes two short points in response:
3. First, the simple and unequivocal position is that MSCCL chose – freely, and whilst in receipt of comprehensive professional advice – to withdraw its ‘in principle’ objection to the Order. This withdrawal of objection in principle was unqualified, save of course for the ability to deal with the remaining issue as to the terms of the protective provisions to be imposed on the Order and the points addressed in Section 5 of the Acquiring Authority’s closing submissions. So MSCCL has subsequently made its submissions as to “*the scope of the protections that are required to avoid detriment to its undertaking*” and the Acquiring Authority has responded. MSCCL expressly confirmed by the same letter that its submissions “*in these respects would be limited to the form in which the Order is confirmed, and not whether it should be confirmed as a matter of principle*”: see [[MP/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-December-2018-1.pdf)]. Thus, there can be no proper basis for MSCCL to seek to argue that the Order should not be confirmed at all. The time for any such attempt has long since passed and the Acquiring Authority has correctly and properly identified that the MSCCL has withdrawn any ‘in principle’ objection. The Acquiring Authority has not disputed MSCCL’s ability to make submissions on the form of the Order, and the Acquiring Authority has responded to those submissions already.
4. Second, save for the qualification highlighted above, no further gloss was applied to the withdrawal of MSCCL’s ‘in principle’ objection. It was certainly not couched in the terms that MSCCL now seeks to add, whether by reference to particular issues or particular evidence.
5. Set against that context, MSCCL’s assertion that the Acquiring Authority is “not correct”[[126]](#footnote-126) [[127]](#footnote-127) in submitting that there cannot be any controversial issues relevant to the principle of the Order at all is manifestly wrong. A cursory glance at the wording of [[MP/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-December-2018-1.pdf)] confirms that MSCCL withdrew its objection ‘in principle’ to the confirmation of the Order. Any ex-post facto gloss about MSCCL’s withdrawal is neither helpful, nor proper. It is particularly inapposite if used simply as a vehicle to give new evidence on the reasons for MSCCL’s withdrawn objection.
6. The position remains straightforward.
7. There is no ‘in principle’ objection to the confirmation of the Order. To the contrary, it is now recognised by MSCCL that there is a compelling case in the public interest for the Order to be made. MSCCL’s only qualification relates to the exact wording of the Order itself, something on which both parties have made submissions.
8. The evidence before the Inquiry is more than sufficient to satisfy the Inspector and Secretary of State that the implementation of the CPO Scheme (which will include protective provisions) will not have a detrimental impact on (let alone cause a serious detriment to) MSCCL’s statutory undertaking.
9. Given that is the case, MSCCL’s assertions as to the Acquiring Authority having “*mischaracterised the extent of what can properly be regarded as falling within MSCCL’s ‘in principle’ objection*”[[128]](#footnote-128) are not correct. In particular, contrary to what is said at paragraph 16a, it is correct that MSCCL has withdrawn any ‘in principle’ objection to the confirmation of the Order; its only reservation relates to the wording of the Order in terms of the extent and nature of any relevant protections for its undertaking, i.e. the very same acknowledgement made at paragraph 7.10 of the Acquiring Authority’s closing submissions and repeated at paragraph 18 of the MSCCL Response. Given that acknowledgement, it is difficult to conceive of what – if anything – the remainder of MSCCL’s submissions adds in this regard.
10. Nevertheless, and in any event, the Acquiring Authority can briefly address the points raised at paragraph 17 of the MSCCL Response as follows:
11. Contrary to what is said by MSCCL at sub-paragraphs 17a and 17c, the withdrawal of MSCCL’s ‘in principle’ objection demonstrates that there will be no serious detriment to MSCCL’s undertaking (with only the terms of the protective provisions to be resolved). If MSCCL considered that hearing further oral evidence would have supported its submissions as to any such detriment then the Inspector can be in no doubt that the Inquiry would have heard such evidence, given MSCCL’s conduct of its objection to date. Moreover, the evidence of Messrs West and Clarke was dealt with at the Inquiry as to the fact that protective provisions fully addressed their points. The written evidence of Messrs Gavin, Blythe and Rhodes was not tested under cross examination because MSCCL chose not to call them as witnesses in light of its withdrawal of any objection in principle to the Order. Their written evidence is out-of-date and carries no material weight.
12. Contrary to what is said by MSCCL at sub-paragraphs 17b and 17d, there can be no question that MSCCL’s objection in principle was expressly withdrawn not only in the absence of any asset protection agreement being in place, but also without any requirement that one be in place. This is precisely the point made at paragraph 7.16 of the Acquiring Authority’s closing submissions. MSCCL’s claims as to what might occur with other statutory undertakers or with other asset protection agreements have never had any relevance.
13. Therefore, the recommendation on the terms of the Order must be made on the basis of evidence, which supports UU’s submission that there is no need for additional protective provisions beyond those which the Acquiring Authority has identified. Contrary to what MSCCL may now assert at paragraph 21 of the MSCCL Response, there can be little doubt that Parliament will have had in mind the fact that where a statutory undertaker asserts that serious detriment will arise, there will be the opportunity to test that assertion with evidence and that evidence may be found to be lacking. That is precisely what has occurred here. By virtue of this Inquiry, the CPO Scheme has gone through a lengthy process of testing objections leading to the withdrawal of the objection in principle.

**Additional Borehole Evidence**

1. Mr West has provided a response in relation to BH7 information in his “Note in Response to New Borehole 7 Information” (undated, the “**West Response**”) [[MP/INQ/72a](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-Stephen-West-Note-in-response-to-Borehole-7-Information-2-1.pdf)]. The Acquiring Authority briefly responds as follows.

Settlement Risk

1. As the Inquiry heard and was agreed, the theoretical potential for any settlement of the type that Mr West now refers to in his note would only exist if dewatering was included in the method for the construction of the outfall cofferdam. As has been repeatedly stated in the evidence of Mr Parsons, Mr Sephton and Mr McKimm on behalf of the Acquiring Authority, dewatering of the ground between the cofferdam and the wing wall is not necessary to complete the cofferdam and build the outfall structure. Owing to the partial location of the cofferdam within the Canal, it is essential that its walls are water-tight to prevent water flowing in from the Canal.
2. As now proven by the recent ground investigation commissioned by the Acquiring Authority and completed in December 2018, the main part of the wing wall is founded on sandstone. The shallow western end of the wing wall is founded on a thin bed of dense gravel above sandstone.
3. Mr West states that according to the Standard Penetration Test (‘SPT’) in the gravel in BH7, the gravel should be described as medium dense: see West Response, para 2.4. However, with reference to the plot of SPT N values, which give a measure of the relative density of granular soils in Mr McKimm’s earlier note ([[AA/INQ/61](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_61-Note-to-Inquiry-on__-Ground-Investigationsfinalpdf.pdf)], at Figure 3), it can be seen that the density of the gravel in fact varies from medium dense to very dense. Therefore, a summary description of dense is appropriate.
4. Mr West’s views about the stiffness of the ground ignore the written information provided by Mr Gavin (as identified by Mr McKimm and Mr Parsons), which demonstrates that the lock walls were built in the dry such that the gravel at the base would have been compacted by the weight of the wall and hence stiffened to the level of maximum compression, i.e. when the wall was at its maximum effective weight.
5. As the Inquiry heard, and again is common knowledge, after construction in the dry, the Canal was impounded (flooded). The water level was lowered during operation at least once – in 1969 the water level in the Barton Pond was lowered by about 5.69m for a period of about 2 months. Therefore, it is clear that the wall was subjected to water level variations and effective stress changes without serious detriment, which indicates that no material differential settlement has taken place. It is unlikely to take place in the (itself unlikely) event of dewatering during construction of the cofferdam.
6. These events – which are not disputed by MSCCL - constitute a realistic test of the stiffness of the ground supporting the wall (as explained by Mr McKimm), as compared to simplistic theoretical assessments based on crude in situ tests and rock descriptions. They suggest that there is little or no variation in strength or stiffness of the ground along the base of the wall sufficient to cause damaging differential settlement.
7. Therefore, contrary to paragraph 3.4 of the West Response, there is overwhelming evidence to support Mr McKimm’s opinion that the sand and gravel provides as firm a foundation as the rock even if this issue became relevant because of dewatering (which is not proposed).

Dewatering

1. The Acquiring Authority’s clear evidence to this Inquiry is that dewatering is neither required nor intended to be undertaken.
2. Notwithstanding that this remains the case, Mr McKimm has previously emphasised ([[AA/INQ/61](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_61-Note-to-Inquiry-on__-Ground-Investigationsfinalpdf.pdf)], at paragraph 5.4) that according to Mr Gavin’s evidence, the Canal is designed to allow for significant variations in water level down to a minimum of 8.42mOD [[MP/6/R2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_R.2.pdf)]. Even if the dewatering at the cofferdam was undertaken to the final excavation level (7.0mOD), owing to the curve of groundwater drawdown level in the soil between the cofferdam and the wing wall, the water level at the wing wall would remain above 8.42mOD.
3. Furthermore, even if dewatering was attempted in the cofferdam or shaft, Mr McKimm’s evidence is that the wall foundations are in direct connection with the Canal and so the wall and foundations would remain submerged. Mr West agrees that “…*there is a hydraulic connection between the water in the canal bank and the water level in the canal*”: see West Response, at paragraph 3.6. In this regard, it is Mr McKimm’s evidence that the sudden loss of water at the base of the wall in BH7 suggests a direct connection to the Canal, which – in the unlikely event of dewatering – would allow immediate recharge of water to the wing wall, most likely along the interface between the wall and the Canal bank.
4. Overall, however, there is no issue in any event. Mr West himself concludes his response by noting that the risk of settlement “can be managed by suitable design and monitoring of the wing wall and the construction works”. There is not a shred of evidence to support any assertion that the design and monitoring that would be undertaken would be anything other than suitable and appropriate. It is clearly in The Acquiring Authority’s own interests to ensure that the works adjacent to the Canal are designed and monitored to prevent damaging impacts on MSCCL’s assets; however unlikely those impacts may be.

**Right to Remain**

1. As noted in the Acquiring Authority’s closing submissions, MSCCL’s concerns in relation to the “right to remain” are best characterised as the very definition of a drafting point; not least because – as noted above - the ‘terms’ of MSCCL’s withdrawn objection are such that its submissions are limited to the form in which the Order is confirmed, and not whether it should be confirmed as a matter of principle.
2. The points raised in the MSCCL Response do not take things materially further.
3. The Acquiring Authority’s position remains the same. It is appropriate and better to avoid ambiguity by having the right to remain set out expressly, rather than (as MSCCL say) it already being implicit. It is very difficult to see what reasonable argument MSCCL can have with such right being made explicit if they accept that it exists implicitly. If the Secretary of State were to remove express reference to it, it would have to be on the basis that (as MSCCL submit) such right is implicit.

**Return of Plots 6Z and 6Q**

1. The Acquiring Authority responds briefly as follows:
2. As to sub-paragraph 33a, the Secretary of State patently does not need to be “*certain now that the land would be returned to MSCCL in order to be able to conclude that serious detriment would be avoided*”. Tellingly, no evidence is cited in support of MSCCL’s assertion in this regard, nor does it make any sense because it is not explained how non-return would create such serious detriment. To the contrary, the Acquiring Authority and MSCCL will have a mutual interest in the land in question operating as part of the Canal, given that it will contain the Acquiring Authority’s essential outfall providing for discharge into the Canal.
3. In any event, as to sub-paragraphs 33b and 33c, the Acquiring Authority has to build the CPO Scheme. In order for it to do so under the operation of the Acquiring Authority’s proposed schedule, it is likely to require MSCCL’s consent for works in this location. If MSCCL wants to impose a condition on any such consent then – subject to reasonableness – it would be permitted to do so, with any dispute as to the same falling within the scope of the dispute resolution mechanisms in the Acquiring Authority’s proposed schedule. Indeed, provided that it acts reasonably, MSCCL can grant consent, grant consent subject to conditions, or refuse consent. Likewise, of course, any terms imposed on any return of land would equally have to be reasonable terms in order for them to not fall foul of the same provisions.
4. Overall, therefore, MSCCL’s Response does not take the debate materially further in any respect.

**Serious Detriment**

1. This point can also be covered briefly. The terms and content of MSCCL’s original objection are clear from the relevant correspondence. Whether by oversight or otherwise, there is no reference made in that correspondence to paragraph 3 of Schedule 3. In fact, quite to the contrary given that by letter dated 20 September 2017, the Secretary of State for Environment, Food and Rural Affairs expressly stated that MSCCL’s objection was considered to be a representation pursuant to s.16 of the 1981 Act alone. In those circumstances, although the parties may agree as to what would be a duly made representation relevant to each statutory provision, the Acquiring Authority does not agree that MSCCL’s representation has been duly made for the purposes of paragraph 3 of Schedule 3.
2. However, in any event and as noted at (Footnote 256 of [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] the Acquiring Authority’s closing submissions, which is) Footnote 62 in this report, the Acquiring Authority does deal with both acquisition of MSCCL land and acquisition of rights over MSCCL land, demonstrating no material detriment at all.

**Proposed Protections**

1. The Acquiring Authority’s proposed schedule is a simple, overarching consenting mechanism which ensures that MSCCL has all necessary protection for its statutory undertaking. It is both secure, but also flexible for both parties, rather than imposing unnecessary hurdles. It can be responsive, without weakening any of the required protection.
2. It is irrelevant whether the description of the Acquiring Authority’s proposed schedule in paragraph 7.87 of the Acquiring Authority’s closing submissions amounted to “new points” or not, given that there is no suggestion at paragraph 38 of the MSCCL Response that there is anything in, or lacking from, those clarifications that would mean that the Acquiring Authority’s proposed schedule does not provide the required level of protection on any given application.

**Conclusions**

1. The Acquiring Authority neither invites nor envisages that any further written submissions will be required from either party. Rather, the Acquiring Authority requests that the Order, with the proposed changes identified by the Acquiring Authority, be confirmed as soon as practicable.

Objection by Manchester Ship Canal Company Limited (‘MSCCL’)

Plots at various locations within the Order lands

1. The case set out below is an edited summary of the MSCCL’s closing submissions contained within [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)].

Case for the Objector [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)]

**Introduction**

1. There are two issues raised by Manchester Ship Canal Company Limited’s (‘MSCCL’) remaining objection:

a. what form of protective provisions for MSCCL’s statutory undertaking should be included as part of the Order; and

b. should a right to “remain” be compulsorily acquired over MSCCL’s land?

1. At the time of writing it has unfortunately not proved possible for MSCCL and United Utilities Water Limited (‘UUWL’) to agree on the contents of an asset protection agreement (‘APA’). The absence of such an agreement gives rise to the need for additional matters to be included in the protective provisions now sought by MSCCL.
2. MSCCL’s suggested Schedule of protective provisions in its final form is appended to these closing submissions ([Appendix 1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf)). The contents of the Schedule, and any changes made to the version submitted as [MP/INQ/69](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_69-BDB-Draft-Schedule-WITHOUT-APA.pdf) are described and explained in detail in the body of these closing submissions.
3. MSCCL’s closing submissions are structured as follows:

a. MSCCL’s statutory undertaking

b. The requirement to demonstrate no serious detriment

c. UUWL’s approach to the protection of MSCCL’s undertaking

d. Evidence to the Inquiry on protections

e. The appropriate form and content of the Schedule of protective provisions

f. The right to “remain”

g. Conclusions

1. These closing submissions do not seek to address MSCCL’s earlier “in-principle” objection that was formally withdrawn on day 28 of the Inquiry[[129]](#footnote-129) [[130]](#footnote-130).
2. As was explained to the Inspector at the time that the withdrawal was made, once that objection had been withdrawn the issues to which it gave rise no longer need to be resolved and become academic for the purposes of decision-making. Thus MSCCL would not anticipate the Inspector and Secretary of State needing to grapple with and determine those otherwise controversial issues (e.g. the approach to and adequacy of UUWL’s optioneering exercise, and the extent to which the poor water quality in the Canal is attributable to inputs from UUWL’s assets rather than the structure of the Canal itself) in order to reach a decision in this case.
3. If for any reason the Inspector decides that it is necessary to determine those issues, and we should make clear that we see no reason why that would be necessary, MSCCL would ask that it be provided with an opportunity to make further submissions as appropriate.

**A. MSCCL’s Statutory Undertaking**

1. MSCCL was originally incorporated by private Act of Parliament; the Manchester Ship Canal Act 1885 (‘the 1885 Act’). MSCCL wholly owns, is the navigation authority in respect of and is responsible for the Manchester Ship Canal (‘the Canal’). By virtue of its authority under the 1885 Act to construct and maintain the Canal and to operate as the harbour authority of the Harbour and the Port of Manchester, MSCCL is a statutory undertaker.
2. The Harbour and Port of Manchester comprises the River Irwell from Hunt’s Bank to the start of the Canal, the Canal from Manchester to Eastham and the River Mersey from Rixton Junction to Warrington Bridge. Of significance to the present case, it also includes MSCCL’s quayside at Irlam Wharf and the container operation carried on there.
3. The Canal is, in practical terms, a linear port/harbour, and MSCCL is the port/harbour operator.
4. The statutory functions and duties[[131]](#footnote-131) that MSCCL has (which were set out in MSCCL’s Statement of Case[[132]](#footnote-132) and which have not been challenged by UUWL) include obligations to:

a. construct and maintain the Canal;

b. take reasonable care (whenever the harbour is open for public use) to ensure that all who choose to navigate it may do so without danger to their lives or property;

c. conserve and promote the safe use of the harbour and to prevent loss or injury caused by the harbour authority’s negligence;

d. have regard to the efficiency, economy and safety of operation as respects the services and facilities provided;

e. take such action that is necessary or desirable for the maintenance, operation, improvement or conservancy of the harbour; and

f. ensure that enough resources are available to discharge their marine safety obligations and set the level of dues accordingly.

1. MSCCL is also an undertaker for the purposes of the Harbours, Docks, and Piers Clauses Act 1847 (‘the 1847 Act’) and the Port of Manchester is subject to the provisions of the 1847 Act. Most significantly, section 33 of the 1847 Act creates a public right of navigation (subject to the payment of dues) through the Port of Manchester, which MSCCL is obliged to maintain.
2. All of the land in the ownership of MSCCL and subject to the Order forms part of the statutory undertaking.

**B. The Requirement to Demonstrate No Serious Detriment**

1. In the above circumstances, MSCCL is a statutory undertaker for the purposes of section 8 of the Acquisition of Land Act 1981 (‘the 1981 Act’)[[133]](#footnote-133). The test in section 16 (in respect of land acquired) and paragraph 3 of schedule 3 to the 1981 Act (in respect of rights)[[134]](#footnote-134) requires that, if the Secretary of State is to authorise the compulsory acquisition of either land or rights, they must be satisfied that all of the land and rights contained in the CPO can either:

a. be purchased without serious detriment to the undertaking; or

b. that any detriment can be made good by the use of other land belonging to or available to the undertakers for acquisition by them.[[135]](#footnote-135)

1. The consequence, if they cannot be so satisfied, is that the Secretary of State is prohibited by the statute from permitting the compulsory acquisition of the statutory undertaker’s land.
2. Against this background, MSCCL was perplexed by various suggestions made by Leading Counsel for UUWL during the course of the Inquiry, including that one would not ordinarily expect to have asset protection agreements in place ahead of the confirmation of an order[[136]](#footnote-136) and that the substance of any asset protection arrangements were of “no particular relevance” to the Secretary of State in exercising his powers of confirmation[[137]](#footnote-137). The question of the adequacy of the protections secured for statutory undertakers is in fact fundamental to the decision as to whether there is serious detriment and, as such, to the decision of if and how to confirm. It is MSCCL’s case that, absent the modification of the Order so as to include the Schedule in the form it suggests, the Secretary of State will not be able to be satisfied as to the absence of serious detriment.
3. Moreover, as the Inspector and Secretary of State should be aware, it is entirely commonplace – indeed it is usual practice – for asset protection agreements to be put in place prior to the confirmation of a compulsory purchase order. The existence of such agreements is typically the basis for statutory undertakers either (a) not objecting to and / or (b) withdrawing any earlier or holding objection. Whilst we anticipate that both the Secretary of State and Inspector will be perfectly familiar with this, a selection of orders where this can be demonstrated to have been the case include:

a. The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Orders (Nos 1 & 2) 2016, where both National Grid and Highways England withdrew their objections on the express basis of suitable agreements having been entered into. These withdrawals, among others, were then recorded in the Inspector’s report. A copy of the front sheet and relevant pages of the Inspector’s report, together with the letters is appended as [Appendix 2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.2-MSCCL-Closing-Submissions-Appendix-2.pdf) to these closing submissions[[138]](#footnote-138).

b. The Leicester City Council (Leicester Waterside) Compulsory Purchase Order 2016, where Western Power Distribution Networks withdrew their objection on the basis of an agreement having been entered into. Their withdrawal, among others, was then recorded in the Inspector’s report. A copy of the front sheet and relevant pages of the Inspector’s report, together with the letter is appended as [Appendix 3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.3-MSCCL-Closing-Submissions-Appendix-3.pdf) [[139]](#footnote-139).

c. The London City Airport Limited (King George V Dock) Compulsory Purchase Order 2015, where the Docklands Light Railway Limited withdrew its objection following the conclusion of an asset protection agreement (and in fact where the Inquiry was resumed on a particular day to allow time for that agreement to be concluded). A copy of the front sheet and relevant pages of the Inspector’s report is appended as [Appendix 4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.4-MSCCL-Closing-Submissions-Appendix-4.pdf) [[140]](#footnote-140).

d. The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. Although this was a development consent order, in respect of which protective provisions are available, Thames Water also entered into a number of asset protection agreements that enabled objections to be withdrawn. The front sheet and relevant extracts from the decision letter confirming the position are appended as [Appendix 5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.5-MSCCL-Closing-Submissions-Appendix-5.pdf) [[141]](#footnote-141).

**C. The Acquiring Authority’s Approach to the Protection of MSCCL’s Undertaking**

1. UUWL’s attitude to the protection of MSCCL’s undertaking has shifted on a number of occasions since the making of the Order. There are a number of instances where the position now being advanced to the Secretary of State is inconsistent with that which UUWL advanced previously, and which MSCCL considers ought to inform the Secretary of State’s view as to what ought ultimately to be required. MSCCL’s attitude, by contrast, has remained consistent throughout.
2. At the time of making the Order, UUWL addressed the requirement to demonstrate that no serious detriment would arise in Section 12 of its Statement of Reasons[[142]](#footnote-142). It stated that it had been in discussions with those undertakers affected by the Order Scheme (used here as shorthand for the works proposed to be undertaken on the land and pursuant to the rights that would be acquired under the Order) and MSCCL in particular.
3. At that stage, UUWL simply asserted that the test of no serious detriment would be satisfied, without explaining the basis for that assertion. It did however note that it was “possible” that Schedule 13 of the Water Industry Act 1991 (‘the 1991 Act’) would apply, such that the consent of any affected undertakers would have to be obtained prior to work commencing, notwithstanding the Order powers. Nonetheless, its position was that the Order Scheme works would not injuriously affect the property of any statutory undertaker or the carrying on of any undertaking, such that Schedule 13 would not be engaged[[143]](#footnote-143).
4. It is noteworthy that UUWL also claimed, without qualification, that as on previous occasions where they had sought to work in or adjacent to the Canal (outside the CPO context), they would “*comply with applicable byelaws and rules relating to such works*”[[144]](#footnote-144).
5. MSCCL objected to the order by letter dated 20 October 2016[[145]](#footnote-145). In that letter, MSCCL identified its role as statutory undertaker and noted that UUWL’s Statement of Reasons had failed to discuss the detriment that they would suffer and the means by which that detriment could be made good. In particular, MSCCL noted the absence of information provided by UUWL about the degree to which navigation would be affected. Other specific points raised included the need to maintain continuous access to Barton Locks, and the need for construction not to impact upon existing canal bank infrastructure[[146]](#footnote-146). These were all points that were subsequently maintained and made good in MSCCL’s evidence to the Inquiry[[147]](#footnote-147).
6. That objection was in turn addressed in a letter sent on behalf of UUWL dated 19 January 2017, in which UUWL challenged MSCCL’s concerns about the impact of the proposal on their undertaking. Amongst other things, it was stated that[[148]](#footnote-148):

a. The detailed design of the cofferdam would ensure that there would be a clearance of around 7.5 m between the edge of the cofferdam and the line of the northern lock wall, and that if any reduction in this clearance was required this would be notified to MSCCL for further discussions and assessment;

b. The use of non-fixed equipment would mean that UUWL could allow unimpeded navigation notwithstanding its works, and that UUWL and its contractor would liaise with MSCCL regarding vessel and plant movements to ensure that all activities were co-ordinated;

c. That continuous and unencumbered vehicular access to Barton Locks would be allowed via the A57 access as far as practicable, and that there would be provision of access to the eastern end of the operational area, from Stadium Way, which would ensure that vehicles (including a large crane with a 16.5t axle load) would be able to access the lock operational area. It was anticipated that this, combined with timely and regular communication with MSCCL, would ensure that MSCCL could fulfil its obligations to operate and maintain the canal infrastructure at Barton Locks.

d. That UUWL or its contractor would discuss permissible movement and vibration limits with MSCCL and install appropriate monitoring to ensure that those limits were not exceeded.

1. No explanation as to how the above matters were proposed to be secured was provided. However, at that stage, UUWL’s case was that it would require a licence from the harbour master and an MSCCL Engineering Licence[[149]](#footnote-149). It is uncontroversial that such licences would have given MSCCL the protection that it seeks, including by giving MSCCL control over the means by, and manner in which UUWL’s works were carried out.
2. The 19 January letter also addressed the scope of the right to discharge proposed to be acquired pursuant to the Order, stating as follows:

“*The right to discharge sought by UUWL as part, of the Order will be subject to the same statutory limitations on UUWL's existing statutory right to discharge, as are contained within ss.117(5) and 186(3)* [of the 1991 Act]”[[150]](#footnote-150).

1. On 1 November 2017, UUWL supplied MSCCL with its Statement of Case[[151]](#footnote-151). In this, UUWL noted that MSCCL’s objection had been acknowledged to be a representation pursuant to section 16 of the 1981 Act, but again asserted that it was “*entirely satisfied*” that MSCCL’s interest could be acquired without causing serious detriment to its undertaking.
2. As in its earlier correspondence, UUWL’s assertions included that:

a. It would maintain access to Barton Locks throughout the carrying out of the Order Scheme[[152]](#footnote-152);

b. Consistent with UUWL’s usual approach to works involving third party assets, it would undertake detailed assessment of the structures and implement mitigation and monitoring as appropriate, reasonable and necessary[[153]](#footnote-153); and that

c. UUWL would be obliged to seek licences to carry out their works from both MSCCL and the harbour master[[154]](#footnote-154), the last of these points securing and ensuring MSCCL’s role in determining how the works were carried out, as described above.

1. By this stage, UUWL had however changed its position as to whether the rights of discharge acquired pursuant to the Order would be subject to the same restrictions as equivalent rights implied into statute, instead arguing that section 155 is “*not subject to any of the limitations on the authorisation of discharges referred to and relied on by MSCCL*”[[155]](#footnote-155). We consider this in more detail further below.
2. Similarly, although it drew attention to the protective provisions for statutory undertakers conferred by Schedule 13 of the 1991 Act, it now stated (correctly) that such protections relate to the exercise by statutory undertakers of powers conferred by the 1991 Act rather than to rights conferred on a sewerage undertaker by a CPO[[156]](#footnote-156), the effect of which is that Schedule 13 would not be engaged and thus could not protect MSCCL following confirmation of the CPO.
3. On 14 March 2018, noting the continued reliance placed by UUWL upon the requirement to obtain an MSCCL engineering licence to undertake the works comprised in the Order Scheme in order to address its impacts, MSCCL wrote to UUWL to seek confirmation of the legal basis for its position[[157]](#footnote-157).
4. In a response sent on 13 April 2018[[158]](#footnote-158), UUWL acknowledged for the first time that “*there may be no mechanism which secures a requirement for* [the Acquiring Authority] *to obtain an engineering licence in the event that* [it] *has to rely on the powers in the Order to deliver the Order Scheme*”.
5. It went on, the Acquiring Authority’s “*…preference remains to obtain the land and rights required for the Order Scheme by agreement, and in that circumstance consider that the agreement should provide for the information to be submitted by* [the Acquiring Authority] *to MSCCL prior to carrying out the works, and the process for MSCCL to consider and approve that information. A mechanism for resolving any matters which cannot be agreed between the parties is also appropriate. In the event that* [the Acquiring Authority] *has to rely on the powers in the Order, it will provide similar information to MSCCL prior to carrying out the works, discuss it with MSCCL and take into account MSCCL's comments in finalising its approach and the design.* [the Acquiring Authority] *is again willing to commit to a mechanism for resolving matters which cannot be agreed*”.
6. In the absence of agreement to the acquisition of MSCCL’s land, however, no enforceable mechanism for securing this liaison was proffered.
7. MSCCL supplied its own draft Statement of Case to UUWL on 16th of April 2018[[159]](#footnote-159). In that draft, MSCCL explained its view that its licensing powers would not survive the grant of the CPO. It also noted UUWL’s recognition that the protections contained in Schedule 13 of the 1991 Act would not apply to the exercise of the order powers. In that context, MSCCL commented:

“*10.10…Beyond its reference to compliance with existing byelaws and regulations (which are of limited assistance here), UUWL has not suggested any alternative means by which the necessary controls and safeguards required to avoid serious detriment to the carrying on of MSCCL's undertaking would be secured so as to be legally enforceable by MSCCL, and therefore capable of being relied upon and given weight by the Secretary of State when deciding whether or not to confirm the Order.*

*10.11 The only remaining option of which MSCCL is aware that would be capable of providing it with legally enforceable protection is therefore an asset protection agreement, pursuant to which UUWL would enter into a series of binding contractual obligations to MSCCL intended to ensure adequate protection of MSCCL's interests. To date, UUWL has made no offer to commence any discussions with MSCCL regarding protections it would wish to secure in such an agreement. Documentation provided by UUWL makes only very limited reference to mitigation such as monitoring of settlement effects on sensitive assets, but without identifying any legally enforceable mechanism by which such mitigation is proposed to be secured*”.

1. Essentially the same points were subsequently repeated in MSCCL’s final Statement of Case, submitted on 1 May 2018[[160]](#footnote-160). It follows that, at the time MSCCL was preparing its evidence to the Inquiry, there was no proposal for the protection of MSCCL’s statutory undertaking at all.
2. MSCCL’s Statement of Case also captured its concerns about another matter that remains a live issue in the Inquiry, being the scope of the ‘right to remain’. MSCCL’s view was and remains that the meaning and effect of a right to “remain” is unclear and uncertain. We deal with this in more detail further below.
3. On 22 May 2018, the day of exchange of proofs of evidence for the Inquiry, UUWL wrote to MSCCL inviting it to withdraw its objection, on the basis that the question of compensation could be referred to the Upper Tribunal (Lands Chamber). The offer was made on the basis of Heads of Terms that included an Appendix (Appendix 2 at [MP/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-provisions-for-the__-protection-of-MSCCL-21.05.18-1.pdf)), “*which contains provisions intended to ensure the protection of your client’s statutory undertaking*”[[161]](#footnote-161). The Inspector and Secretary of State are referred to that Appendix for their full terms and effect[[162]](#footnote-162), but it will be noted that the protections then proposed for MSCCL’s undertaking significantly exceeded those contained in Schedule 13 to the 1991 Act. By way of illustration, these include:

a. An obligation to give MSCCL reasonable notice of works proposed;

b. A two month period for consideration by MSCCL of plans submitted;

c. Express provision for access and inspection for the MSCCL engineer;

d. Express protection for MSCCL apparatus;

e. Express provision for reinstatement of MSCCL property;

f. A communication plan;

g. Provision for the maintenance of UUWL works; and

h. Cost indemnities[[163]](#footnote-163).

1. MSCCL responded to that offer the very next day, 23 May 2018, noting that “*Although we note your offer was couched in a context of a proposed voluntary acquisition, the need for protection for MSCCL’s statutory undertaking is just as clear (if not more so) in circumstances where your client proposes to acquire our client’s land and rights over that land compulsorily. We therefore seek your urgent confirmation that your client is willing to negotiate appropriate protections to apply in circumstances where the CPO is confirmed, even if the Order remains opposed*”[[164]](#footnote-164).
2. No reply was forthcoming to MSCCL’s letter of 23 May, and so on 4 June 2018 it wrote again, enclosing an amended draft asset protection agreement[[165]](#footnote-165). The Acquiring Authority responded on 8 June 2018, saying that they intended to “*revert shortly with… a proposal*” that was anticipated to “*be considerably simpler than that enclosed with your letter dated 4 June 2018 while still providing MSCCL with sufficient protection for its undertaking*”[[166]](#footnote-166). This came as something as a surprise, given that MSCCL’s draft had taken as its basis and simply built upon that provided by UUWL little over two weeks prior.
3. The question of protection for MSCCL’s undertaking was subsequently picked up in UUWL’s opening submissions to the Inquiry on 12 June 2018[[167]](#footnote-167). In those submissions, UUWL explained that the existing protections contained in Schedule 13 of the 1991 Act were inapplicable to powers obtained pursuant to section 155 but that “there is nothing to preclude the provision of rights to provide equivalent protection which is what UUWL is content to offer in respect of MSCCL as appropriate”[[168]](#footnote-168). No indication was given that they did at that stage consider those equivalent protections to be appropriate; no reference was made to UUWL’s earlier proposed Heads of Terms; and nor was any comment passed on the scope of either the rights to discharge or to remain.
4. On 13 June 2018, following commencement of the Inquiry, UUWL sent a further letter to MSCCL, enclosing a copy of the Schedule of Rights that they now propose ought to be included within the Order[[169]](#footnote-169). The letter suggested that

“*the proposed heads of agreement enclosed with your letter dated 4 June 2018… are unnecessarily complicated and do not reflect the statutory scheme. Our proposals seek to reflect the provisions of Schedule 13 of the Water Industry Act 1991, modified as appropriate to the nature of the rights sought, which would apply were* [the Acquiring Authority] *to exercise its statutory rights under ss.159 and 168*”.

1. In light of the terms of this letter, MSCCL (quite reasonably) concluded that the offer to agree protections in the form set out in Appendix 2 to the Heads of Terms issued on 22 May 2018 (which also did not reflect the statutory scheme) had been withdrawn.
2. As the Inspector will recall, this issue subsequently came to a head on day 11 of the Inquiry, when, during cross-examination of Mr Sephton, Leading Counsel for MSCCL sought to establish the scope of the provisions that would be necessary to ensure the protection of MSCCL’s undertaking. That cross-examination was interrupted by Leading Counsel for UUWL, on the basis of his view that the points being raised were covered by the provisions of the Schedule they had proposed.
3. MSCCL’s understanding at that time was that the Schedule was effectively ‘in draft’, that no application to modify the Order to include the Schedule had yet been made, and that (as above) the offer to negotiate more detailed protections had been withdrawn. Indeed, this appeared to be confirmed by Leading Counsel for UUWL who initially stated that there was “no negotiation”[[170]](#footnote-170) and that the Order was in the form that the Secretary of State would be invited to confirm, albeit it was also (somewhat confusingly) suggested that comments had been invited and would be considered.
4. The position was subsequently clarified following the overnight adjournment, with UUWL asserting that it “*has been and remains open to entering into an agreement with the Objector to incorporate protective provisions” but that the Schedule represented “a baseline position of what UU are seeking at the end of the Inquiry*”.
5. Solicitors for MSCCL responded to this position by letter dated 21 June 2018[[171]](#footnote-171), noting that “*We are pleased to note once more that it is agreed between the parties that as a matter of principle our client’s reasonable concerns require adequate protection. What has yet to be agreed is the substance, namely what concerns are to be addressed by protection*”.
6. The remainder of the Inquiry proceeded on the basis of UUWL’s amended 13 June Schedule forming a minimum degree of protection.
7. Negotiations on the terms of an APA did continue thereafter, albeit at a far slower rate of progress than MSCCL either desired or considered reasonable, having regard to the fact that UUWL was only having to engage with two outstanding objectors (and after, October, only one). Letters evidencing MSCCL’s concerted attempts to progress agreement, including one noting that Messrs West, Clarke, Gavin and Blythe would not be required to give evidence if one could be concluded promptly, were sent on 26 July 2018[[172]](#footnote-172), 13 September 2018 (which was chasing for a response to the 26 July letter)[[173]](#footnote-173), 14 September 2018[[174]](#footnote-174), 2 October 2018[[175]](#footnote-175), 12 October 2018[[176]](#footnote-176) and 2 November 2018[[177]](#footnote-177).Their content and timing is wholly at odds with the suggestion made by UUWL on the final sitting day of the Inquiry that in its efforts to secure appropriate protection for its statutory undertaking MSCCL was engaged in a ‘pattern of behaviour’ attempting to obstruct delivery of the scheme.

**D. Evidence to the Inquiry on Protections**

**Principles applicable to determining the scope of any protections**

1. The approach of UUWL’s witnesses to the questions of what should be assumed about UUWL’s proposed methods of working, and the future working relationship between UUWL and MSCCL, is of considerable assistance in understanding the nature and scope of the protections that ought to be put in place for the benefit of MSCCL’s undertaking.
2. Before considering that evidence, it is however essential for the Secretary of State to have in mind a number of points of principle.
3. The first is one relating to the approach to be taken to the assessment of effects. The Secretary of State will be familiar, in the context of Environmental Impact Assessment, with the concept of the ‘Rochdale Envelope’[[178]](#footnote-178). This approach is commonly employed in cases where the detail of a project is not known in full and is shorthand for the assessment by a developer of effects arising from development by reference to a set of defined parameters. The approach is one that ensures that the range of possible effects that may arise from a given project are fully considered, and that no effects are overlooked by virtue of an unduly optimistic approach being taken to the way in which the details will be developed and implementation controlled in due course.
4. It is then ordinarily for the consenting authority (typically but not always the local planning authority) to ensure that conditions are imposed upon the authorisation of the development to ensure its effects do not stray beyond the parameters assessed. This is the second point to note, and reflects the important and well-established public law principle that a decision maker is not entitled to take into account and rely upon matters as controlling effects unless they can be satisfied that those matters are properly secured[[179]](#footnote-179). Indeed, the Inspector appeared to have just this point in mind when he asked, during the cross-examination of Mr Sephton, what it was that would guarantee that the interests of third parties would be taken into account if UUWL decided to increase the scope of the project (as it could do within the bounds of the rights being sought), and enable him to recommend to the Secretary of State that this would not be an issue[[180]](#footnote-180).
5. Whilst it is accepted that there is no specific legislative or policy requirement to apply the ‘Rochdale’ approach to the assessment of effects upon a statutory undertaking of the acquisition of broadly defined private law rights over its land, MSCCL considers that it is applicable by analogy because the underlying principle is the same in both cases. The decision-maker (in this case the Secretary of State) must assess the effects of the broadly defined rights taken by reference to the full spectrum of what could lawfully be done (including by way of works) pursuant to those rights following implementation of the Order. This would have been the only way to ensure that the range of possible effects of the Scheme upon its undertaking had been properly identified, assessed and taken into account.
6. As set out in more detail below, that has not however happened in this case. UUWL’s case as to the absence of serious detriment to the carrying on of MSCCL’s undertaking is predicated on a number of assumptions about inter alia how the rights will be exercised in practice, such that certain potential adverse effects have not been assessed. That being so, MSCCL’s case is that it is incumbent upon the Secretary of State, in accordance with the second principle above (which does apply directly to the decision they have to make), to ensure that UUWL’s ability to exercise the rights in ways that might have different (worse) implications for MSCCL’s undertaking than those that have been assessed is restricted. The importance of this approach is underlined by the fact that the CPO is not tied to the implementation of any particular planning permission, or indeed any specific scheme of works.
7. In the present case, the only practical way of ensuring that this can be achieved is ensuring that the works that may be carried out pursuant to the Order (and generally the manner in which the relevant rights are exercised) are subject to an appropriate degree of control by MSCCL itself. It is this course of action that both parties are advocating the Secretary of State to take, albeit in different forms.
8. It is also to be noted that, quite apart from the fact that relying only on controls that the decision maker can be satisfied are secured is a well-established principle, ensuring clear and secure controls assumes a particular importance in this case because the history set out above demonstrates that UUWL has changed its position in respect of the protections that would or should be available to MSCCL, illustrating very clearly the risks that UUWL may (if left free to do so) choose to adopt a different approach to the level and extent of protection required once the Order is confirmed.

**Approach of UUWL’s witnesses to construction methodology**

1. In this case, there is no dispute that the evidence of UUWL as to the likely effects of the exercise of the rights sought upon MSCCL assets was predicated on assumptions about the construction process including the following:

a. That construction would principally be undertaken from the land, with only limited works undertaken from the water involving (for example) small safety boats[[181]](#footnote-181);

b. That construction of the tunnel would be carried out using a tunnel boring machine (‘TBM’) with full face support[[182]](#footnote-182);

c. That construction of the shaft would be undertaken by the secant pile method[[183]](#footnote-183);

d. That construction of the twin pipes to the outfall would be undertaken by pipe-jacking rather than their being laid in a trench[[184]](#footnote-184) (it also being noted that if the works were undertaken by a trenched method, which is not precluded by the order, this could give rise to ground movements that might reach the wing wall)[[185]](#footnote-185);

e. That the scheme can be constructed without dewatering[[186]](#footnote-186);

f. That a gap of c.7.5m would be maintained between the end of the cofferdam and the northern lock wall[[187]](#footnote-187);

g. That cranes would not be permitted to oversail the navigable channel whilst a vessel was transiting close by and that men would be removed from the cofferdam at the same time;

h. That the construction contract would impose limits[[188]](#footnote-188) providing that there would be “no movement” at Barton Locks; and that

i. Continuous access for MSCCL to Barton Locks would be provided at all times.

1. None of these matters are ones that are secured, either in an agreement or pursuant to the planning permission for the Scheme (to which the Order is not in any event tied)[[189]](#footnote-189). Indeed, UUWL’s witnesses accepted that there was nothing to stop UUWL constructing principally from the water (and indeed, during cross-examination on day 11 Mr Sephton made clear that was a decision for the yet-to-be-appointed contractor), and it is common ground that there is no commitment from UUWL to use or require the use of, or to exclude, any particular construction methodology, including in relation to groundwater exclusion.
2. Contrary to the proposals set out in the UUWL’s earlier written submissions (see section C above), it is also the case that there is, as yet, no secured access for MSCCL to Barton Locks; no proposal by UUWL which confirms that all of the harbour authority and harbour master’s powers are unaffected by the rights taken[[190]](#footnote-190); and no contractor on board[[191]](#footnote-191), with the effect that there is, at present, no contractual requirement securing “no movement” at Barton Locks.
3. In the present circumstances, the Secretary of State is not therefore put in a position where they are able safely to conclude that the exercise of the rights pursuant to the CPO will not give rise to adverse effects and serious detriment to MSCCL’s undertaking by reason of the proposed construction methodology, because there is no guarantee that the Scheme will in fact be constructed (and thus those rights exercised) in the way envisaged and assessed by UUWL’s witnesses. The only evidence before the Inquiry as to how the exercise of the Order rights might affect UUWL’s undertaking if alternative feasible means of construction and groundwater control *are* used as they could be under the Order if not modified, is that of MSCCL, which demonstrates a material risk to sensitive MSCCL assets, in particular to the vitally important Barton Locks wing wall. It will be recalled that this point was accepted by Messrs Parsons and McKimm (during their cross-examinations), who confirmed that they had not undertaken any assessment of the impacts of dewatering, or of the effects of removing the stone pitching on Canal bank stability.

**Approach of UUWL’s witnesses to future liaison with MSCCL**

1. In addition to assuming favourable construction methods to which UUWL is not bound, the conclusion of UUWL’s witnesses as to the absence of harm to MSCCL assets was also based on assumptions about the future working relationship between UUWL and MSCCL, and the extent of control that MSCCL would have over UUWL’s works notwithstanding the existence of the rights that would be taken pursuant to the Order.
2. These bear repeating in some detail, because they make clear the matters that UUWL’s witnesses assumed would occur when they were advising the Inquiry that there would be no adverse impact upon MSCCL’s assets and, as such, its undertaking. Given that UUWL’s conclusions are based on assumptions as to these matters, the Secretary of State can have no confidence that more significant adverse effects than UUWL predicts would not arise absent them being in some way secured. The points articulated by UUWL’s witnesses must therefore be taken into account in determining the nature of the protections that need to be secured for MSCCL’s benefit, and the Secretary of State is invited to consider these together with the protections which MSCCL now seeks.

Assumptions made by Mr Parsons

1. The overarching evidence as to UUWL’s proposals for constructing the Order Scheme was given by Mr Parsons. In addition to assumptions about the working methods to be employed, he considered that:

a. Personnel would be removed from the works during the passage of a ship through Barton Locks, to avoid the risk of injury to personnel in the event of a collision[[192]](#footnote-192). Such risk would be contrary to MSCCL’s obligations in respect of safety in the harbour (see section A above).

b. The crane would be slewed away from the navigable channel whilst in use by a vessel[[193]](#footnote-193). Again, the need to secure this reflects MSCCL’s obligations to ensure the safety of other users of the Canal.

c. Although there was a risk to the Barton Locks wing wall structure from overturning caused by horizontal ground movements, “*such effects would need to be assessed by detailed calculation during detailed design…the detailed design of the temporary works would then need to control the ground movements to an acceptable level*”. Such measures “*would reduce horizontal ground movements to acceptable levels resulting in negligible damage to Barton Locks wing wall*”, (making clear that they would not be negligible without such measures)[[194]](#footnote-194).

d. That UUWL intend that the working methods and temporary works designs are developed in conjunction with MSCCL[[195]](#footnote-195);

e. That UUWL would fully co-operate with MSCCL throughout, including by the submission of plans and details of work proposed “*prior to work being commenced*”[[196]](#footnote-196);

f. That the question of construction methodology and risk profiles has to be determined between UUWL and MSCCL and that if a given construction method/risk profile were unacceptable to MSCCL, acting reasonably (and such reasonableness to be determined by arbitration), UUWL could not proceed with that method[[197]](#footnote-197);

g. That development of a detailed construction method and temporary works design process is required for the removal of the stone pitching and that MSCCL would be involved in this, and that MSCCL should (acting reasonably) again be able to refuse consent for this work if they are not satisfied by UUWL’s proposals, notwithstanding that UUWL are proposing to take the relevant parcel of land on a freehold basis;

h. That there would be detailed assessment of the groundwater control methodology by a contractor and that the disclosure of that assessment to MSCCL “*is part of the arrangement to be put in place*” between the parties;

i. As is canal bank stability;

j. That the appropriate levels of ground movement ought to be agreed between the parties;

k. That, “*in practical terms*” that arrangement should be “*in similar terms to MSCCL’s licence*”;

l. That there needs to be a process to establish what information MSCCL require in order to inform their ability to consent to the proposed works;

and

m. In the case of any emergency works required to recover the TBM if it failed, UUWL would liaise with MSCCL and share information regarding proposed works, monitoring proposals and data[[198]](#footnote-198).

1. In re-examination, Mr Parsons confirmed that there should be no unacceptable impacts on MSCCL assets, “*If the work is done properly…and UUWL and their contractor will make sure that is the case*”. It is not clear, however, what Mr Parsons had in mind for the purpose of achieving this.

Assumptions made by Mr McKimm

1. Mr McKimm gave UUWL’s evidence in respect of ground movement. In addition to assumptions about the working methods to be employed, and consistently with the evidence given by Mr Parsons, he considered that:

a. It is important that reasonably foreseeable impacts are not missed or underestimated[[199]](#footnote-199);

b. If MSCCL considers the Barton Locks to be a sensitive structure, its stability can be further assessed at the detailed design stage;

c. Ground investigation and testing will be undertaken for all structures at the detailed design stage, with structural and geotechnical modelling of the outfall construction and its impacts on the wing wall and canal bank assessed, with suitable monitoring and mitigation measures also being established, including allowable ground movements[[200]](#footnote-200);

d. A “*similar process*” to that undertaken with Highways England (with whom UUWL has entered into a binding APA) in respect of the potential movements to Barton High Level Bridge would be undertaken with the MSCCL engineering team[[201]](#footnote-201);

e. It would not be unreasonable to carry out a numerical analysis to understand the effects of ground movement based on actual designs for the works (which are “*not currently known in detail*”);

f. That MSCCL’s concerns would be addressed by sitting down with them at the detailed design stage;

g. That it is normal and appropriate for an asset owner to be involved, just as Highways England are in respect of Barton High Level Bridge.

Assumptions made by Mr Sephton

1. Mr Sephton also gave some evidence about the likely construction of the Scheme. His assumptions and acknowledgements included the following[[202]](#footnote-202):

a. That it would be for UUWL and its contractor to decide how to construct the Order Scheme, including whether to undertake works from the land, water or both.

b. The rights being taken over the Canal and Irlam Wharf are sufficient to enable UUWL to expand the scope of the scheme works if they saw fit.

c. That he “struggled” to identify a practical reason for the inclusion of the ‘right to remain’ within one of Plots 2K and 2J, but not the other.

d. There is no need to remove existing MSCCL structures at Irlam Wharf.

e. The fact that the outfall structure is located in Plot 6Z does not mean that the freehold of that plot is required (the majority of the outfall is located in Plot 6H, where a freehold interest is not sought).

f. MSCCL needs to be able to access this land and to maintain the bank in order to fulfil its legal obligations.

g. His understanding was that “as soon as construction was complete, the land would be returned”.

h. The importance of maintaining vehicular access to Barton Locks was raised by MSCCL from the outset, and he accepted that such access was needed.

i. In so far as there was a proposal to provide access from the east over Port Salford/CoSCS land, it would be for UUWL to arrange that.

j. He was unaware of the security arrangements at Irlam Wharf, but considered UUWL would work with MSCCL to gain access to the area. UUWL might have to remove access barriers if MSCCL did not provide them with access.

k. When asked about the need for an agreement, he said “*There needs to be a sensible way of ensuring* [the] *parties are protected*”.

l. MSCCL’s containers at Irlam Wharf would need to be removed if they were preventing UUWL from keeping the area they require clear. He did not have the knowledge to challenge Mr Gavin’s assessment that up to 20% of MSCCL’s container stacking area would be lost as a result.

m. Previous discussions had related to the potential for UUWL to use MSCCL’s existing crane at Irlam Wharf (outside the CPO boundary). UUWL had not considered the ability for the areas over which they have sought oversailing rights to take the load from a crane, although works could be done to facilitate loading if required.

n. He would not expect material prejudice to MSCCL’s operations at Irlam Wharf if there is full and proper liaison between the parties. The works “will be planned and managed to minimise disruption”.

Assumptions made by Captain Nicholson

1. The picture presented by Captain Nicholson, in respect of impacts upon navigation, was a similar one. In addition to assuming that most if not all construction works would be land-based and as such only small boats for ancillary matters would be present in the Canal in connection with the works[[203]](#footnote-203), he anticipated that:

a. Any impacts as arose could be mitigated with “*normal marine practices*”[[204]](#footnote-204) and that liaison with MSCCL would be “*essential*”[[205]](#footnote-205);

b. UUWL would work with the harbour master[[206]](#footnote-206);

c. There should be advance notification of proposed works to MSCCL[[207]](#footnote-207);

d. Any waterborne assets present in the navigable channel could be moved prior to the arrival of passing traffic[[208]](#footnote-208);

e. Cranes would be swung in to avoid conflict with passing traffic[[209]](#footnote-209);

f. UUWL would liaise with MSCCL’s Harbour Master in respect of lock movements[[210]](#footnote-210);

g. “*normal marine planning*” could be used to minimise impacts on MSCCL’s activities at Irlam Wharf and any risks from dredging, when those rights are being exercised[[211]](#footnote-211);

h. UUWL would liaise with MSCCL in respect of any dredging pursuant to the rights, to satisfy the requirements of the harbour master[[212]](#footnote-212);

i. Men should be removed from the cofferdam when a vessel passes on a precautionary basis, and this should be included in the Standard Operating Procedure (‘SOP’)[[213]](#footnote-213);

j. The SOP is a document that would be agreed with MSCCL[[214]](#footnote-214);

k. Activities are normally planned well in advance and notified to stakeholders to avoid potential disruption[[215]](#footnote-215); and

l. Re-fuelling would take place in accordance with MSCCL’s bunkering guidelines[[216]](#footnote-216).

**Evidence of MSCCL technical witnesses**

1. There is evidence before the Inquiry from four witnesses dealing with matters relevant to the nature and scope of protective provisions: Messrs West, Clarke, Gavin and Blythe[[217]](#footnote-217).
2. The original purpose of that evidence was to identify the very limited information that UUWL had provided about how the exercise of the rights and taking of land it was proposing to acquire would impact upon MSCCL’s undertaking, and to demonstrate that, if the proposed works were constructed by feasible and industry standard means, they would as a matter of principle have the potential to adversely impact upon the safe and efficient carrying on of MSCCL’s statutory undertaking. Consequently, they were also called to highlight the need to regulate the carrying out of works pursuant to the land and rights to be acquired, and to identify the nature and scope of suitable protections.
3. In the event, only two of those witnesses had their evidence subject to testing, but the essential points that they were making – that there was potential for the works to impact upon MSCCL’s assets and undertaking if adequate protection was not secured, and hence a clear need for such protection - held good. It was a striking feature of the cross-examination of both Messrs West and Clarke that the questions asked of them were predicated on:

a. Works being carried out in the manner UUWL’s witnesses described;

b. UUWL being able to do works comparable to those proposed pursuant to the Order Scheme under s.159 of the 1991 Act in the ordinary course of things;

c. MSCCL enjoying protections equivalent to those contained in Schedule 13;

and

d. On the basis of MSCCL receiving adequate notice of proposed works.

1. The clear inference of the questions was that MSCCL would be consulted in respect of all the works identified as being of concern in the evidence produced on its behalf.
2. The basis of the questions asked was, however, false:

a. As a matter of principle, there is nothing to prevent UUWL from undertaking their works in any manner they choose. They are not restricted in the manner in which they may exercise the rights.

b. The things that UUWL would be entitled to do pursuant to the Order are not the same as those they could do pursuant to s.159, as UUWL well knows. This is covered in more detail in section E below.

c. The protections UUWL is proposing are, as we also explain in section E below, not equivalent to those contained in Schedule 13. Those drafted by UUWL offer substantially narrower and inferior protection for MSCCL’s undertaking than the statutory scheme.

d. UUWL is in fact resistant to providing clear and reliable notice periods (such as apply in the statutory scheme) for the benefit of MSCCL.

e. The absence of reasonable notice requirements relating to the exercise of powers pursuant to the order means that MSCCL is at risk of not being consulted, because the decision as to whether to seek MSCCL’s consent lies exclusively with UUWL.

1. In those circumstances, the answers secured from MSCCL’s witnesses as to whether the Schedule 13 scheme would go part of the way to resolving their concerns do not assist to advance UUWL’s case. In any event, the Schedule MSCCL proposes closely reflects the statutory scheme, with only modest additions to reflect the more extensive nature of the rights being acquired pursuant to the Order.

**Differential treatment of MSCCL as compared to other undertakers and objectors**

1. In circumstances where UUWL’s witnesses have been so clear about the level of involvement they consider MSCCL ought to have in the design and control of the works affecting its assets, and where UUWL itself has previously indicated a willingness to ensure MSCCL’s undertaking is adequately protected, the Secretary of State may find it somewhat surprising that there is not yet any detailed formal protection in place.
2. Indeed, his surprise may be amplified when they consider that such formal protections have been concluded with other affected parties, neither of whom enjoy the special status enjoyed by statutory undertakers[[218]](#footnote-218): Highways England has had the benefit of an asset protection agreement in respect of the Barton High Level Bridge since February 2016, and Port Salford/CoSCS have had an agreement protecting their development since November 2018. The Highways England agreement in particular covers many of the same issues as arise in respect of MSCCL’s property, such as the ability of MSCCL to influence and control the manner in which UUWL’s works are carried out pursuant to the rights acquired; protection of assets from unacceptable ground movement; safety; the availability of insurance and so on[[219]](#footnote-219).
3. They may then ask themself how it would come to pass that one statutory undertaker (MSCCL) would be treated less favourably in terms of the nature and form of the protection offered to them than another statutory stakeholder, and a commercial objector. So far as MSCCL can tell, the only explanation is that MSCCL is being treated less favourably because at the time of the Inquiry it happens to be engaged in an ongoing commercial dispute with UUWL in relation to the subject matter of the Order (discharges of sewage effluent into the Canal), and the existence of that dispute has coloured UUWL’s approach to the protection of UUWL’s undertaking.
4. Looking back on the way that UUWL has treated MSCCL’s concerns about the effect on its undertaking throughout the Inquiry, it is hard to avoid the conclusion that it has been seeking to ‘punish’ MSCCL for objecting to the order as a matter of principle. This much is evident from the fact that it was initially offered a more favourable set of protective provisions (protections in the form offered in Appendix 2 to UUWL’s letter of 23 May 2018) but only if it withdrew its objection. That offer was then, at least initially, retracted and replaced with UUWL’s skeletal ‘Schedule 13’ style protections (which we will explain below in fact offer a lesser degree of protection even than Schedule 13 of the 1991 Act) once it had become apparent that MSCCL was not prepared to take that course of action[[220]](#footnote-220).
5. Notwithstanding Mr Smith’s acceptance on behalf of UUWL that it was perfectly proper for an objector to a compulsory purchase order to advance whatever case they see fit[[221]](#footnote-221), the questioning of MSCCL’s witnesses (in particular, Dr Studds) was also peppered with suggestions that grounds of objection were not legitimate because they went to matters wider than impact on the undertaking alone. The underlying premise appeared to be that it was illegitimate for an objector to have or express concerns about the strength or otherwise of the public interest justification for a proposed compulsory acquisition of its land, where those concerns extend beyond matters relating to the carrying on of its statutory undertaking.
6. Even as late as the final sitting day of the Inquiry, after which time MSCCL’s in-principle objection had been withdrawn and the parties were working constructively on reaching whatever agreement they could, MSCCL was rather surprised to hear Leading Counsel for UUWL suggest that MSCCL was attempting, through its suggested Schedule, to obstruct the delivery of the Scheme. As we have said, that suggestion cannot be reconciled with the history of its approach to this aspect of the case. It is all the more surprising when in fact the suggestions that MSCCL advances go (a) only little further that UUWL’s own proposed Schedule and (b) no further in substance than UUWL’s own witnesses suggested would be the appropriate level of protection[[222]](#footnote-222).
7. For the avoidance of doubt, and as will have been clear from the evidence of those technical witnesses who appeared for MSCCL and from a consideration of MSCCL’s relatively modest proposals themselves, the protections that it seeks are not intended to prevent the Acquiring Authority’s scheme from being built, or somehow to frustrate its operation. Their intent, purpose and effect is simply to ensure that the rights proposed to be taken cannot be exercised in a way that would cause serious detriment to MSCCL’s undertaking, in circumstances where reaching a mutual accommodation on these matters has proved challenging.
8. It is perhaps worth bearing in mind the guidance given by MHCLG that an Acquiring Authority’s conduct should demonstrate to those whose interests are affected that the authority “*is willing to be open and to treat their concerns with respect*”[[223]](#footnote-223).
9. MSCCL would invite the Secretary of State to consider, when reflecting on the unnecessarily combative, dismissive and at times personal tone of the written evidence by UUWL’s witnesses (particularly the rebuttals), and the similar manner in which in which submissions were made and questions were asked of MSCCL’s professional witnesses dealing with this part of its case[[224]](#footnote-224), whether UUWL’s approach can be said to have been consistent with that guidance.

**E. The Appropriate Form and Content of the Schedule of Protective Provisions**

**Approach**

1. It is essential that the Secretary of State approaches the question of the appropriate form and content of the Schedule of protective provisions with the contents of section D above in mind.
2. Before we turn to address the contents of and requirement for the additional protection set out in MSCCL’s proposed Schedule of protective provisions, it is however necessary first to set out our position on the approach adopted by UUWL by reference to section 159 of and Schedule 13 to the 1991 Act.

**S.159 and Schedule 13 of the 1991 Act**

1. The relevance and implications of section 159 and Schedule 13 to the 1991 Act have featured prominently (if inconsistently) in UUWL’s case, both generally in relation to the approach to confirming the CPO, and specifically in relation to the approach that should be taken to the protection of MSCCL’s interests as a statutory undertaker.
2. UUWL has advanced two related points by reference to this aspect of the statutory framework.
3. Firstly, it has argued that if it was not necessary for UUWL to acquire a right to discharge, the Order Scheme could all be undertaken using existing statutory powers, principally s.159 of the 1991 Act[[225]](#footnote-225). It relies on that argument to suggest that there is no need to do anything more than reproduce the protection afforded by Schedule 13 to the 1991 Act in order to provide adequate provision to avoid serious detriment to MSCCL’s statutory undertaking. Hence it was submitted that UUWL’s suggested approach in the proposed draft of the Order, dated 6 December 2018 ([AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf)) “*reflects what Parliament has prescribed as the only necessary protection for a statutory undertaker in carrying on works of this nature*” and the rhetorical question was posed “*If Parliament has decided that was necessary, why is anything more necessary in this case?*”[[226]](#footnote-226)
4. Secondly, on the final sitting day of the Inquiry it was suggested on behalf of UUWL that because Parliament had not made statutory provision for protective provisions to be included within a CPO made under section 155, whereas it had made such provision for the use of the pipe-laying powers under section 159, that meant there was in principle no need for any protection at all.
5. This novel and rather surprising second line of argument was elaborated upon as follows:

“*As a matter of principle, it is actually not necessary to include protective provisions on an order of this kind, and they are not provided for in the Water Industry Act CPO powers. That is because the CPO goes through its own process of testing objections, without the need to include protective provisions. In contrast, pipe laying powers under ss.158/159 can be exercised on notice, without independent scrutiny. You find protective provisions do apply there. Where CPO has been tested, you would not expect any need for protective provisions because the undertaker will be exercising CPO powers for the statutory purposes identified. The undertaker will, because of rights flowing from interference with land, be doing its best to minimise interference anyway. It is not in the interests of UU to interfere any more than it needs to with anyone, let alone a statutory undertaker.*”[[227]](#footnote-227)

1. We deal with those two related lines of argument in turn.

The first line of argument

1. The first line of argument is misconceived for two reasons, which we summarise here and then address in more detail below.
2. Firstly, even if the right to discharge is left entirely to one side, the Order Scheme requires the acquisition of land, and rights over land, that far exceed what Parliament has authorised to be done via the use of s.159[[228]](#footnote-228). As we will explain, that more extensive acquisition includes acquisition of the freehold interest in important parts of MSCCL’s land, and extensive and highly intrusive rights over other important parts of MSCCL’s land.
3. Secondly, and in any event, Parliament has decided that the statutory powers such as s.159 should not be available where a right to discharge needs to be acquired, and that instead the undertaker must obtain a CPO to obtain the necessary rights.

*The scope of the Order Scheme and the use of s.159*

1. UUWL’s stated position on this issue has been inconsistent and opaque. In its opening submissions UUWL stated that absent the need for a right to discharge there would be no Inquiry[[229]](#footnote-229). As Mr Smith confirmed, that is because UUWL’s case is that there would be no need for a CPO to which MSCCL could object[[230]](#footnote-230). UUWL’s position as at the start of this Inquiry was that all physical works required to implement the scheme could be carried out in reliance on the powers set out in ss.159 and 168 (which provides powers of entry for the purposes of exercising works powers such as those in s. 159)[[231]](#footnote-231), but that s.159 could not be relied upon unless a right to discharge had been obtained[[232]](#footnote-232).
2. Even on UUWL’s own case, however, that position cannot be maintained. In UUWL’s Statement of Case, no doubt drafted with great care by its extensive team of specialist lawyers, it identified “*very real doubt*” about whether certain specific elements of the Order Scheme would fall within the scope of s.159, namely the new Shaft 04, the retaining wall, the outfall structure and the rights required in relation to surveys and “*similar required activities*”. When Mr Smith was asked whether it was his understanding that all of those “*very real doubts*” had now been resolved, his answer was a very clear “*No*”[[233]](#footnote-233).
3. Mr Smith was also asked whether his understanding was that if a right to discharge was acquired, UUWL would then be able to achieve what it planned to do at Irlam Wharf in reliance on s.159. His answer, again, was “*No*”. That is plainly right, and the Secretary of State is invited to consider the extensive and intrusive powers that UUWL seeks to acquire over Irlam Wharf – including *inter alia* the right to remove buildings and an access road, and to carry out works to rebuild the ground - and to compare that to the very much more limited scope of what can be done pursuant to s.159.
4. Furthermore, the CPO which UUWL asks the Secretary of State to confirm includes the acquisition of the *freehold interest* in significant areas of land. This can be seen on the CPO Plans, which identify those plots where freehold acquisition is proposed. Although Mr Smith described s.159 as ‘in effect’ a form of CPO[[234]](#footnote-234), there are important differences between use of that power and what is proposed to be achieved here using s.155. A key distinction is that s.159 does not enable the undertaker to take a permanent freehold interest in third party land.
5. UUWL argues that the use of the s.159 pipe-laying power results in the undertaker acquiring an “interest” in the stratum of land in which the pipe lays, by reference to *Taylor & Taylor v. NW Water[[235]](#footnote-235)*. That may or may not be right, a matter we address briefly below, but it is neither here nor there for present purposes because those authorities do not suggest that the use of s.159 involves (or could lawfully extend to include) taking a freehold interest in land. Whether or not an undertaker with a pipe running below third party land technically has an “interest” in a small underground sliver of that land, the limited degree to which the taking of that interest affects the landowner is reflected in the absence of any right to compensation for the acquisition of such an interest[[236]](#footnote-236).
6. For the sake of completeness, MSCCL’s position is that the issue of whether the use of the s.159 pipe laying power involves the acquisition of a stratum of land or an “interest” in the land is uncertain as a matter of law. In the *Taylor* case the Lands Tribunal identified the fact that the law was unclear, and was frank that it had experienced some difficulty in reaching a decision on the point[[237]](#footnote-237). Those difficulties, and the inconsistent pull of the authorities on this point, are set out at pp.100-106 of the P&CR [Inspector’s note: understood to be *Planning (Property) and Compensation*] Report. The essential difficulty was summarised at p.106 in this way:

“*We have found it impossible to reconcile the above decisions. There are two inconsistent lines of authority … We must decide which line of authority to follow*.”

1. Although MSCCL recognises that the Lands Tribunal elected to prefer the *Taylor and Thurrock* line of authority, there must at the very least be significant doubt as to whether the same answer would be given if the matter were to be considered by the Courts, and in particular by the Court of Appeal.
2. For the Secretary of State’s present purposes, however, the point may be of academic interest only for the reasons we have given. Even if s.159 would result in the acquisition by the undertaker of “*absolute property in the sewer (the whole of the space occupied by the sewer)*” i.e. “*the stratum of subsoil comprising the sewer*”[[238]](#footnote-238), even a cursory glance at the CPO Plans in this case – let alone careful study of those plans alongside the Schedule to the Order[[239]](#footnote-239), show that UUWL is seeking to acquire land and rights in land that far exceed what can be achieved using s.159.
3. Before moving on to the second issue, it is worth reflecting on the implications if UUWL was right. If the existing statutory powers would be adequate to allow all or most of the Order Scheme to be implemented and maintained thereafter, the compulsory acquisition of freehold interests in land and permanent rights over land would not be necessary for anything other than the right to discharge and (depending on whether the “*very real doubts*” remain) the specific elements identified in its Statement of Case. In other words, to the extent that the CPO Scheme could be implemented and thereafter maintained using the less intrusive s.159 powers, there would be no compelling case in the public interest for the compulsory acquisition of more extensive interests in land. Either UUWL’s reliance on s.159 would logically prove fatal to its attempt to justify the compulsory acquisition of more extensive interests, or it is a distracting irrelevance. We say it is the latter.

*The need for a CPO*

1. In any event, Mr Smith agreed the following points as common ground in cross-examination:

a. UUWL accepts that it cannot implement the Order Scheme without the use of CPO powers.

b. It is unable to achieve its ends using s.159, and must seek the Secretary of State’s approval to the use of s.155.

1. In that context the very different and more limited scope of the s.159 powers mean that it is simply wrong to start – as UUWL does – from the assumption that reproducing the safeguards in Schedule 13[[240]](#footnote-240) for the use of those more limited powers will be adequate to protect the interests of statutory undertakers in a CPO context where the extent of acquisition and interference is so much greater. Parliament could have chosen to apply Schedule 13 to the use of CPO under s.155, but it did not do so. To start from the presumption that such protections are nevertheless apt to address the implications of the use of the more draconian s.155 compulsory purchase powers is misconceived and does not reflect the clear intention of Parliament.

The second line of argument

1. The second line of argument would appear to contain the following main elements:

a. As a matter of principle protective provisions are not needed in respect of a CPO because Parliament did not apply Schedule 13 to the use of s.155 powers.

b. The testing of a CPO through the Inquiry process distinguishes a CPO from the use of s.159.

c. In exercising CPO powers UUWL will be doing so for the statutory purposes identified, and, because the rights flow from interference with land, will be doing its best to minimise interference anyway.

1. We address each element in turn, and can do so briefly because they are entirely devoid of substance or merit.

*Schedule 13 does not apply to the use of s.155*

1. This point is closely related to that advanced under the first line of argument, but contains an additional element that is demonstrably wrong.
2. As we have explained in the ‘Introduction’ above, the purpose of protective provisions[[241]](#footnote-241) in the CPO context is to counter the adverse effects of the proposed interference with the statutory undertaker’s land on the carrying on of the statutory undertaking so that no serious detriment arises. Logically, that requires the decision-maker to consider:

a. the nature and extent of the interference proposed; and

b. the likely effects of that interference on the carrying on of the undertaking, tempered (as appropriate) by the existence of any safeguards and/or mitigation measures that can be relied upon in the sense that they are legally secured and capable of being enforced against UUWL.

1. If, as here, a more extensive interference with a statutory undertaker’s land is authorised under s.155 than would be possible under s.159, it would be perverse to argue that in principle no safeguards and/or mitigation measures need to be secured because Parliament has not legislated for them to apply automatically. Logically that can have no bearing on the issue that falls to be determined, which requires the application of judgment to the facts in the way we have described above.
2. In our view, a more credible basis for the absence of specific protective provisions applying to s.155 powers is that it reflects the fact that the serious detriment test contained in the 1981 Act applies, and that Parliament can therefore safely assume either that (a) compulsory acquisition of statutory undertakers’ land will not be permitted, or (b) that bespoke provision will be made where this is proposed in order to make such acquisition acceptable.

*The effect of testing through an Inquiry*

1. This too is a point of no merit, because if (as here) the testing takes place on the assumption that certain procedural and other safeguards and/or mitigation measures will be in place, it is only effective as a means of answering the question of serious detriment if those safeguards and measures are secured.

*UUWL will be exercising the powers for the statutory purposes and doing its best to minimise interference*

1. This is a hopeless argument. It is something that could be said for most CPOs and all DCOs and TWAs, but plainly it does not obviate the need for appropriate safeguards and/or mitigation measures to be secured so that they can be relied upon and enforced by the statutory undertaker (and thus can be relied upon by the Secretary of State).
2. As was noted above, the conclusion of agreements in advance of the close of any Inquiry is entirely the norm.
3. Against that important background, we now turn to address what protections should appear on the face of the Order.

**Common elements**

1. There are a number of elements in MSCCL’s proposed protective provisions which are common to those proposed by UUWL in [AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf). [Inspector’s note: The latest version of the Acquiring Authority’s protective provisions is in [AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf)] However, the differences in wording between those common elements are important, and require close attention and close comparison to the equivalent drafting of Schedule 13 to the 1991 Act on which UUWL’s version purports to be based.
2. When that is done, it becomes apparent that UUWL has in fact significantly departed from Parliament’s drafting so as to seek to weaken the extent of protection offered to MSCCL below that provided for the exercise of pipelaying powers. That is entirely inappropriate, and betrays an approach inconsistent with the actions of a responsible and reasonable Acquiring Authority.
3. Both versions introduce and give effect to a Schedule of provisions, which do not apply to the right to discharge. MSCCL’s final suggested form seeks to mirror the structure of [AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf) to avoid unnecessary debate about the format of the order.
4. Both identify the plots to which the Schedule applies, and the lists are identical.
5. The main operative part of the first paragraph in the two versions of the Schedule have some similarities in effect, requiring MSCCL’s consent to be sought prior to exercising any right conferred by the CPO where this will either directly or indirectly interfere either with works or property vested in MSCCL or with the use of any such works or property so as to affect injuriously those works or that property or the carrying on of MSCCL’s statutory undertaking.
6. There are, however, a number of important differences in this crucial first paragraph that need to be understood and very carefully considered.

a. UUWL’s version is confined to rights “to carry out works”, and therefore offers no protection at all to MSCCL’s undertaking from any injurious affection caused as a result of the proposed compulsory acquisition of other rights within the Order (e.g. the right to compel operation of the locks, or to pass and repass over various parcels of land).

i. UUWL has not sought to advance any proper basis for limiting the protection for the statutory undertaker from the injurious effects of the order on its undertaking in this way (and there is no proper basis for doing this), and therefore MSCCL’s version is properly expressed as covering “any rights (except for the right to discharge)”.

ii. If the exercise of any other right gives rise to injurious affection to MSCCL’s statutory undertaking, it must be made subject to the necessary requirement for consent in order that the Secretary of State can be confident that the Order will not give rise to serious detriment.

iii. That reflects the formulation in paragraph 1(1) of Schedule 13 to the 1991 Act, which provides that the sewerage undertaker does not have “power to do anything, except with the consent …” (emphasis added).

iv. Only MSCCL’s formulation therefore reflects the protection in Schedule 13. It will not present any materially greater obstacle to implementation than UUWL’s proposal, because in both cases consent cannot be unreasonably withheld and there is a mechanism for resolving disputes.

b. Neither MSCCL’s version, nor paragraph 1(1) of Schedule 13 include the additional phrase “if and only if”. These additional words proposed by UUWL are either intended to give a more restrictive meaning and effect to the protection afforded to MSCCL by the Schedule than would be the case if section 159 powers were used instead of more intrusive CPO powers (which would be perverse), or they are superfluous, serving no purpose. Either way, there is no proper justification for their inclusion.

c. Neither MSCCL’s version, nor paragraph 1(1) of Schedule 13 bundle together the need for consent with the limitations on withholding consent. Both deal with those matters separately (see paragraph 1(3) of Schedule 13). UUWL’s version does bundle these matters together, and it is not clear why. Again, it may be that it is intended to give a more restrictive meaning and effect than would be the case if section 159 powers were used instead of more intrusive CPO powers (which would be perverse), or it is change to the statutory language which is not intended to achieve any different effect. Either way, there is no proper justification for it.

d. Both MSCCL’s version and Schedule 13 adopt a simple and straightforward form of words to give effect to the restriction: “except with the consent”. UUWL’s version eschews this formulation, and this can only be because it wants to weaken the meaning and effect of the protection offered by Schedule 13. In UUWL’s version:

v. UUWL is required to “seek the consent” of MSCCL;

vi. the restriction on the “commencement of works” where consent has not been received is subject to the caveat “unless such consent is unreasonably withheld or delayed”.

This raises the question of whether under UUWL’s version it could press ahead and commence works provided that it has sought MSCCL’s consent and decided unilaterally that MSCCL’s refusal of consent, or the time being taken to reach a decision, is unreasonable:

i. If that is not the intention, why distort the clear statutory formulation in this way?

ii. If it is the intention, it is wholly unreasonable and would not only undermine the efficacy of the protection to the carrying on of MSCCL’s statutory undertaking, but also create a substantial risk of unnecessary dispute (including in the form of litigation) as to the meaning, effect and use of this paragraph.

1. Both versions of the Schedule provide for limitations on the decision of MSCCL regarding whether consent should be given. In both versions consent may be given subject to reasonable conditions but shall not be unreasonably withheld. That reflects the statutory formulation in Schedule 13 (paragraph 13(3)). In UUWL’s version, however, the statutory formulation is further qualified in two ways.

a. Through the addition of the words “or delayed”. This addition is entirely unnecessary because to unreasonably delay the giving of consent is also to unreasonably withhold it. In both cases the consent has been unreasonably withheld. That is obvious, and that is why the Parliamentary drafting is as it is. It is poor drafting to add unnecessarily to an already clear formulation with the intention of producing precisely the same effect.

b. By adding that “without limitation” the imposition of a condition or the withholding or delaying of consent “will be regarded as unreasonable if it is not … for the purpose of protecting MSCCL’s statutory undertaking”. No such formulation is to be found in Schedule 13, presumably because it is regarded as entirely unnecessary. The Secretary of State must therefore ask them self the question: why should it be regarded as necessary here? MSCCL is a statutory undertaker and should be treated in the same way as any other for the purposes of securing protection to ensure that there is no serious detriment to the carrying out of its undertaking. If (as appears to be the case), UUWL seeks to add those words to the Parliamentary drafting because it fears that MSCCL might seek to use its protections for ulterior purposes, that is not a proper reason. In deciding what protection is appropriate, MSCCL must be treated as any other statutory undertaker and it would be wrong to treat it less favourably on the basis that at a particular moment in time it happens to be involved in a commercial dispute with the Acquiring Authority. Such a course of action would be wrong in principle, would set a dangerous precedent, and would be unlawful.

1. Both versions provide for what happens in the event of dispute, namely arbitration. The differences between the way that this is expressed in the two versions are only material insofar as they refer back to and thus incorporate any differences in the earlier paragraphs.
2. Both versions contain a paragraph which deals with the relationship between the rights acquired under the Order and the statutory power, authority and jurisdiction relating to the harbour. There are differences in the way that this is proposed to be dealt with, which we identify and address below.
3. So far as MSCCL is concerned, this paragraph is provided ‘for the avoidance of doubt’ as to whether the powers, authority and jurisdiction of the harbour authority or harbour master prevail over any private law rights acquired under the CPO. MSCCL considers that as a matter of law the acquisition of private law rights under the CPO cannot override or otherwise diminish those powers, or alter the authority or jurisdiction of the harbour authority or harbour master. Those matters are provided for by statute, and therefore only statutory intervention can alter the position. Nevertheless, it is regarded as appropriate to make this plain on the face of the Order so that no unnecessary dispute arises in future[[242]](#footnote-242).
4. UUWL’s version is different (and defective) in two main respects:

a. It is confined to the power, authority and jurisdiction of the harbour master of the Canal and does not therefore cover the power, authority and jurisdiction of MSCCL as harbour authority. Both must obviously be included because some of the relevant statutory powers are expressed to be powers of the harbour authority and others to be powers of the harbour master.

b. It is confined to the rights of navigation and mooring that are proposed to be acquired over the Canal, whereas it should be all rights. The rights that are acquired which would authorise activities in areas within the jurisdiction of the harbour master and harbour authority are more extensive than just navigation and mooring.

1. So far as the second of those two points is concerned, MSCCL’s solicitors wrote to UUWL’s solicitors on 20 November 2018[[243]](#footnote-243) in order to identify and seek to address the outstanding points. No reply was ever received to that letter, and so it is appropriate briefly to rehearse the main points here.
2. For example, if UUWL were to argue that the harbour master’s powers of direction only apply where the right of navigation being exercised is the public right of navigation.
3. A number of the rights that UUWL seeks to acquire which would authorise activities in areas within the jurisdiction of the harbour master and harbour authority were identified. Some are thought potentially to fall within the formulation “rights of navigation and mooring” in UUWL’s version of the schedule, but others are not. Taking them in turn:

a. Tethering of boats and barges

i. MSCCL considers that the rights taken to tether boats and barges are in effect rights of mooring, and this is implicit from what Mr Nicholson has said on behalf of UUWL in his proof of evidence[[244]](#footnote-244).

ii. Confirmation has been sought from UUWL that it shares this view, and that the exercise of these rights is embraced within even its own more limited formulation, but no reply has been received.

b. Right to compel operation of the lock

i. MSCCL considers that these rights amount to incidences of navigation, and this was accepted on behalf of UUWL by Mr Nicholson when them point was put to him in cross-examination[[245]](#footnote-245).

ii. Again, however, UUWL has failed to respond to MSCCL’s request to confirm that is a shared understanding.

c. Right to carry out dredging

i. MSCCL considers that the exercise of rights to carry out dredging pursuant to the Order will not be caught by UUWL’s formulation as they are neither rights of navigation nor rights of mooring. Although the vessel undertaking the dredging would be subject to the harbour master’s rights of direction when navigating or moored, UUWL’s formulation would not encompass the dredging activity itself.

ii. Mr Nicholson’s evidence on behalf of UUWL was that he did not consider that dredging would be a problem, *provided that it was managed by the harbour master*[[246]](#footnote-246).

d. Rights to assemble and disassemble plant and pontoons (at Irlam Wharf)

i. The Order would authorise UUWL to acquire rights to “assemble and disassemble plant, barges and pontoons” over Plot 6P (forming part of Irlam Wharf). Pontoons are vessels[[247]](#footnote-247), and subject to the statutory authority of the harbour master when present in the Canal.

ii. When loaded into the Canal at Irlam Wharf, any pontoons used by UUWL pursuant to the rights to be acquired under the Order will be engaged in either mooring or navigation.

iii. UUWL was asked to confirm that reflected its own position, but it has not replied.

e. Works to support, repair, remove or reinstate the ground and structures

i. The Order would authorise UUWL to acquire rights to “carry out works to support, protect, repair, remove, reinstate and rebuild the ground, vegetation and structures” over numerous land plots including Plots 6H and 6I, both of which form part of the Canal in the location where the outfall will be constructed.

ii. The rights acquired over this part of the Canal are plainly not rights of navigation and mooring, and would thus not fall within the scope of UUWL’s formulation. They are nevertheless rights whose exercise would be subject to the statutory power, authority and jurisdiction of the harbour master, and ought therefore to be embraced within this part of the Schedule.

iii. The difficulty caused by the narrowness of UUWL’s formulation here is exacerbated by the ongoing uncertainty as to whether UUWL itself considers that the carrying out of works to construct the outfall would engage paragraph 1(1) of its version of the Schedule or not.

iv. UUWL’s position has vacillated on this[[248]](#footnote-248), and even on the very last sitting day its counsel said only that the construction of the outfall “will potentially injuriously affect the bank”[[249]](#footnote-249) (emphasis added).

f. Registration of vessels

i. Registration of vessels is addressed by section 53 of the Manchester Ship Canal Act 1952 (as amended), and must continue to apply in relation to vessels exercising the rights which UUWL seeks to acquire. However, UUWL’s formulation leaves this in doubt.

ii. MSCCL sought UUWL’s confirmation of its understanding of the position, or alternatively for UUWL to modify its formulation so as to embrace that particular provision. As at the time of writing, UUWL has taken neither step.

g. Cranes oversailing the navigable channel

i. The harbour master’s powers include a power to direct the removal of obstructions to the navigable channel. A crane oversailing the navigable channel would clearly have the potential to comprise such an obstruction.

ii. On UUWL’s formulation the crane oversailing rights are not covered. That is an obvious lacuna.

1. The net effect of those points is to demonstrate the unsatisfactory and unduly narrow nature of UUWL’s formulation, and the need for MSCCL’s more straightforward and comprehensive alternative.
2. The difference in scope between the two versions also needs to be considered having regard to the overall legal position as set out above. If, as MSCCL submits, the purpose of the provision is to avoid any doubt as to the legal relationship between the private law rights acquired over the Canal through the Order and the statutory powers, authority and jurisdiction of the harbour master and harbour authority, a formulation which only includes some of those rights necessarily introduces ambiguity and uncertainty which completely defeats the purpose of the provision.
3. Indeed, the implication of (and only conceivable reason for) seeking any such restriction on the scope of this provision would be an argument on the part of UUWL that those private law rights do in some way ‘trump’ the statutory powers, authority and jurisdiction of the harbour authority and harbour master. Any such argument would thus not only be directly contrary to the purpose of the provision, it would also simply be wrong as a matter of law.
4. The list of enactments in UUWL’s version of this provision is incomplete, as comparison with [MP/INQ/68](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_68-List-of-Ship-Canal-Enactments-and-powers.pdf) very clearly demonstrates.
5. In the final version of its Schedule attached to these closing submissions, MSCCL has adopted the simpler alternative formulation canvassed on the final day of the Inquiry which does away with the need to identify the specific statutes as they exist at present.
6. It will again be noted that, notwithstanding UUWL’s claimed emphasis on reflecting the statutory drafting, MSCCL’s version is much closer to Schedule 13 [2], which simply provides that “*Nothing in any provision of this Act conferring power on [a water undertaker] to carry out any works shall confer power to do anything which prejudices the exercise of any power, authority or jurisdiction from time to time vested in [the affected statutory undertaker]*”.

**Necessary elements omitted from** [AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf)

1. In addition to the differences examined above, the main distinction between [AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf) and MSCCL’s version of the Schedule is that the former contains no provision for MSCCL to be notified about the proposed exercise of rights. The absence of such a provision undermines the effectiveness of UUWL’s proposed protective provisions, and creates a recipe for uncertainty, dispute and delay.
2. Paragraph 2(2) of MSCCL’s version deals with notice and is intended to ensure two things:

a. Firstly that (save in emergencies) MSCCL will be alerted in good time to the planned exercise of any rights that would or might trigger the need for its consent, so that it has an adequate opportunity to consider and decide:

i. whether its consent is required; and

ii. if so, whether it should be given, and whether any conditions are needed.

b. Secondly, that MSCCL is given enough information to make an informed decision on those matters.

1. As set out in section D above it was common ground with UUWL’s witnesses that MSCCL ought to have both adequate notice and sufficient information to enable an informed decision to be made.
2. MSCCL has suggested that it should be given notice no less than 42 days before the relevant rights are exercised. That period strikes a fair balance, and is considerably shorter than the three month notice period that features in the statutory scheme UUWL purports to emulate in its provision[[250]](#footnote-250). It is to be noted that UUWL has at no stage suggested to the Inspector that if notice is required, it should be shorter than 42 days (and if so why it should be shorter).
3. The need for MSCCL to be given proper notice and adequate information is obvious, and we are surprised that UUWL disputes this point at all.
4. The need is obvious even from the terms of [AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf), where paragraph 1(3) of Schedule 1 provides for a procedure to resolve disputes as to, inter alia “*whether anything proposed to be done will interfere as mentioned in sub-paragraph (1) above*”, i.e. a dispute as to whether or not MSCCL’s consent is required. How (and when) can such a dispute arise if MSCCL is given no advance opportunity to consider and express an informed view as to whether its consent is required for something that is proposed?
5. Under UUWL’s approach, it would be the sole arbiter as to whether MSCCL is even told about proposed exercise of rights, because it is only if *UUWL* decides that consent is required that any need to inform MSCCL (so as to seek its consent) and supply information arises. Where UUWL forms the view that there would not be interference (whether or not MSCCL would agree if asked), it has no obligation at all even to alert MSCCL that it is going to exercise the relevant right. The first MSCCL may learn of it is when work begins on site. That is quite clearly unacceptable and inadequate as a mechanism to ensure that consent is sought and obtained in relation to any work that would trigger the prohibition in paragraph 1(1) of Schedule 1 in [AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf).
6. There is a lacuna that must be filled, and UUWL has made no effort to address it.
7. What that means is that the Secretary of State has MSCCL’s suggested mechanism to address the lacuna, but nothing from UUWL. If, as we expect, the Secretary of State concludes that MSCCL is right and that there is an issue that needs to be addressed, there is no alternative mechanism that has been presented to the Inquiry identifying how that can be done. In those circumstances, if any alternative mechanism were to be proposed by UUWL in its closing submissions (or contemplated by the Secretary of State in due course), there would need to be an opportunity provided to MSCCL to consider and comment upon it.
8. MSCCL’s proposal is eminently reasonable and proportionate. It does not seek to be given advance notice of the exercise of each and every right acquired under the Order, merely those which, if exercised, would or might trigger the prohibition so that it can consider them and reach a view on the issues it needs to consider.
9. The formulation that MSCCL now commends to the Secretary of State (“would or might if exercised directly or indirectly interfere”) represents a fair and workable solution to the obvious problem with UUWL’s approach. It recognises the fact that there must necessarily be a decision by UUWL as to when notification is provided, but addresses the problem caused by the evident scope for disagreement as to whether in fact any particular exercise of rights *will* interfere with the use of MSCCL’s works or property. It does this by requiring UUWL to ask itself in the first instance whether what it proposes “might” have the relevant effect. If it might, it should notify MSCCL so that it is given an opportunity to form and express its own view on the matter.
10. It is a formulation with some relevant statutory pedigree, adopting as it does the language in which Parliament has expressed the obligation in section 44(4) of the Planning Act 2008 (‘PA 2008’) on the promoter of a development consent order to decide who should be consulted as a ‘Category 3 person’ for the purposes of section 42(1)(d).
11. A ‘Category 3 person’ in that context is defined in section 44(4) as follows:

“*A person is within Category 3 if the applicant thinks that, if the order sought by the proposed application were to be made and fully implemented, the person would or might be entitled –*

*(a) as a result of the implementation of the order,*

*(b) as a result of the order being implemented, or*

*(c) as a result of the use of the land once the order has been implemented, to make a relevant claim.*”

1. A “relevant claim” is defined in section 44(6) as:

a. A claim under section 10 of the Compulsory Purchase Act 1965 (compensation where satisfaction is not made for the taking, or injurious affection, of land subject to compulsory purchase),

b. A claim under Part 1 of the Land Compensation Act 1973 (compensation for depreciation of land value by physical factors caused by the use of public works,

c. A claim under section 152(3) of the PA 2008 (compensation to any person whose land is injuriously affected by the carrying out of the works).

1. The only other alternative means of addressing the issue would be an all-embracing requirement to notify MSCCL of any exercise of rights which would affect the use of MSCCL’s works or property, but we suggest the proposed approach strikes a fairer balance and is less onerous for UUWL.
2. In correspondence UUWL has raised the issue of the need for shorter notice periods in some circumstances[[251]](#footnote-251), and in response MSCCL made clear[[252]](#footnote-252) that:

“*MSCCL would be willing to agree a different notice period in certain cases if appropriate, including a carve out for works needed on an emergency basis. If UUWL wishes to suggest a different notice period, and/or drafting to cater for the potential for emergencies, we would be happy to consider and discuss any reasonable proposals*”.

1. Unfortunately, despite UUWL replying in its letter of 8 November 2018 that “there is some common ground on the issue of notices” and that “this is a point that can usefully be discussed between us at the meeting due on 9 November 2018”, UUWL has not provided the Inquiry with any alternative notice provision.
2. Cognisant of the potential need for emergency works, and that UUWL has identified this as a “key point” from its perspective[[253]](#footnote-253), MSCCL’s final version of its own Schedule has made an exception for emergencies.
3. Finally, we would remind the Inspector that there is evidence before the Inquiry that demonstrates very clearly the importance and efficacy of the giving of advance notice in the case of the proposed use of s.159 powers. The service of s.159 notices through 2012 to 2014[[254]](#footnote-254) enabled MSCCL to consider and take advice about what was proposed. Indeed, it was the response of MSCCL’s solicitors to those notices that ultimately led to the recognition by UUWL that it could not lawfully use those powers to implement the Order Scheme[[255]](#footnote-255).
4. This, we respectfully suggest, is a complete answer to the suggestion made by UUWL that the notice period in s.159 is not a notice period to enable the giving of consent for the purposes of Schedule 13. The statutory scheme set out in the 1991 Act must be read as a whole, and when one does that, it is apparent that the notice provision contained in s.159 is effective to put statutory undertakers on notice for the purpose of obtaining consent pursuant to Schedule 13. It is that (rather than the absence of need for notice) that explains why there is no express provision made in Schedule 13 itself.

**Additional elements required in the absence of any Asset Protection Agreement**

1. In the absence of any APA, MSCCL will require additional protections to be incorporated in the Schedule for the protection of its undertaking. What follows explains those additional protections, and the need for them. In most respects this version of the Schedule is identical to that which MSCCL would have invited the Secretary of State to include within the Order in the event that the APA had been agreed in time.
2. In the event that an APA is agreed following the submission of these closing submissions, MSCCL will write and confirm those parts of the Schedule which it will no longer require.
3. The main differences are to be found in paragraphs 2(2) to (4) with minor consequential differences in paragraph 2(6).
4. Paragraph 2(2) effectively requires UUWL to submit an APA (or equivalent) to MSCCL for its approval before the relevant rights are exercised.
5. As explained on day 29 of the Inquiry, it takes a form which in its essential nature should be familiar from conditions imposed on a grant of planning permission and requirements imposed on development consent orders. A scheme is to be submitted and approved, and adhered to once it has been approved.
6. The purpose of the scheme, and hence the additional provisions in this version of the Schedule, reflects the purpose of the APA that UUWL should have entered into with MSCCL, namely to regulate how the Acquiring Authority will exercise the rights that it acquires so as to protect MSCCL’s statutory undertaking.
7. As a matter of principle, the need to submit and agree an APA or equivalent in due course should not be controversial. In a letter of 26 September 2018 UUWL’s solicitors said that whilst UUWL did not accept that an APA needs to be finalised before the CPO is made:

“*Nonetheless, UU welcomes the opportunity now to discuss the detailed terms of an asset protection agreement, recognising that such discussions [i.e. as to the detailed terms of an asset protection agreement] will be necessary in any event as part of the process of obtaining consent*.”[[256]](#footnote-256)

1. Equally, this might be thought to have been implicit from UUWL’s submission of its own draft agreement on 22 May 2018, as referred to in section C above.
2. Thus the requirement for such a scheme to be submitted and agreed cannot properly be portrayed by UUWL as some unjustified additional bureaucratic burden[[257]](#footnote-257). It does no more than UUWL has suggested will be necessary as part of the process of obtaining consent under its own Schedule. Absent provision in the Order, however, there would be nothing to prevent UUWL changing its mind and refusing to seek to agree an APA once the Order had been made and it has the land and rights it seeks.
3. Paragraph 2(2) creates the obligation to submit for MSCCL’s approval “*a written scheme to regulate how the Acquiring Authority will exercise* [the relevant rights] *so as to protect MSCCL’s statutory undertaking*”. Paragraph 2(3) then provides an inclusive list of what the scheme is to include, and paragraph 2(4) obliges the Acquiring Authority only to exercise such rights in accordance with the scheme as approved. Paragraph 2(6) includes the words “*or approved*” where relevant so as to bring any dispute over the approval of the scheme within the mechanism for dispute resolution.

Submission of the scheme

1. In practice it is likely that UUWL would wish to submit and agree the scheme well in advance of exercising the relevant rights. Having regard to its contents, and their implications for the contractor who will in due course be tasked with carrying out the works needed to implement the Order Scheme, these are matters a responsible undertaker would wish to have established as soon as reasonably practicable. That is reflected in the timing of the APA entered into with Highways England, the equivalent agreement entered into with CoSCS, PSL and PINL and the (belated) willingness to seek to agree an APA with MSCCL during the Inquiry. UUWL plainly recognises that it is in its interests to reach an agreement on these points now, ahead of detailed design and the process of deciding upon construction methodology.
2. That would also be consistent with the evidence that UUWL has called to explain how it envisages the interaction with MSCCL being managed to avoid serious detriment, as described above, which assumes detailed co-ordination with MSCCL in developing both detailed design and construction methods[[258]](#footnote-258).
3. MSCCL has suggested that the scheme be submitted for approval not less than three months prior to the exercise of the relevant rights under the Order (such period being the minimum reasonably required to enable consideration and approval of the scheme), but for the reasons we have given that should be seen as a ‘backstop’ rather than an expectation of the likely timing in practice.

The contents of the scheme

1. The non-exhaustive list of matters in paragraph 2(3) identifies those aspects of the regulation of the Acquiring Authority’s exercise of the relevant rights which would not be dealt with adequately or at all by the ‘with APA’ version of the Schedule where no APA was in place. In those circumstances, the additional provision sought would become necessary in order to allow the Secretary of State to conclude that serious detriment would be avoided.
2. Before describing the individual elements, it is to be noted that UUWL has not put before the Inquiry any alternative drafting for the Secretary of State to adopt in the event that the principle of MSCCL’s approach were to be accepted. In the event that alternative drafting was to be proposed by UUWL after MSCCL has submitted its closing submissions, it would of course be necessary for MSCCL to be given an opportunity to consider and comment on the adequacy of any such proposal.

Item (a): Regulation of the provision of information and communication between the Acquiring Authority and MSCCL related to the proposed exercise of such rights, including information about the Acquiring Authority’s proposed programme for the exercise of the rights

1. As will be clear from section D above, the evidence presented by UUWL on the effects on MSCCL’s statutory undertaking of the exercise of the rights sought proceeds from the twin assumptions that there would be adequate provision of information to MSCCL and that communication between the parties would be effective.
2. Without both, there could be no certainty that the interaction between the needs of both parties could be successfully accommodated. Both matters are clearly essential to avoid harm to the carrying on of MSCCL’s statutory undertaking, and to supplement the rather rudimentary provision otherwise contained in the Schedule in circumstances where no APA has been entered into in order to fill the gaps.
3. Equivalent provision was made in the APA entered into with Highways England[[259]](#footnote-259), and was included in the draft protective provisions offered to MSCCL by UUWL in May 2018[[260]](#footnote-260).

Item (b): Regulation of the provision of notice by the Acquiring Authority to MSCCL prior to the exercise of such rights

1. In order to provide clarity, certainty and predictability to the process of regulating the necessary interaction between the two statutory undertakers during the period when the Order Scheme is being implemented, it will be essential that there is an adequate system of notification in place. This would be expected to cover matters such as:

a. The timing of applications for consent (with scope to provide different timescales for different types of application if appropriate).

b. The timescales for MSCCL to take the various steps required of it when it receives an application (including, e.g. how soon it must make any requests for further information).

c. Any provision for deemed consent in the absence of any decision by MSCCL within a set timescale.

1. The scheme would enable the parties to agree notice periods that reflected the implications of the nature of the rights being exercised.
2. Again, equivalent provision was made in the APA entered into with Highways England[[261]](#footnote-261), was included in the draft protective provisions offered to MSCCL by UUWL in May 2018[[262]](#footnote-262), and was (as set out above) regarded as reasonable by Mr Parsons and Captain Nicholson for UUWL.

Item (c): Such continuous vehicular access for MSCCL as is reasonably required to meet MSCCL’s operational requirements

1. The importance of maintaining continuous vehicular access for MSCCL to Barton Locks has been explained in the evidence of Mr Gavin[[263]](#footnote-263). As described above[[264]](#footnote-264), UUWL’s own submissions and evidence have consistently acknowledged the need for such access to be secured.
2. The Secretary of State is therefore entitled to look to see where such access is secured so that it can be relied upon for the purposes of decision making. If it is not contained in an APA, MSCCL’s proposed scheme provides the only means either party has so far suggested which would secure certainty of delivery of this necessary requirement.
3. Equivalent provision was made in the APA entered into with Highways England[[265]](#footnote-265).

Item (d): Regulation of any measures including but not limited to the carrying out of any works (whether or not pursuant to rights granted by this Order) which are reasonably required to minimise or prevent adverse impacts to any works or property vested in MSCCL in its capacity as statutory undertaker or are reasonably required to enable the continuation of the safe and efficient carrying out of MSCCL’s statutory undertaking during or following the exercise of any such rights

1. It is highly likely that various works will need to be undertaken in order to seek to avoid and/or minimise impacts on MSCCL’s assets, and impact on the safe and efficient operation of the undertaking. By way of example only, it is common ground that a piling platform will be required to protect the canal bank from loading by a crane, or works may be required to the quayside at Irlam Wharf in order to accommodate a crane[[266]](#footnote-266). Some of these may well require access to and use of land outside the Order limits.
2. This item has been included in order to provide confidence that where necessary such works will be undertaken, and that these works will not themselves cause unnecessary interference with the carrying out of MSCCL’s statutory undertaking.
3. Again, equivalent provision was made in the APA entered into with Highways England[[267]](#footnote-267), and was included in the draft protective provisions offered to MSCCL by UUWL in May 2018[[268]](#footnote-268).

Item (e): Regulation of the exercise of any such rights which may give rise to ground movement affecting any works or property vested in MSCCL in its capacity as a statutory undertaker (including but not limited to the assessment, prevention and monitoring of ground movement, and the making good of any damage caused by the same)

1. Section D above shows that it was common ground that there would need to be an assessment of risk to MSCCL assets from ground movement, that mitigation and monitoring measures are required to be put in place, and that MSCCL should be involved in that process.
2. In the absence of an APA, none of these measures are secured so that MSCCL and the Secretary of State can rely upon them being implemented. This provision therefore serves the essential function of tying the evidence called to justify the confirmation of the Order to the terms of the Order itself.
3. Equivalent provision was made in the APA entered into with Highways England[[269]](#footnote-269), and was included in the draft protective provisions offered to MSCCL by UUWL in May 2018[[270]](#footnote-270).

Item (f): Regulation of any remedial works likely to be required following the exercise of such rights

1. In the event of any harm arising to MSCCL assets as a result of ground movement or otherwise by virtue of the exercise of the rights under the CPO, remedial measures would be required[[271]](#footnote-271).
2. If remedial works are necessary to MSCCL’s infrastructure, this is likely to involve work outside the limits of the Order (i.e. in and around the Lock structures). An agreed system for regulating such work must be put in place before the relevant rights under the Order are exercised so as to ensure that there are no unnecessary delays in UUWL’s contractors getting on site and undertaking the necessary remedial works.
3. Equivalent provision was made in the APA entered into with Highways England[[272]](#footnote-272), and was included in the draft protective provisions offered to MSCCL by UUWL in May 2018[[273]](#footnote-273).

Item (g): Regulation of any variations to works in respect of which MSCCL has previously granted consent

1. It is highly likely that from time to time UUWL will need to vary the details of works in respect of which MSCCL has previously granted consent. A sensible system will need to be put in place to regulate how this is to be done, so as to ensure that variations are dealt with effectively and expeditiously. This is in the interests of both parties.
2. Experience of the operation of other equivalent systems, such as the town and country planning development control system, has shown the advantages in the public interest of making explicit provision for non-material and material changes to previously approved details. If no such provision is made, it is likely that this will prove to be a source of (avoidable) dispute as to whether or not variations are material, and the way they are dealt with (including e.g. timescales and the information needed to accompany such an application).

Item (h): securing such insurance and indemnity as is reasonably required to protect the interests of MSCCL and the Acquiring Authority

1. This item does not itself oblige either party to put in place any particular arrangements for insurance or an indemnity, because it would be open to the parties to agree that in fact no such provision is “reasonably required”. However, absent any requirement of the type proposed by MSCCL, it would fall to be dealt with on a piecemeal basis as each application for consent (and variation of an existing consent) is submitted from time to time during the works.
2. Equivalent (indeed more prescriptive) provision was made in the APA entered into with Highways England[[274]](#footnote-274), and was included in the draft protective provisions offered to MSCCL by UUWL in May 2018[[275]](#footnote-275).

Item (i): The surrender by the Acquiring Authority of any land or rights that it considers are no longer required for the purposes set out above

1. The primary purpose of this item is to address the serious detriment that would otherwise inevitably arise as a result of the freehold acquisition from MSCCL of Plots 6Z and 6Q.
2. These two plots comprise important parts of the Canal bank, adjacent to the Wing Wall structure for Barton Locks. It is essential to ensure that MSCCL is able permanently to access these Plots and undertake whatever works are required from time to time in order to maintain the stability and integrity of the Canal bank and the Wing Wall. If MSCCL’s ability to do those things is impaired, there can be no real doubt that serious detriment will arise.
3. UUWL seeks to acquire the freehold in both plots. Thus the unmitigated effect of the Order would be to leave MSCCL with no legal rights over this land at all. That cannot be allowed to happen, and absent any further provision the Order simply could not be made in that form without giving rise to serious detriment.
4. In light of the concessions made by Mr Sephton in cross-examination (as set out in section D above), there is no disagreement that MSCCL would need to maintain this land and that the land would need to be returned to them, and as such it should not be controversial[[276]](#footnote-276).
5. However, it is necessary to deal with two suggestions made by UUWL during the Inquiry as supposedly providing a solution to this problem.
6. The first was reliance on the Access to Neighbouring Land Act 1992 (‘ANLA 1992’), a suggestion made by way of re-examination of Mr Sephton on day 12 of the Inquiry[[277]](#footnote-277).
7. The second was reliance on the operation of the non-statutory ‘Crichel Down Rules’, a suggestion made for the first time in oral submissions on behalf of UUWL on the final sitting day of the Inquiry[[278]](#footnote-278).

*The ANLA 1992*

1. Reliance on the ANLA 1992 is misconceived, and we were surprised that the suggestion was made (and, having been made, that it was not subsequently withdrawn).
2. Section 1(1) of the ANLA 1992 provides for applications to be made to the court for ‘access orders’, but these are for the benefit of a person

“*(a) who, for the purposes of carrying out works to any land (“the dominant land”), desires to enter upon any adjoining or adjacent land (“the servient land”), and*

*(b) who needs, but does not have, the consent of some other person to that entry*”.

1. It is not difficult to see why this would be of no benefit to MSCCL. What MSCCL would require would not be to access UUWL’s land (‘the servient land’) for the purposes of carrying out work to its adjacent retained land (‘the dominant land’), but rather for the purposes of carrying out works to the servient land (what would then be UUWL’s land) itself. Unsurprisingly, the ANLA 1992 provides for access orders to allow people access to neighbouring land where that is needed to do works to their *own* land, but not for the purpose of doing works to their *neighbour’s* land.
2. That is reflected in section 3(2) which governs the effect of an access order and makes clear that nothing in the ANLA 1992 or in any access order shall authorise the applicant to leave anything in, on or over the servient land (other than in discharge of their duty to make good that land) after their entry for the purpose of carrying out works to the dominant land ceases to be authorised.
3. In those circumstances it is not even necessary to examine the question of whether leaving MSCCL in a position where it would need to seek a court order so as to gain access to maintain the Canal bank would be sufficient to avoid serious detriment.
4. The ANLA 1992 is not an answer, and it should never have been put forward as a solution to the acknowledged problem that arises.

*The Crichel Down Rules*

1. Again, this suggestion does not provide the answer. In fact, it is a complete nonstarter as the MHCLG Guidance on the Crichel Down Rules makes explicit:

“*The Rules are not relevant to … land acquired compulsorily by … the water or sewerage companies in consequence of the Water Act 1989 or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under … section 156 of the Water Industry Act 1991, and the consents or authorisations given by the Secretary of State for Environment, Food and Rural Affairs under those provisions.*”[[279]](#footnote-279)

1. Thus the Crichel Down Rules are simply not relevant, because they are displaced by section 156 of the 1991 Act.
2. Section 156 of the 1991 Act does not provide the answer either. That section operates to prevent a sewerage undertaker such as UUWL from disposing of any of its protected land or any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by the Secretary of State (subsection (1)).
3. It is only if UUWL actively sought to dispose of land it has acquired compulsorily that subsection (4)(a) might operate so as to provide MSCCL with an opportunity of acquiring the land. Even then, that would be a matter for the Secretary of State to decide when considering whether to grant a consent or authorisation for the disposal of the land. It is not automatic.
4. Section 156 places no obligation on UUWL to consider disposal of Plots 6Z or 6Q to MSCCL if it chose to retain ownership and not dispose of them.
5. Thus neither of the answers suggested by UUWL has any merit whatsoever. It follows that in the absence of an APA, MSCCL’s suggested addition to the Schedule represents the only workable means by which the Secretary of State can be confident that confirmation of the Order will not result in serious detriment to MSCCL.

Conclusion

1. The Schedule that MSCCL has proposed to be added to the Order is necessary, appropriate and reasonable for the reasons set out above.
2. The version of the Schedule proposed by UUWL in [AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf) is not only inadequate and materially incomplete, it is also manifestly unreasonable in its terms and drafted in a way that provides even less protection than Parliament has considered appropriate for statutory undertakers where the more limited s.159 powers are used.
3. No reasonable statutory undertaker, properly advised, could possibly accept [AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf) as providing adequate protection for its statutory undertaking. UUWL’s continued unwillingness to amend its proposed Schedule to address MSCCL’s legitimate concerns is not what the Secretary of State is entitled to expect from a responsible and reasonable Acquiring Authority promoting compulsory acquisition of the land and extensive and intrusive rights over the land of a statutory undertaker.
4. The Schedule must be in a form that is both effective and adequate to protect MSCCL’s rights for the long term, because the Order involves the taking of permanent rights many of which do not fall away once construction is complete.

**The Discharge Proviso**

Introduction

1. MSCCL’s version of the Provisos includes at paragraph 3 the following:

“*The discharge proviso*

*Any right to discharge “water soil and effluent” under this Order shall be subject to the following provisions of the Water Industry Act 1991 (or any re-enactment, replacement or amendment of those provisions), which shall apply as conditions to which the right to discharge is subject in the like manner as if the right arose impliedly under section 116 of the Water Industry Act 1991:*

*a. Section 117(5)(a) and (b)*

*b. Section 117(6)*

*c. Section 186 (1), (3), (6) and (7)*

*d. Schedule 12 paragraph 4*”

1. The justification for seeking the discharge proviso is set out below. It is independent of the evidence that has been heard on matters such as the specific water quality impacts and implications of the Order Scheme, in the sense that the protections that MSCCL seeks already apply to relevant discharges as a matter of general law, and the public interest justification for them is universal in that respect. The existence of these protections is not dependent on the location or size of the discharge, or the water quality of the receiving watercourse. The protections provided by section 117(5) and (6), section 186(3) and Schedule 12 paragraph 4, for example, apply to the existing discharge from Eccles WwTW in the same way as they apply to every other sewerage discharge into other watercourses up and down the country being made pursuant to the implied right derived from section 116 of the 1991 Act.[[280]](#footnote-280)
2. In the absence of a CPO, the creation and use of a new outfall would require the consent of the owner of the receiving private watercourse. The need for such consent would itself enable the owner to regulate carefully the parameters of the outfall and the discharges from it, by reference to the location and dimensions of the outfall and the flows, total volumes and constituency of the discharges through it. This mechanism could serve to provide an owner with protection equivalent to the statutory protections listed above. The right of discharge sought in the CPO, if granted, would be free of such protections and would lack any equivalent controls, being expressed in the widest possible and most general terms. That would be an anomaly that could not be said to be justified in the public interest (and indeed UUWL has not sought to advance any such justification, as noted in section C above). There is nothing intrinsic in the mere fact that the right to make this discharge would be created by compulsion that would justify a lower level of protection when compared to the existing implied right of discharge.

The statutory context

*The relevant sections of the 1991 Act and their operation*

1. The relevant statutory protections under the 1991 Act are s.117(5) and (6), s.186 (1), (3), (6) and (7), and Schedule 12 paragraph 4.
2. Section 117(5) and (6) provide as follows:

“***117.— Interpretation of Chapter II.***

…

*(5) Nothing in sections 102 to 109 above or in sections 111 to 116 above shall be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall—*

*(a) in contravention of any applicable provision of the Water Resources Act 1991 or the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154); or*

*(b) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake.*

*(6) A sewerage undertaker shall so carry out its functions under sections 102 to 105, 112, 115 and 116 above as not to create a nuisance*”

1. Section 186 provides inter alia as follows:

“***186.— Protective provisions in respect of flood defence works and watercourses etc.***

*(1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—*

*(a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or*

*(b) with any such works used by any person for irrigating any land.*

*(2) Without prejudice to the construction of subsection (1) above for the purposes of its application in relation to the other provisions of this Act, that subsection shall have effect in its application in relation to the relevant sewerage provisions as if any use of or injury to any such works as are mentioned in paragraph (a) or (b) of that subsection were such an interference as is mentioned in that subsection.*

*(3) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—*

*(a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or*

*(b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream, without the consent of any person who would, apart from this Act, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.*

*…*

*(6) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.*

*(7) Any dispute—*

*(a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;*

*(b) as to whether any consent for the purposes of this section is being unreasonably withheld;*

*(c) as to whether any condition subject to which any such consent has been given was reasonable; or*

*(d) as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions,*

*shall be referred (in the case of a dispute falling within paragraph (d) above, at the option of the party complaining) to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.*

*(8) In this section “relevant inland waters” means any inland waters other than any which form part of a main river for the purposes of Part IV of the Water Resources Act 1991.*

*(9) The provisions of this section shall be without prejudice to the provisions of Schedule 13 to this Act.*”

1. Schedule 12 paragraph (4) provides as follows:

“*4.—*

*(1) Subject to the following provisions of this paragraph, a sewerage undertaker shall make full compensation to any person who has sustained damage by reason of the exercise by the undertaker, in relation to a matter as to which that person has not himself been in default, of any of its powers under the relevant sewerage provisions.*

*(2) Subject to sub-paragraph (3) below, any dispute arising under this paragraph as to the fact of damage, or as to the amount of compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the Authority.*

*(3) If the compensation claimed under this paragraph in any case does not exceed £5,000, all questions as to the fact of damage, liability to pay compensation and the amount of compensation may, be referred to the Authority for determination under section 30A of this Act by either party.*

*[...]*

*(5) No person shall be entitled by virtue of this paragraph to claim compensation on the ground that a sewerage undertaker has, in the exercise of its powers under the relevant sewerage provisions, declared any sewer, lateral drain or sewage disposal works, whether belonging to that person or not, to be vested in the undertaker.*”

1. The statutory protections provided by section 117, section 186(3) and Schedule 12 paragraph 4 currently apply to all pre-1991 discharges in the UK and any new discharges made in the absence of CPO powers would need the consent of the landowner. UUWL’s proposals would make the new discharge to the Canal the only one nationwide to which no set of specific protections, either statutory or imposed by private agreement to the satisfaction of the landowner, applied.
2. The reason for that anomalous position is that the power of compulsory purchase under section 155 of the 1991 Act is not one of the “relevant sewerage provisions” as defined in section 219(1). In the case of *Manchester Ship Canal Company Ltd v United Utilities Water plc* [2014] UKSC 40; [2014] 1 WLR 2576 the Supreme Court specifically held that the pre-1991 discharges were permitted to continue by virtue of section 116 of the 1991 Act (which ***is*** a ‘relevant sewerage provision’) rather than (as UUWL had there contended) under section 159 (which is ***not*** a ‘relevant sewerage provision’) or otherwise. This had the quite specific and deliberate effect of ensuring that such discharges were subject to the protections afforded by sections 117(5) and (6) and 186(3), each of which is only engaged by reference to the ‘relevant sewerage provisions’.
3. This anomaly was identified and addressed in MSCCL’s Statement of Case[[281]](#footnote-281) at paragraphs 11.1 to 11.9, including the following at paragraph 11.8:

“*In short, UUWL has not sought to argue that a right limited [by the application of ss. 117(5) and 186(3)] would be inadequate to meet the identified public interest objective. Nor has it offered any explanation for why there might be a compelling case in the public interest for acquiring what is now effectively:*

*11.8.1 a more extensive right to discharge than UUWL had originally been content was adequate to meet its stated needs; and*

*11.8.2 a more extensive right to discharge than UUWL enjoys in relation to its existing discharges*.”

*UUWL’s response*

1. As set out above, UUWL initially advanced a case that the right of discharge it proposed to acquire would be subject to the same statutory limitations as the implied rights that it already enjoys.
2. By the time of its Statement of Case, it had however abandoned that position, without explaining why as a matter of principle those same limitations should not apply to a new right.
3. It remains the case after the Public Inquiry has sat for eight weeks that there has been nothing said on behalf of UUWL in evidence or submission to justify a conclusion that the rights to discharge that it seeks would not be adequate to meet the identified public interest objective if they were qualified as suggested.
4. That is important, because it is not for MSCCL to justify why the rights taken from it by compulsion should be narrower than proposed. It is for UUWL to demonstrate a compelling case in the public interest for the full extent of the rights that it seeks.
5. Unless UUWL can show that the more limited interference with MSCCL’s land rights that would arise if the rights were qualified as requested would not be adequate to meet the identified public interest objective, only the qualified rights could properly be granted by the CPO.
6. So far the only response by UUWL has been to argue that the qualifications to the rights that would be made by the application of s.117(5) and s. 186(3) are not necessary.
7. In its letter of 8 November 2018[[282]](#footnote-282) UUWL set out its position as follows:

“*We do not agree that it is necessary or reasonable to make the right to discharge subject to the limitations set out in ss117(5) and 186(3) of the Water Industry Act 1991 (“WIA”). Parliament in enacting the 1991 Act applied these provisions only to limited sections, [and] did not apply them to compulsory purchase orders. Your client is adequately protected against the risk of any such breaches by the environmental permitting regime. Any risk of injurious affection can be dealt with through compensation*”.

1. It is of course correct that where the operator of a WwTW wishes to discharge sewage effluent into a watercourse, it will require an environmental permit pursuant to the Environmental Permitting (England and Wales) Regulations 2016 (‘EPR 2016’).
2. It is also MSCCL’s understanding UUWL will require a new permit from the EA in order to permit the discharge from Eccles WwTW Inlet Overflow, Eccles WwTW Storm Tanks Overflow and SAL0018 (Winton Outfall) into the Canal. It is understood that a variation to its existing discharge permit will be required in relation to continued intermittent discharges into Salteye Brook.
3. Parliament has, however, legislated to provide further protection for (inter alia) the water quality of receiving water courses from discharges made by wastewater undertakers such as UUWL: that is why s.117(5) has both sub-paragraphs (a) and (b). The additional layer of statutory protection offered by s.117(5)(b) must be separate from and additional to the controls set out in the EPR 2016 regime.
4. The purpose of MSCCL’s proposed provisos to the right to discharge is to ensure that the protections Parliament has legislated to create and which it would be open to and prudent for a private landowner to impose in the absence of a CPO are not absent from a right to discharge that is created by compulsion under s.155. As we have said, MSCCL can see (and UUWL has advanced) no good public interest reason why any lesser standard of protection should exist in those circumstances, and there is no precedent that can be relied upon to justify such differential treatment.
5. The permanent right to discharge into the Canal that UUWL seeks to acquire by compulsion is expressed as follows:

“[the right to] *to construct, lay, retain, use, inspect, reconstruct, replace, remove, relay, remove, alter, maintain, clean, repair, conduct and manage and a right of support for foul and surface water sewers and an outfall, and to enjoy the free flow of water, soil and effluent with or without other matter through the sewers and outfall and to enjoy the free flow of water, soil and effluent with or without other matter through the outfall pipe and outfall, and to discharge the same from there into the Canal*”.

1. If given literal effect, it is an entirely unfettered private law right for UUWL to discharge, in perpetuity, whatever it sees fit into the Canal, including (by way of example) unlimited quantities of entirely untreated raw sewage. No limitation on that right is proposed on the face of the draft Order, either in terms of what may be discharged, the frequency and volume of discharge, or its effects on the Canal. Indeed, there is nothing expressed on the face of the order to prevent UUWL in the future from enlarging without limit the outfall and the pipework serving it.
2. The burden lies on UUWL to demonstrate to the Secretary of State that there is a compelling case in the public interest to justify imposing such a right in those broad and unfettered terms, and in perpetuity against the will of the landowner into whose watercourse (and thus onto whose land) this discharge would be made – and, crucially, that no more limited right would meet the identified public interest objective.

**S.117(5) and s.186(3)**

1. We deal with s. 117(5) and s. 186(3) together because the arguments in relation to each are essentially the same.
2. UUWL’s position as to the existence of any automatic statutory limitations on this proposed right has not been consistent. As noted above, in a letter from its solicitors to MSCCL’s solicitors dated 19 January 2017 in response to MSCCL’s objection to the CPO, it stated:

“*The right to discharge sought by UUWL as part of the Order will be subject to the same statutory limitations on UUWL’s existing statutory right to discharge as are contained in ss 117(5) and 186(3) of the 1991 Act. Accordingly, we do not accept that the confirmation of the Order by the Secretary of State would be inappropriate in any way and nor do we accept that any such confirmation would affect the legality of UUWL’s discharges at this location as is suggested*” (emphasis added).

1. It is therefore clear that at the time the Order was made, UUWL and its legal advisers were satisfied that the public interest objectives said to justify the acquisition of the proposed right to discharge would adequately be addressed in circumstances where that right was subject to the limitations set out in ss.117(5) and 186(3) of the 1991 Act, and indeed should properly be so addressed.
2. UUWL’s position has now changed, in that it no longer considers that the right it proposes to acquire would automatically be subject to those statutory limitations (see its response to the Objection by Peel Group at Appendix 1 to its SoC[[283]](#footnote-283) and its response to a request for information[[284]](#footnote-284)). MSCCL agrees that the right UUWL proposes to acquire would not automatically be subject to those statutory limitations, but reaches different conclusions as to the implications of this for UUWL’s case.
3. In short, UUWL has neither sought to argue, nor called evidence to demonstrate, that a right limited in that way would be inadequate to meet the identified public interest objective said to justify the CPO. Nor has it provided any explanation (let alone evidence) to show that there is a compelling case in the public interest for acquiring what is now effectively:

a. a more extensive right to discharge than UUWL had originally been content was adequate to meet its needs; and

b. a more extensive right to discharge than UUWL enjoys in relation to its existing discharges.

1. The implications of this are twofold.

a. The right to discharge that would be acquired should be qualified so that it is made subject to the protections for affected landowners that Parliament has seen fit to provide for pre-1991 discharges under the 1991 Act and which could and sensibly would be imposed as conditions of the consent of the landowner needed by UUWL in the case of a new outfall not the subject of a CPO.

b. It is clear from the legislative framework that Parliament has decided there is a need to protect the water quality of receiving watercourses from the adverse effects of discharges by wastewater undertakers which goes beyond the system of control established by the EPR. The drafting of section 117(5) puts this beyond any sensible argument. It makes clear that the protection afforded by sub-paragraph (b), namely providing that there is no authorisation for a sewerage undertaker to use any sewer or any drain or outfall “*for the purpose of conveying foul water into … canal …, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake*” is in addition to the protection afforded by sub-paragraph (a), namely the absence of authorisation for such use in contravention of the requirements of the EPR regime. To argue against the existence of a need for both protections for this outfall is either to take issue with Parliament’s judgment as to what the public interest requires, or to suggest that the extent to which the EPR would serve to constrain the use of the Order Scheme is in some way unique compared to every other outfall in the UK. Such an argument is untenable.

c. It is no answer to say that Parliament chose not to apply those provisions automatically to section 155. Parliament has not dictated how the right UUWL seeks to acquire should be framed, or its extent. It is for UUWL to do that, and to make a compelling case to the Secretary of State for its breadth and scope.

**Section 117(6)**

1. Essentially the same arguments apply in relation to s. 117(6). There can be no suggestion that this would prevent the Order Scheme from being implemented and used as envisaged, i.e. that the Order Scheme would need to be free to create a nuisance in order to operate satisfactorily.

**Section 186(1)**

1. The effect of section 186(1) is to require the consent of the person who uses works used for draining, preserving or improving any land under any local statutory provision for anything done which interferes with that use. The consent of that person cannot unreasonably be withheld (subsection (6)), and if there is dispute as to whether there is or would be interference, or whether the person’s consent is unreasonably withheld, or any conditions imposed on the consent are reasonable, an arbitration mechanism is provided by subsection (7).
2. Unlike subsection (3), subsection (1) is not confined in its operation to the relevant sewerage provisions.
3. MSCCL seeks to reproduce that statutory protection within the Order so that it applies in future in relation to the new right to discharge in the same way as it applies to the existing right to discharge.
4. There is a separate legal dispute between the parties[[285]](#footnote-285) as to whether or not section 186(1) applies to the Canal, and thus whether or not MSCCL benefits from the protection afforded by the subsection at present.
5. MSCCL considers that section 186(1) does apply to the Canal, and thus that it currently benefits from this protection[[286]](#footnote-286). MSCCL also considers that the taking of a private law right to discharge pursuant to a CPO could not operate so as to qualify or dis-apply this statutory safeguard. UUWL will presumably make its own position clear in its closing submissions, should it consider that to be necessary.
6. MSCCL does not consider it to be necessary for the Secretary of State to reach any conclusion on the first point, because the proviso can be expressed subject to the qualification ‘if and insofar as it applies’. That would reflect the existing position, whichever view eventually turns out to be right, and would not give rise to any prejudice to either party.
7. So far as the second point is concerned, if the Secretary of State concludes that MSCCL is right, and that insofar as section 186(1) applies its application is unaffected by the CPO then this proviso could be omitted. However, if there is any doubt about that it should be included so as to ensure that MSCCL is not left with a lesser degree of statutory protection than it enjoys at present as a result of the new right to discharge having been acquired by compulsion.

**Schedule 12 paragraph (4)**

1. Schedule 12 paragraph (4) provides that a sewerage undertaker shall make full compensation to any person who has sustained damage by reason of the exercise by the undertaker, in relation to a matter as to which he has not himself been in default, of any of its powers under the relevant sewerage provisions. It provides statutory protection to MSCCL in the event of any damage associated with the use of the existing implied right of discharge, but it would not automatically apply to the right of discharge to be acquired under the CPO because it is limited to the relevant sewerage provisions.
2. As with the other statutory provisions identified above, there is no proper public interest rationale for leaving MSCCL in a worse position than it is at present, simply because the right is acquired by compulsion.

**Issues as to enforcement of statutory protections**

1. Arguments as to whether or not the owner of a receiving watercourse would or would not themselves be able to take legal action to enforce certain of these statutory protections (the subject of separate legal dispute between the parties) are irrelevant for present purposes. If there are disputes about those matters they are for another day and another forum. Parliament has created the protections and considered them to be appropriate in the public interest regardless of who would ultimately prove to be the person or body able to enforce them. The answer to that question does not detract from their appropriateness for implied rights to discharge and equally it does not detract from their appropriateness in relation to rights to discharge acquired by compulsion.

**F. The Right to Remain**

**The nature of the right sought**

1. UUWL has included a right to “remain” within the list of the rights that it seeks to take by compulsion over some plots of MSCCL’s land (and over plots of land belonging to other parties).
2. So far as MSCCL’s land is concerned, the right to “remain” is proposed to be taken over the following plots: 6A, 6B, 6D, 6E, 6F, 6G, 6H, 6I, 6J, 6K, 6L, 6M, 6N, 6P, 6R, 6S, 6T, 6U, 6V, 6W, 6X, 6Y (in part), 6AA, 6AB, 7C, 7E, 7F and 7H.
3. There is no definition provided within the Order (or anywhere else) to explain the nature and scope of the right to “remain” that is sought.
4. There is no evidence that the inclusion of this right is based on any practical issue. In cross-examination Mr Sephton accepted that in terms of practical implications he did not identify anything that the right to “remain” added to the other rights that UUWL seeks to acquire[[287]](#footnote-287).
5. There is also a distinct lack of consistency in UUWL’s approach to the inclusion of this right, which tends to indicate that its inclusion and scope has not been properly thought through. This issue was explored in cross-examination of Mr Sephton, considering by way of an example Plots 2J and 2K. In Mr Sephton’s Appendix DS43 at p. 1067 precisely the same justification is advanced in relation to each plot, but whereas a right to “remain” is sought in relation to Plot 2K, it is not in the case of plot 2J.[[288]](#footnote-288) It is fair to say that Mr Sephton was not able to offer any cogent explanation for the difference[[289]](#footnote-289).
6. We should add that is not a criticism of Mr Sephton, because there is no proper explanation available to UUWL. It is simply a reflection of the ambiguous and uncertain nature of the right and the fact that it is plainly not needed.

**Approach**

1. UUWL must establish a compelling case in the public interest for the full extent of the rights that it proposes to acquire by compulsion over MSCCL’s land.
2. No right should be taken over MSCCL’s land against its will unless it has been demonstrated to the satisfaction of the Secretary of State both that the legal ambit and effect of the proposed right is clear, and that it is necessary.
3. The burden of proof rests clearly on UUWL in both respects. It must be able to establish clearly what the right entails and its legal effect, and that the public interest decisively demands that this right be taken. If there is any reasonable doubt about any of those elements, the balance must be resolved in MSCCL’s favour.

**The issue**

1. MSCCL has consistently made clear its concerns about the ambiguous and uncertain effect of a right to “remain” being acquired over its land[[290]](#footnote-290).
2. In response to cross-examination of Mr Sephton as to whether there was some practical justification for the inclusion of this ambiguous right, leading counsel for UUWL stated that:

a. the right to “remain” has a “specific legal meaning”; and

b. a Note would be provided to identify that specific meaning and to set out why there was a compelling case in the public interest for the acquisition of such a right in this case[[291]](#footnote-291).

1. UUWL’s note, drafted by (different) leading and junior counsel and entitled “Right to Remain”, was provided on 13 July 2018[[292]](#footnote-292). Given the intended purpose of the Note, it is a rather curious document. Most notably, it does not provide any adequate definition of what a right to “remain” means or explanation of its legal effect, and nor does it seek to explain what it is intended to add in practical terms to the other rights that are sought.
2. The closest thing to an explanation of the meaning and intended effect of the right to “remain” is to be found in paragraph 8(2) of the Note, in which it is said that the right:

“… *is an entirely ancillary right to allow UU to ‘remain’ on the land for the purpose of undertaking the works it acquires the right to undertake … it makes explicit that UU will have a right not only to enter but to remain for the purposes within each paragraph*.”

1. It therefore appears to be suggested that, absent such a right, UUWL could lawfully enter the relevant land for the purposes of carrying out the relevant works but could not actually carry out those works because it would immediately have to leave. If that really is UUWL’s case (and it would seem to be), it is obviously misconceived.
2. This argument was accompanied by the rather discourteous allegation that MSCCL’s concern to understand what the right meant and why it was said to be needed was “*possibly*” based on “*ignorance of good drafting practice*”.
3. In those circumstances it is surprising that the Note did not provide any reference to other made CPOs or equivalent Orders to show that the inclusion of a right to “remain” was in fact good drafting practice, and to substantiate the allegation of (possible) ignorance.
4. On 22 August 2018 solicitors for MSCCL responded to the Note[[293]](#footnote-293). The main points made in that letter are set out below for the sake of convenience.

a. The Note does not identify any case in which the courts have considered the legal meaning and effect of a right to “remain”. Reference is made to the case of *Moncrieff v. Jamieson*[[294]](#footnote-294), but that case concerned whether in Scottish law a servitude right to park was capable of being constituted as ancillary to a servitude right of vehicular access. Whilst the Note asserts at paragraph 4 that this was an example of a right to remain on land, no right to “remain” was in issue in that case (either as an explicit right or a right claimed as being implicit) or discussed by the Court. The right that had been explicitly granted was a right of access including access by vehicles. The right claimed was an implicit ancillary right to park vehicles on the servient land which was essential to make the explicit right of vehicular access to the dominant land effective. Neither the parties nor the court suggested that any separate right to “remain” had been created or was necessary.

b. The legal meaning and effect of the grant of an explicit right to “remain” on land would therefore appear to be untested and uncertain.

c. UUWL’s position would seem to be that without the grant of a right to “remain”, UUWL would be unable effectively to exercise the other rights it seeks.

d. The Note does not explain the restrictions or limitations on the other rights that UUWL seeks to acquire which it is said would otherwise exist and which could be argued to justify the acquisition of a separate right to “remain”.

e. The reasoning of the House of Lords in *Moncrieff v Jamieson* would seem to demonstrate that a right to enter land to construct an access road would not be ineffective if it was not accompanied by the grant of a right to “remain” on the land.

f. The Note states at paragraph 8(2) that a right to “remain” only appears in the context of other rights of ‘entry’ onto land, but does not explain why UUWL has not sought a right to “remain” on the following plots, over which a right of entry is also sought: Plots 2, 2A, 2H, 2J, 2M and 2N.

g. The Note does not address the issue that Mr Sephton was unable to explain in response to questions in cross-examination, namely why UUWL considers that the compulsory acquisition of a right to “remain” was necessary in respect of Plot 2K, but not in respect of Plot 2J.

h. The same argument applies equally to Plots 2A, 2H, 2M and 2N. If UUWL’s case is that the acquisition of a separate right to “remain” is necessary for the carrying out of the construction, operation or maintenance of the CPO scheme, then it is inconsistent with the fact that it has not sought a right to “remain” over these plots. If UUWL does not consider that the acquisition of a separate right to “remain” is necessary in respect of these plots (as must be assumed from the drafting of the Order), it plainly cannot be justified in seeking to acquire such a permanent right on other plots on the same basis.

i. The Order authorises the compulsory acquisition of rights in land and does not itself authorise the carrying out of specific works. The Schedule to the Order which describes the rights in land to be acquired compulsorily does not constrain the exercise of rights by reference to the carrying out of specific works.

j. Paragraph 8(4) of the Note places reliance on the prospect of “*future argument*” over the scope of the other rights authorised to be acquired by the Order as justification for the inclusion of a separate right to “remain”. However, it does not identify any particular examples of circumstances in which there might otherwise be disagreement between the parties as to the scope of rights exercised pursuant to the Order. For the reasons set out above, the legal basis for such possible future argument that UUWL is unable effectively to exercise its other rights in the absence of a right to “remain” is wholly unclear.

1. In response to the suggestion that in some way MSCCL’s concerns might be based on “*ignorance*” of “*good drafting practice*” for Orders of this type, solicitors for MSCCL’s letter also explained that consideration of a sample of recently confirmed compulsory purchase orders and development consent orders which contain compulsory acquisition powers show that in all but one no right to “remain” was included. It is clear from this sample (which included orders promoted by UUWL’s solicitors) that neither the specialist lawyers promoting those orders nor the relevant Secretaries of State considered it necessary to supplement the rights granted with a right to “remain” on the land over which other rights were acquired.
2. The letter concluded by inviting UUWL to respond to various specific requests for further information and clarification, and generally to reconsider whether it was necessary to include a right to “remain” within the Schedule to the Order where such a right currently appears, or whether that controversial right can be removed without giving rise to any genuine doubt as to the resulting effectiveness of the other rights sought.
3. The specific requests made for further information and clarification from the Acquiring Authority were as follows:

a. To identify any authority of which UUWL was aware in which the courts have considered the legal meaning and effect of a right to “remain”.

b. To confirm whether UUWL’s position is that without the grant of a right to “remain” it would be unable effectively to exercise the other rights it seeks.

c. Confirmation of the restrictions or limitations on the other rights that UUWL seeks to acquire which it is said would otherwise exist and which could be argued to justify the acquisition of a separate right to “remain”.

d. An explanation as to why a separate right to “remain” is said not to be necessary for Plots 2A, 2H, 2J, 2M and 2N.

e. Identification of the legal basis on which UUWL considers there to be realistic scope for “future argument” that UUWL is unable effectively to exercise its other rights in the absence of a right to “remain”.

1. For three months UUWL did not respond to that letter. Finally, on 20 November 2018, the day before the Inquiry resumed, the following very brief response was provided:

“*It is our understanding from your letter of 22 August 2018 … that MSCCL accepts that where a right to remain is sought as a right ancillary to other rights (such as access rights) that the right to remain is implicit within the order sought. We are happy to accept this position and do not dispute it but consider it a matter of good drafting practice to make such ancillary rights express wherever possible to avoid misinterpretation or dispute in future. We do not intend to respond to your letter of 22 August 2018 beyond what is set out above as we believe this matter is now best left as a submission point.*”[[295]](#footnote-295)

1. That response is wholly inadequate, and leaves MSCCL in a position whereby at the point of making its closing submissions it is left uncertain of the full particulars of the case being advanced by the Acquiring Authority for the compulsory acquisition of a right to “remain” on its land. MSCCL must be given a fair opportunity to understand, consider and respond to the Acquiring Authority’s case, and if any new legal arguments or additional authorities are to be relied upon by UUWL in its own submissions in due course, it will be essential that MSCCL is given a fair opportunity to respond.
2. As matters stand, however, MSCCL has no option but to close its case on the basis that despite having had months to consider the requests made in solicitors for MSCCL’s letter of 22 August, UUWL is unable or unwilling to provide any specific response to them which MSCCL can consider for the purposes of preparing its own closing submissions. Hence MSCCL must close its own case on the basis that the Acquiring Authority:

a. has been unable to identify any authority in which the courts have considered the legal meaning and effect of a right to “remain”;

b. has not sought to argue that without the grant of a right to “remain” it would be unable effectively to exercise the other rights it seeks;

c. has been unable to identify any restrictions or limitations on the other rights that it seeks to acquire which it is said would otherwise exist and which could be argued to justify the acquisition of a separate right to “remain”;

d. has been unable to provide any explanation as to why a separate right to “remain” is said not to be necessary for Plots 2A, 2H, 2J, 2M and 2N; and

e. has been unable to identify any legal basis for concluding that there is realistic scope for ‘future argument’ that UUWL is unable effectively to exercise its other rights in the absence of a right to “remain”.

1. Finally, it is simply wrong for UUWL to suggest that MSCCL’s letter of 22 August constitutes an acceptance on the part of MSCCL that “*where a right to remain is sought as a right ancillary to other rights … that the right to remain is implicit within the order sought.*” Unless and until the nature, scope and legal effect of a right to “remain” is clearly identified, it is not possible to reach any safe conclusion as to whether it is implicit or not.

**Conclusion on the right to “remain”**

1. In those circumstances, and for those reasons, MSCCL’s position is that UUWL has not been able to demonstrate either that the legal ambit and effect of the proposed right to “remain” is clear, or that it is necessary.
2. The consequence is that UUWL simply cannot establish a compelling case in the public interest for the taking of such a right over MSCCL’s land against its will, and that the right to “remain” should be struck out of the Table in Schedule 2 to the Order wherever it appears.
3. MSCCL reserves the right to provide additional submissions in the event that UUWL seeks to introduce new arguments or authorities as part of its own closing submissions in due course.

**G. Conclusions**

1. For the reasons summarised above, and addressed in MSCCL’s written and oral evidence:

a. MSCCL’s suggested form of Schedule should be included as part of the Order;

and

b. the right to “remain” should be struck out wherever it appears in the Table in Schedule 2 to the Order.

**MSCCL’s response [**[MP/INQ/72](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MSCCL-Note-in-response-to-UUWL-Closing-Submissions-1.pdf)**] to the Acquiring Authority’s closing submissions [**[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)**]**

**Introduction**

1. On 10 December 2018 the Inspector (through the Programme Officer) set a deadline of 25 January for MSCCL to identify any queries regarding the written closing submissions made on behalf of UUWL.[[296]](#footnote-296)
2. MSCCL recognises that it has no general right of reply to UUWL’s closing submissions, and so has limited its response to the following:

a. A specific query as to whether any additional written submissions from MSCCL are required.

b. Clarification where it appears that the UUWL CS are based on a misunderstanding or mischaracterisation of MSCCL’s position.

c. A brief response to new points of law and fact, and new arguments, in the UUWL CS to which it was unable to respond in its own written closing submissions submitted on 14 December 2018 (‘MSCCL CS’).

d. A brief response to certain suggested potential amendments to the Schedule to the Order identified in UUWL CS.

1. Thus the absence of a response to a point made in the UUWL CS involves no acceptance of its merit.
2. Where there are differences between the parties as to what was or was not said in oral evidence (see e.g. UUWL CS paragraph 5.32), the Inspector’s own notes are likely to resolve any differences.
3. Against that background, there are 7 points that we briefly address in this Note:

a. A query as to whether any additional written submissions from MSCCL are required.

b. Clarification in relation to the withdrawal of MSCCL’s ‘in-principle’ objection and its implications for the determination of the remaining issues in dispute.

c. Additional borehole evidence submitted by UUWL on 11 January 2019.

d. The right to “remain”.

e. The return of Plots 6Z and 6Q.

f. Serious Detriment.

g. MSCCL’s protective provisions.

**Query as to whether any additional written submissions are required from MSCCL**

1. For the reasons summarised at paragraph 6 of the MSCCL CS, and explained in open Inquiry at the time the withdrawal of the in-principle objection was made, those submissions did not address issues arising in relation to MSCCL’s former ‘in-principle’ objection. At MSCCL CS paragraph 7, however, we said that:

“*If for any reason the Inspector decides that it is necessary to determine* [the issues referred to in paragraph 6 of the MSCCL CS]*, and we should make clear that we see no reason why that would be necessary, MSCCL would ask that it be provided with an opportunity to make further submissions as appropriate*”.

1. A good deal of the extensive UUWL CS is dedicated to addressing those issues, and criticism of MSCCL’s case in that regard. MSCCL does not accept what is said by UUWL in relation to those issues, and indeed much of it is highly controversial.
2. On page 7 of UUWL CS (Footnote 3 of [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf), and above as Footnote 2 in this report) it is suggested that because MSCCL does not maintain its ‘in principle’ objection to the Order “*There cannot be any “controversial” issues relevant to the principle of the Order at all.*” That is not correct.
3. The decision to withdraw MSCCL’s remaining ‘in-principle objection’ arose from a recognition by MSCCL that following evidence given by Dr Studds in cross-examination it was no longer able to demonstrate through its evidence that the adverse water quality implications of the CPO Scheme when compared to the alternatives identified in [MP/INQ/35](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Mr-Clive-Sproule-5-October-2018.pdf) were sufficient to justify a decision not to confirm the Order.
4. In those circumstances it very plainly does not follow that by withdrawing its ‘in-principle’ objection that MSCCL has accepted that *every element* of that in-principle objection (and evidence in support of it) was wrong, or that *every element* of UUWL’s case in response (and evidence in support of it) was well-founded. It is simply a recognition by MSCCL that the evidence it was able to adduce in support of some crucial elements of its ‘in principle’ case was not sufficiently strong for that case to succeed.
5. Hence paragraph 6 of the MSCCL CS identified some examples of what would otherwise remain controversial issues that were now academic. The examples given were just that, examples. As was apparent from the evidence of both parties and from the way that MSCCL’s case was put in cross-examination of UUWL’s witnesses, there are very many others (both large and small) including (by way of further example) the extent to which the Canal ‘needs’ water from UUWL’s discharges (MSCCL’s position being that it does not). However, we do not propose to set out a comprehensive list.
6. MSCCL believes it is now no longer necessary for the Secretary of State to resolve those matters, and it would therefore not wish to extend the duration and costs involved in this process further by setting out its own position on those matters in additional written submissions. We note that UUWL already seeks to criticise the length of the MSCCL CS (see UUWL CS paragraph 1.3), but the written closing submissions would necessarily need to be very significantly extended if they sought to deal with issues that remain controversial but which have now become academic. More time would need to be allowed in order to prepare and draft those submissions (dealing with a raft of complex issues involving disputed expert evidence), and UUWL would then need to be given an opportunity to respond to those further submissions. Of course, none of this was anticipated as part of the approach discussed in the final sitting days of the Inquiry because it quite clearly should not be (and is not) necessary.
7. In this Note, we have not therefore sought to engage with and respond to those points, but we maintain the position that if it is considered necessary to determine or comment in any substantive way on those issues, MSCCL would ask that it be provided with an opportunity to make further submissions as appropriate.

**The withdrawal of MSCCL’s ‘in-principle’ objection and its implications for the determination of the remaining issues in dispute**

1. MSCCL considers that, in the light of the way matters are put in the UUWL CS, there is a need to clarify this issue for the benefit of the Secretary of State. It is concerned that UUWL has mischaracterised the extent of what can properly be regarded as falling within MSCCL’s ‘in-principle’ objection, and thus the implications of the withdrawal of that objection for the issues that the Secretary of State needs to grapple with and resolve.
2. This can be seen most starkly at paragraph 9.5.1 within the concluding section of UUWL CS where it is suggested that “*The lack of any remaining objection to the Order is clear evidence that the implementation of the CPO Scheme will not have a detrimental impact on MSCCL’s statutory undertaking*” (emphasis added).
3. That is simply wrong, because it assumes incorrectly that:

a. MSCCL has withdrawn *all* objection to the Order, rather than simply that part of its objection which related to the principle of the Order; and that

b. MSCCL’s remaining objection was not based on the Order giving rise to serious detriment in the absence of the protection that MSCCL invites the Secretary of State to secure through the Schedule to the Order.

1. UUWL’s mischaracterisation of the position is also reflected in a number of other places in the body of the UUWL CS. For example:

a. UUWL’s submission that withdrawal of MSCCL’s ‘in-principle’ objection involves an acceptance that there would be no serious detriment, and suggestion that MSCCL’s evidence submitted in support of the protections that it seeks (i.e. the evidence of Messrs. West, Clarke, Gavin, Blythe and Rhodes) was withdrawn (UUWL CS paragraphs 7.9 and 7.11.2(1))

b. UUWL’s submission at UUWL CS paragraph 7.12 about the implications of MSCCL accepting that its objections can be overcome by means of additional protection in the Schedule to the Order. That submission overlooks the nature and purpose of the additional clauses which MSCCL seeks in the absence of a concluded APA, which include effectively requiring UUWL to submit an APA (or equivalent) for its approval before the relevant rights are exercised (MSCCL CS at paragraph 157).

c. UUWL CS paragraph 7.14 which suggests MSCCL’s summary of the evidence is at odds with the withdrawal of its ‘in-principle’ objection.

d. UUWL CS paragraph 7.16 which points out that no requirement for an APA to be in place had been secured at the time when MSCCL’s ‘in-principle’ objection was withdrawn.

1. Those submissions within the UUWL CS are clearly based on a mischaracterisation of MSCCL’s position, because as UUWL itself acknowledges at paragraph 7.10, MSCCL’s position as to whether or not serious detriment will arise is “*subject … to the securing of what it considers to be appropriate protections*”.
2. For the avoidance of any doubt, MSCCL’s position is that the withdrawal of its ‘in-principle’ objection encompassed that part of its objection relating to water quality, alternatives, flawed scheme design, unsustainable development not in the public interest, adequacy of attempts to acquire by agreement and impediments to implementation. It will be recalled that the remaining[[297]](#footnote-297) parts of its objection were expressly preserved by its offer to UUWL’s solicitors dated 4 December 2018[[298]](#footnote-298), which stated that it was subject to its ability to make submissions on the “*remaining aspects of MSCCL’s objection, as to the scope of the protections that are required to avoid detriment to its undertaking*”. It was on this basis, whereby it was able to argue for equivalent or more extensive protection on the face of the Order, that MSCCL considered it acceptable to proceed without an APA having been concluded.
3. Further, MSCCL’s position could not have been made any clearer in the MSCCL CS: “*It is MSCCL’s case that, absent the modification of the Order so as to include the Schedule in the form it suggests, the Secretary of State will not be able to be satisfied as to the absence of serious detriment*.” (MSCCL CS paragraph 16). That case has been consistent throughout, and is supported by the evidence of Messrs. West, Clarke, Gavin, Blythe and Rhodes. That evidence has always been and continues to be relied upon for those purposes, and has never been withdrawn.
4. Thus it is simply inaccurate for UUWL to submit that:

a. MSCCL “*has withdrawn the entirety of its case suggesting that the Scheme poses a risk to the Canal*” (UUWL CS paragraph 7.29);

b. all objections have been withdrawn and therefore the Inquiry has shown no need for protections (UUWL CS paragraph 7.31);

c. that “*it is inconsistent with the withdrawal of MSCCL’s objection in principle for confirmation of the Order is in some way to be found to cause material prejudice to MSCCL’s undertaking*” (UUWL CS paragraph 7.35); and that

d. MSCCL “*no longer adduces any evidence that the CPO Scheme will cause substantial detriment to its undertaking*” (UUWL CS paragraph 7.38) when MSCCL’s evidence was (and remains) that it would do so in the absence of adequate protection.

1. The agreement by MSCCL that it was no longer necessary to call its remaining witnesses to give oral evidence did not involve the withdrawal of their written evidence. It was simply a pragmatic recognition that in view of the position reached the parties’ time would be better spent focusing on the negotiation of an appropriate form of Schedule and an APA.

**Additional borehole evidence submitted by UUWL**

1. On 11 January 2019 UUWL submitted a Note from its witness Mr McKimm[[299]](#footnote-299) commenting on the results and implications of Borehole 7, and the Borehole Logs[[300]](#footnote-300) themselves. This is new evidence, not therefore previously addressed either by MSCCL’s witnesses or MSCCL’s CS.
2. In the limited time available, MSCCL obtained a response from its own expert witness Mr West. Mr West does not agree with the conclusions reached by Mr McKimm. The key conclusions that Mr West reaches are that:

a. The base of concrete in BH7 is recorded at 7.91mOD, which is within 20cm of the base of step 1 of the wing wall as predicted by MSCCL, based on the historic drawing presented in Mr Gavin’s evidence;

b. BH7 shows that there are medium dense sand and gravels below to the base of the wing wall to a level of 7.21mOD (0.7m thickness), which Mr McKimm incorrectly describes as ‘dense’ in his Supplementary Note (at paragraph 4.3), having regard to his own evidence[[301]](#footnote-301);

c. Below these medium dense sand and gravels is weak-fine grained sandstone, recovered as sand and gravel to a level of +5.71mOD;

d. The tests Mr McKimm has carried out demonstrate that this weak-fine grained sandstone is notably weaker and less stiff in situ than the structured sandstone underlying it; and that

e. It is therefore reasonable to expect greater differential settlement at the western end of the wing wall compared to the section bearing directly on the structured sandstone.

1. In the circumstances it is simply not accepted as a matter of fact that “*the wall is indeed built on sandstone*” (UUWL CS paragraph 4.174) or that the sand and gravel encountered “*provides as firm a foundation as the rock*” (UUWL CS paragraph 4.209). Neither of these statements is supported by the evidence.
2. The issue remains that the wall is founded on a formation of varying stiffness, which has been proven by the boreholes with a transition from a foundation on rock (BH5A) to one with sand and gravel and unstructured rock (BH7). Therefore damage from differential movement remains a risk that needs to be addressed by appropriate protective provisions.

**Right to Remain**

1. The UUWL CS now introduces a new argument to seek to explain why the right is included in some places but not others (paragraphs 5.19.5 and 5.19.6), and MSCCL is entitled to respond to these new points.
2. Firstly, the decision about when the right has been included and when it has not seems to revolve around whether a particular plot is anticipated to be occupied for ‘a couple of days’ (which does not apparently involve ‘remaining’ on the land (UUWL CS paragraph 5.19.5)), or alternatively for ‘a period of time’ or ‘several weeks’ (which apparently does involve ‘remaining’ on the land (UUWL CS paragraph 5.19.6(e) and (f)).
3. That argument is difficult to understand, introducing as it does an uncertain and apparently arbitrary temporal element as to when UUWL will be ‘remaining’ on a particular plot. There also appears to be a degree of inconsistency between UUWL’s belated rationale, and the inclusion of the right in certain plots within MSCCL’s ownership. By way of example:

a. The claim that the works on Plots 2, 2H and 2M do not justify the inclusion of the right to remain because they are ‘intermittent’ and ‘transient’ is inconsistent with the claim made in the Acquiring Authority’s evidence[[302]](#footnote-302) that the estimated duration of activity in these plots is 11 months, and with the claim that they are required for monitoring activities, which can reasonably be assumed to be required for a continuous period exceeding a few days.

b. In the case of Plots 6J, 6K, 6L and 6M, rights of navigation are taken to and from the area of the outfall construction. Having regard to both the nature of navigation, and to the claim in Acquiring Authority’s evidence (see Footnote 302) that UUWL’s intention is to moor plant and vessels in Barton Locks in order to avoid daily journeys to and from the construction site, it would appear that the duration of use of these plots is also likely to be ‘intermittent’ and ‘transient’, and would not therefore appear to satisfy UUWL’s stated criteria for employing the right. Nonetheless, those plots are also made subject to a right to “remain”.

1. If anything, the justification now proffered tends to deepen rather than reduce the uncertainty as to exactly what the right means and why it is required. MSCCL remains of the view that the inclusion of the right is inappropriate, and should be avoided.

**Return of Plots 6Z and 6Q**

1. MSCCL’s position remains as set out in the MSCCL CS at paragraphs 191 to 213, and those submissions are not repeated.
2. The suggestion now made in response is that there is no need for anything specific to deal with this issue, because MSCCL could insist upon the return of its freehold interest in these plots as a reasonable condition for giving consent under UUWL’s Schedule (UUWL CS paragraph 5.33).
3. That is manifestly inadequate in circumstances where:

a. The Secretary of State needs to be certain now that the land would be returned to MSCCL in order to be able to conclude that serious detriment would be avoided.

b. There can be no certainty as to whether UUWL will seek MSCCL’s consent for any particular works in this location, or that if it did it would accept that it would be reasonable for MSCCL to withhold its consent unless the freehold of those plots was returned to it as a condition.

c. Even if that was known, there is no way of knowing on what terms the freehold would be returned.

**Serious detriment**

1. In the UUWL CS a new point is raised for the first time, namely an argument that MSCCL has only raised the issue of serious detriment in relation to operational land to be acquired rather than rights (paragraph 7.9 and Footnote 256 of the closing submissions ([AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)), and above as Footnote 62 in this report). MSCCL is entitled to respond to that point.
2. The scope of MSCCL’s concerns is plainly not limited to the acquisition of operational land but also includes the effect of the acquisition of rights, and always has included those effects.

a. MSCCL’s objection to the Order made reference to the test in paragraph 3 of Schedule 3 to the Acquisition of Land Act 1981 ([CD/CPO/6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.6-Objection-dated-20-October-2016-on-behalf-of-MSCCL-PINL-SCPL-CoSCoS-and-PSLL.pdf) at paragraph 21)[[303]](#footnote-303).

b. The same is true of MSCCL’s Statement of Case ([CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf) at paragraph 3.4)[[304]](#footnote-304) and the proof of evidence of Mr Rhodes ([MP/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_A-John-Rhodes-Proof-of-Evidence.pdf), paragraph 5.21).

c. MSCCL’s CS at paragraph 14 makes reference to Para 3 of Schedule 3 as well as section 16.

1. Thus it is clear that MSCCL has at all times objected both to impact of land acquisition and taking of rights, relying on both section 16 and paragraph 3 of Schedule 3 to the Acquisition of Land Act 1981. Its representations were explicitly made by reference to both provisions, and were not withdrawn. Hence the tests in both provisions are engaged and must be satisfied. Whilst the Defra letter of 20 September 2017 made reference to section 16 and not paragraph 3 of Schedule 3, that appears to be an oversight, and in any event does not alter the legal position, which is that MSCCL’s objection was duly made on both bases.
2. Indeed, UUWL has itself acknowledged at Footnote 256 on page 174 of the UUWL CS [Inspector’s note: and above, as Footnote 62 in this report] that the tests are engaged where a statutory undertaker makes duly made representations relevant to each statutory provision respectively in time. As set out above, MSCCL has done that, and thus UUWL’s assertion that “*In fact MSCCL’s representations were made under s.16 of the 1981 Act only, not paragraph 3 to the 1981 Act*” is based on a mistake of fact.

**MSCCL’s proposed protections**

1. At paragraphs 125 to 127 of the MSCCL CS we explained that MSCCL’s solicitors had written to UUWL’s solicitors on 20 November 2018[[305]](#footnote-305) to seek to address the outstanding points, but that no reply had been received. Paragraph 7.87 of the UUWL CS now provides a belated reply to the questions raised in MSCCL CS paragraph 127. These are new points, and so we respond to them here so far as appropriate.

a. 7.87.1 – MSCCL welcomes this belated clarification, and we invite the Secretary of State to consider the issues on the basis of this common understanding.

b. 7.87.2 - MSCCL welcomes this belated clarification, and we invite the Secretary of State to consider the issues on the basis of this common understanding.

c. 7.87.3 – MSCCL welcomes the addition of ‘and dredging’, which should be added to UUWL’s Schedule in the event that such a right (or something similar to it) is included within the Order.

d. 7.87.4 - MSCCL welcomes this belated clarification, and we invite the Secretary of State to consider the issues on the basis of this common understanding.

e. 7.87.5 – In view of UUWL’s response MSCCL’s position on this issues remains as set out in the MSCCL CS at paragraph 127.e.

f. 7.87.6 – MSCCL understands UUWL’s submissions at 7.87.6 to involve an acceptance that section 53 of the Manchester Ship Canal Act 1952 would apply to vessels exercising the rights which UUWL seeks to acquire.

g. 7.87.7 – MSCCL welcomes the additional words proposed, which should be added UUWL’s Schedule in the event that it (or something similar to it) is included within the Order.

Written Representations

1. There are no written representations in this case except for that in relation to the withdrawal of the objection from Standard Life Trustee Company Limited [[CD/CPO/13](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.13-Letter-dated-31-May-2018-on-Standard-Life-Trustee-Company-Limited-withdrawing-objection.pdf)]. All other relevant correspondence is within the Core and Inquiry Documents.

Inspector’s Conclusions

*Square brackets in these conclusions contain numbers which refer to earlier paragraphs in this report that contain material of relevance to my conclusions. A number of inquiry documents are also referred to.*

**The Main Considerations**

1. Of the remaining objectors at the start of the Inquiry, only MSCCL remained at the close of the Inquiry. All other remaining objections to the Order have been withdrawn. If the Order were to be confirmed by the Secretary of State, the Acquiring Authority and MSCCL have suggested that amendments be made to the Order. My conclusions below seek to address the matters that may inform the Secretary of State’s decision, including the areas of difference between the remaining parties to the Inquiry regarding these amendments. [3, 4, 5, 6, 24-28, 32, 473]
2. The Acquiring Authority considers that: much of the Order Scheme could have been carried out through the powers in ss.159 and 168 of the 1991 Act, which enable a relevant undertaker to lay pipes without the need to use compulsory purchase powers; but, the need to create the new outfall into the Canal has resulted in the CPO and the Order Scheme. MSCCL questions the relevance of s.159 powers and their similarity to the compulsory purchase sought through the Order and the Acquiring Authority’s interpretation of them. In this regard, MSCCL considers the land and rights sought by the Order to far exceed anything that could be done through s.159. [16-23, 50-62, 85-87, 91, 128, 130-136, 316, 343, 388, 613-625, 744-760]
3. The proposed compulsory acquisition is enabled by s.155 of the 1991 Act. Section 155(1) provides the test that any land which is sought to be acquired compulsorily must be ‘…*required by the undertaker for the purposes of, or in connection with, the carrying out of its functions*…”. Section 155(4) then confirms the applicability of procedures within the 1981 Act to any confirmation of the Order by the Secretary of State. The Acquiring Authority is a ‘relevant undertaker’ that can be authorised to acquire land and rights compulsorily for the purposes of or in connection with the carrying out of its functions. [84, 103, 315-323, 517]
4. The CPO Guidance was published in February 2018 and updated in July 2019. Much of the advice within the CPO guidance refers to land acquisition under s.226(1)(a) of the Town and Country Planning Act 1990. While this Order is made under s.155 of the 1991 Act, the CPO guidance is nonetheless relevant to the compulsory acquisition of land and rights within the Order. Paragraph 2 of the CPO Guidance states that:
5. An Acquiring Authority should use CPO powers where it is expedient to do so, but a CPO should only be made where there is a compelling case in the public interest;
6. An Acquiring Authority will be expected to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement.
7. Acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. [437, 438]
8. Paragraph 12 of the CPO Guidance restates points a) and c) as being fundamental principles that an Acquiring Authority should address to justify a CPO. Guidance in paragraph 13 confirms the need for it to be shown that sufficient resources would be available to deliver the scheme. [439, 440]
9. In common with the Acquiring Authority, the remaining objector in this case (MSCCL), is also a statutory undertaker. The scope of MSCCL’s objections has changed and become more focused during the course of the Inquiry. This section addresses MSCCL’s current position within the context of the evidence and the submissions set out and referred to above. [315, 481, 530-535].
10. Section 16(2) of the 1981 Act contains tests for confirmation of any compulsory purchase order that includes a statutory undertaker’s land. These tests are that the nature and situation of the land are such that:
11. it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or,
12. if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on thereof; and,

the Secretary of State certifies accordingly. [320, 536, 537]

1. Paragraph 3 in Part II of Schedule 3 to the 1981 Act addresses the “Acquisition of New Rights Over Special Kinds of Land” in relation to “*Statutory undertakers land*”. Paragraph 3(2) of Schedule 3 contains tests for the confirmation (or making) of any compulsory purchase order that includes a statutory undertaker’s right over any land, and these tests reflect those for land within s.16(2). The Schedule 3 Part II paragraph 3(2) tests for rights are:
2. that the right can be purchased without serious detriment to the carrying on of the undertaking; or
3. that any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them; and,

the Secretary of State certifies accordingly. [320, 321, 536, 537]

1. However, before addressing these fundamental matters, I shall deal with the detailed terms of the Order that remain in dispute between the two remaining parties. I have dealt with those detailed matters in turn as follows:
2. a brief explanation of several issues concerning the scope of MSCCL’s objections;
3. an assessment of the disputed “right to remain”, which UUWL has proposed be included for some of the plots of land;
4. an assessment of the dispute about Plots 6Z and 6Q, the ownership of which MSCCL would like to see returned to them when construction works have been completed; and
5. an explanation and assessment of the additional provisions sought by MSCCL to safeguard its assets and its operations as a statutory undertaking.

**The Scope of MSCCL’s Objections**

1. MSCCL considers the Acquiring Authority’s closing submissions to have raised a new point regarding the nature of its objection, specifically, that serious detriment is only raised in relation to the loss of operational land, rather than the loss of rights over land. [31, 139, 200, 324, Footnote 62, 517, 518, 839]
2. Evidence indicates that a letter from the Secretary of State for Environment, Food and Rural Affairs, dated 20 September 2017, noted MSCCL’s objection to be in relation to s.16 of the 1981 Act. However prior to this, MSCCL’s letter of objection to the Order ([CD/CPO/6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.6-Objection-dated-20-October-2016-on-behalf-of-MSCCL-PINL-SCPL-CoSCoS-and-PSLL.pdf), dated 20 October 2016) stated that the test in paragraph 3 of Schedule 3 of the 1981 Act was not satisfied, and continued “…*This test requires that the Secretary of State is satisfied that the right can be purchased without serious detriment to the undertaking or that any detriment can be made good by the use of other land belonging to or available to the undertakers for acquisition by them*…”. Then after the letter from the Secretary of State for Environment, Food and Rural Affairs, dated 20 September 2017, MSCCL’s Statement of Case (dated 1 May 2018) addressed both land and rights as did MSCCL’s closing submissions. [322, 840-842, Footnote 305]
3. It is therefore apparent that MSCCL’s objection to the Order concerned potential detriment to its undertaking as a result of the proposed compulsory acquisition of land and rights. [840-842, Footnote 305]
4. As noted above, the evidence of Messrs Gavin, Blythe and Rhodes was not tested through cross-examination, and that sets their evidence apart from the remainder of the evidence before the Inquiry which was tested in that way. However, during the latter Inquiry sessions it became apparent that there were matters addressed by immediately preceding witnesses, and others that would have been addressed by Messrs Gavin and Blythe (and possibly Mr Rhodes), that were the subject of ongoing discussions between the two remaining parties to the Inquiry. Those discussions were occurring outside the Inquiry room and were between the two parties through their respective legal teams. So, in the latter stages of the Inquiry, there were matters that had yet to be put before the Inquiry that were affecting the scope of both the questions that could be put during cross-examination and the respective answers. [199, 340, 349, 498, 590-592, 826, 827]
5. It is also clear from the wording of MSCCL’s letter, dated 4 December 2018 ([MP/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-December-2018-1.pdf)), that when MSCCL withdrew its ‘in-principle’ objection to the Order, MSCCL did not withdraw all of its objection to the Order Scheme; nor should it be assumed that MSCCL considers the Order Scheme would cause no serious detriment to its undertaking. In exchanges during the last Inquiry session, MSCCL did highlight possible remaining concerns including those regarding the possible scale of submissions for MSCCL’s consent and the timescale for MSCCL to deal with, and take advice on, matters within the submissions. The nature of MSCCL’s withdrawal reflected the circumstances that pertained on the final sitting days of the Inquiry, and in its closing submissions and additional response, the Acquiring Authority has given its view on the matters that led to that point. [323-325, 328, 329, 344, 350, 351, 489, 491-499, 523, 527-529, 600, 811-816, 819-826]

**Dispute on Right to “Remain”**

1. The Acquiring Authority’s drafting of the Order includes a right to “remain” on some plots but not on others (on plots listed in paragraph 779 of this report). However, the Order contains no definition to assist the interpretation of what the right to “remain” would mean for the purposes of the Order. [779, 782-805]
2. While MSCCL has withdrawn its objection to the principle of confirming the Order, it nonetheless retains its view that the right to “remain” would have an ambiguous and uncertain effect on its land ownership. A note to the Inquiry, entitled *Right to “remain”*, sets out the Acquiring Authority’s position on the matter ([AA/INQ/29.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_29.5-Right-to-Remain-Note.pdf) with MSCCL’s response at [MP/INQ/28](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-UU-22-August-2018-1.pdf) and referred to in [MP/INQ/43](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-12-November-20181.pdf)). The note was submitted after the matter had been raised during cross-examination of one of the Acquiring Authority’s witnesses. [261-274, 512-514, 588, 778-805]
3. In compiling the note, the Acquiring Authority addressed relevant case law, including that in regard to the right to “remain” being implicit as an ancillary easement, along with its effect on land ownership. Paragraph 801 of this report confirms that MSCCL considers it not to be possible to reach any safe conclusion as to whether it is implicit or not without a clearer understanding of the right to “remain”. Further detail is provided in MSCCL’s response to the closing submissions. The Acquiring Authority retains its position as set out in the note. If the Secretary of State concludes that the right to “remain” is implicit, the word “remain” could be removed from the relevant parts of the Order. Doing so would also remove the inconsistency identified by MSCCL in paragraph 794 h. of this report (and the Acquiring Authority’s associated comments are in paragraphs that include 266). [261-274, 512-514, 588, 778-805, 832-835]
4. In my view, the inclusion of this right serves no purpose, and I agree with MSCCL’s argument that the right is already implicit in the CPO terms. UUWL’s submission is that it would be good practice to include such a right is not convincing; it has not been shown to be normal practice to include such a term in CPOs and nor is it helpful to clarity. I consider all reference to the right to “remain” should be omitted from the Order.

**Dispute on the Return of Plots 6Z and 6Q**

1. If the Order were to be confirmed, MSCCL is keen to re-acquire the ownership of Plots 6Z and 6Q after completion of the Order works as it considers them essential to its own statutory objectives. The Acquiring Authority has set out the context of these two plots and why the Order Scheme seeks the freehold, rather than rights over the land. Both parties have addressed comments made during cross-examination of one of UUWL’s witnesses, but there is disagreement on the specifics of what was said.[[306]](#footnote-306) In relation to the possible return of land to MSCCL, the objector notes the Crichel Down Rules to be not relevant to this case due their displacement by s.156 of the 1991 Act, which is entitled “Restriction on disposals of land”. [275-280, 714-720, 728]
2. It is apparent that the Acquiring Authority would be unable to dispose of the land obtained through the Order unless authorisation is provided by the Secretary of State. This s.156(1) requirement provides a statutory process that would ensure MSCCL’s interests are taken into consideration if the Acquiring Authority were to seek to dispose of plots that are the subject of the Order. This would include, for example, Plots 6Z and 6Q that provide access to MSCCL assets next to them. Section 156 would not provide a means for the automatic return of Plots 6Z and 6Q to MSCCL, nor would the terms of any return be known at this stage.
3. However, and in this regard, it is not apparent that either the Order Scheme, or a subsequent transfer of the freehold of Plots 6Z and 6Q, would cause serious detriment to occur through MSCCL losing its ability to access its assets (or for any other reason related to the proposed acquisition of these plots). For example, if the Order were to be confirmed, paragraph 2(3)(c) of MSCCL’s proposed protective provisions ([MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf)) would ensure that vehicular across Plots 6Z and 6Q would always be available for MSCCL to access Barton Locks. [275-285, 515-516, 581, 714-736, 836-838]
4. That said, the Acquiring Authority is unambiguous that a consent from MSCCL would be required to construct the outfall, and such consent could be conditional on the return of Plots 6Z and 6Q, if that were to be considered reasonable. Evidence in this case, referred to above, confirms that the construction and operation of the outfall would be required for regulatory compliance. Therefore, the construction of Shaft 04 and the tunnel outfall in the vicinity of Plots 6Z and 6Q reasonably can be expected to occur, and that would require a consent from MSCCL. [515-516, 836-838]
5. So, if the Order were to be confirmed as modified by the inclusion of MSCCL’s protective provisions within Schedule 1 of [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf), to the extent recommended by this report, the compulsory purchase of Plots 6Z and 6Q would not cause serious detriment to the carrying on of MSCCL’s undertaking. Also, the MSCCL consenting process for works within the Order Scheme would enable a condition to be attached for the return of the freehold for Plots 6Z and 6Q to MSCCL following construction of the outfall, where that has been shown to be reasonable.

**Dispute on Protective Provisions**

1. The form of protective provisions for MSCCL’s statutory undertaking is another one of the issues within MSCCL’s remaining objections. The Order contains protective provisions and MSCCL wishes them to be modified prior to confirmation. MSCCL’s proposed protective provisions are contained within [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf). The Acquiring Authority considers:
2. there to be no need for additional protective provisions, especially given the nature of the powers and provisions within s.159, s.168 and Schedule 13 of the 1991 Act; but,
3. early confirmation of the Order is critical and therefore, the Acquiring Authority would accept MSCCL’s proposed protective provisions if the Secretary of State considers them to be necessary or appropriate.

[92-99, 100, 197, 229-242, 340-342, 347, 348, 352-360, 485, 519, 520, 523-529, 559-570, 592-595, 605-612, 626]

Legislation

1. Schedule 13 of the 1991 Act provides protective provisions for certain undertakings, including for example dock undertakers, that may be affected by works carried out under ss.159 and 168 of the same Act. However, and as in this case, Schedule 13 does not apply to the exercise of rights acquired by compulsory purchase under s.155 of the 1991 Act. MSCCL considers Schedule 13 of the 1991 Act to be an inappropriate basis for protective provisions that seek to address powers that would be provided through a s.155 Order, rather than the quite different powers within s.159 of the 1991 Act. [532-534, 100, 344, 626]
2. It is clear that the 1991 Act specifically applies the Schedule 13 provisions to powers under s.159, and it does not do so for compulsory purchase under s.155. While it may be possible to carry out many of the works within the Order Scheme under s.159, the 1991 Act does not apply Schedule 13 to such works. Both parties have addressed Schedule 13 and the potential appropriateness of its provisions for the Order Scheme. [345, 346, 395, 627-634]
3. On this, I find MSCCL’s case to be more convincing as the 1981 Act will have formed the background to the drafting of the 1991 Act. In this case the suitability of protective provisions for possible inclusion within the Order ultimately falls to be considered against the tests of serious detriment within s.16(2) of, and Paragraph 3 of Part II of Schedule 3 to, the 1981 Act, which are set out above under “The Main Considerations” and are addressed below.
4. Section 16 of the 1981 Act addresses “*Statutory undertakers’ land excluded from compulsory purchase*” and as a result and conversely, land that could be included. It is evident that by their type, location and the circumstances that pertain to them, MSCCL’s land and rights meet the tests of s.16 applicability within s.16(1) of the 1981 Act. [319]
5. Evidence to the Inquiry addressed the nature of the MSCCL undertaking and the Order Lands associated with it, and their circumstances (including the location of the Order Lands and their existing or likely functional use(s) in connection with the undertaking). Accompanied and unaccompanied site visits were carried out of the Order Lands and the locality around them. [1]
6. In relation to s.16(2)(b) of the 1981 Act, and paragraph 3(2)(b) of Part II to Schedule 3 of the same Act, the evidence in this case shows that the MSCCL land and rights included within the Order could not be replaced by other land belonging to, or available for acquisition by, MSCCL. Therefore, in respect to MSCCL’s statutory undertaker’s land, the decision on whether or not to confirm the Order falls to be considered on s.16(2)(a) and paragraph 3(2)(a) of Part II to Schedule 3 of the 1981 Act. That is, whether or not the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking. [326]

‘*Points of principle*’ raised by MSCCL

1. During the latter part of the Inquiry, MSCCL’s concerns were clearly expressed regarding the level of detail that could be supplied to it by the Acquiring Authority in any notification of intended works; and, whether there would be sufficient time to consider the potential effects of the proposed works on the carrying on of the undertaking. Provision of sufficient time, through adequate periods of notice, is addressed below in the section on “The Protective Provisions Proposed”.
2. The ‘Rochdale Envelope’ approach enables large development proposals to be considered through defined parameters, in compliance with European law regarding the European Environmental Impact Assessment (‘EIA’) Directive, before full details of the proposal are confirmed. MSCCL has drawn on the principle of the “Rochdale” approach for the assessment of the possible effects of the Order Scheme as full details are yet to be known about the construction of the works. [361-363, 573]
3. It provides an established approach that may be used for the consideration of development that typically would be large in scale. However, the context of the approach is for ensuring compliance with the EIA Directive and its application in the UK where the detailed design of a development proposal is yet to be known. Works within the Order Scheme were granted planning permission by the local planning authority. In doing so, Salford City Council determined the proposed development not to be EIA development. [364]
4. In addition, while details of the construction techniques for the Order Scheme are yet to be confirmed, there is considerable certainty regarding the scheme itself, including the nature of the tunnel, shaft and the outfall that would be created on the Order Lands. Consequently, the planning status of the Order Scheme, and the associated assessment of effects in relation to the proposed works, are understood. [361-374, 395, 571-578]
5. Confirmation of the Order in this case would neither guarantee specific works to be carried out nor implement a planning permission. That is the nature of a compulsory purchase order. However, in this case the Order Scheme and the works within it result from, and are aimed at meeting, regulatory requirements that form part of the Acquiring Authority’s evidence regarding whether there is a “…*compelling case in the public interest*…” (which is addressed in greater detail below). Subsequent confirmation of the precise details of those works could cause them to vary from that described in the Order Scheme, but the means of delivering the regulatory objectives would remain as described and the Acquiring Authority is unambiguous on that matter. Confirmation of the Order would be expected to result in the works being carried out in the manner described and the planning permission being implemented. [371, 576, 579-580]

How would possible effects be controlled

1. In common with Highways England, MSCCL would have infrastructure in close proximity to works in the Order Scheme. The tunnel and shaft would be close to the Canal, and the outfall would be constructed in the Canal bank. While the evidence in this case has failed to identify a matter that would be likely cause significant concern to the carrying on of the undertaking, the “…*responsible contractor*…” with “…*an appropriate and suitable construction methodology*…” would also be working next to the Highways England infrastructure which is covered by an APA. In relation to its design and construction, Barton High Level Bridge would appear to be a more sensitive structure than the Canal. Nevertheless, it is understandable that MSCCL would have concerns regarding the potential for unforeseen problems to arise in relation to its infrastructure and would look to an APA and other controls/protections to address them. [243, 372, 576-578, 580-595]

The Protective Provisions Proposed

1. Both the Acquiring Authority and MSCCL have submitted proposed protective provisions [[AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf) and [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf) respectively]. The positions adopted, and the opposing party’s view in relation to it, reflect themes that were present within and during the Inquiry. These final versions of the protective provisions have a similar structure and identify the plots to which the protective provisions would apply. [375-378, 573, 601, 639]
2. Schedule 1 to the Acquiring Authority’s final version of the Order ([AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf)), submitted as Appendix 1 to its closing submissions, includes at Paragraph 1 of Schedule 1 a requirement for MSCCL to be consulted on any matter that will directly or indirectly injuriously affect the carrying on of its undertaking. That provision within Paragraph 1 of Schedule 1 would also prevent consent being unreasonably withheld. As such, Schedule 1 of the Order (in [AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf)) would provide assurances to both MSCCL and the Acquiring Authority. [484 c), 548, 549, 554]

*Are the MSCCL PPs unnecessarily complex?*

1. MSCCL has highlighted the sequence of events that led to its position on the need for protections beyond that which would be provided by a licence from the harbour master and an MSCCL Engineering Licence. UUWL understands an MSCCL Engineering Licence application to require details of the Order Scheme works that are, as yet, unavailable as they would require site investigation data and information on the resulting detailed design. The Acquiring Authority would need to obtain these licences for resulting controls to be in place, but there may be no mechanism that requires a licence to be obtained if the delivery of the Order Scheme relies on the powers within the Order. [484, 542-546, Footnote 149, 552, 553, 555-557]
2. MSCCL considers the Acquiring Authority’s proposed protective provisions to have departed significantly from Parliament’s drafting of Schedule 13 to the 1991 Act to weaken the protection that would be provided if Schedule 13 were to apply to this s.155 context. Likewise, the Acquiring Authority considers MSCCL’s Schedule to not reflect the drafting of Schedule 13. [380, 637, 638]
3. The Acquiring Authority seeks protective provisions that respond to circumstances, rather than a ‘shopping list’ approach. MSCCL’s proposed protective provisions “Without APA” ([MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf)) includes requirements for any scheme submitted to MSCCL, and these stated requirements are what is often referred to as a ‘shopping list’. [280, Footnote 53, 285, 337, 379, 382-386, 390, 396, 397]
4. When I am dealing with conditions in planning casework (e.g. for applications and appeals dealt with under the Town and Country Planning Act 1990), I seek to avoid lists of matters that would be required to be submitted for approval. This is due to the potential for a list of specified matters to introduce inflexibility or a restricted focus into the regulating body’s actions. Therefore, I agree with the principle of the Acquiring Authority’s proposed approach, and the Acquiring Authority’s proposed Schedule 1 to the Order would enable MSCCL to impose (protective) conditions that are shown to be relevant and reasonable. [379, 637]
5. However, MSCCL has stated that the list of matters in paragraph 2(3) of its Schedule is non-exhaustive. Also, there is merit in what MSCCL has sought to do in its proposed Schedule, which sets out to achieve what would be obtained through an APA. In doing so, MSCCL seeks to reflect the approach to protection within Schedule 13 to the 1991 Act and draws attention to: examples of where the Acquiring Authority’s proposed Schedule of protective provisions departs from the approach in the wording of Schedule 13; and, the potential consequences of those departures. In support of its position, MSCCL also refers to the parts of its Schedule that would: prevent MSCCL’s consent being unreasonably withheld; and, provide a dispute resolution mechanism (i.e. [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf) Schedule 1 paragraphs 2.(5) and 2.(6) respectively). Both would protect the Acquiring Authority’s interests if MSCCL’s Schedule were to be included on the Order. [395, 642, 643, 680-682, 690]
6. Both parties have addressed MSCCL’s duties as harbour master and harbour authority. UUWL has raised concerns regarding the potential for paragraph 4 of the MSCCL Schedule of protective provisions to enable charges to be made for its use of the Canal. However, the Acquiring Authority also states that confirmation of the Order is ‘critical’ in the public interest, even if that were to be with some or all of MSCCL’s proposed protective provisions. The inclusion of a paragraph within the protective provisions to deal with harbour master and harbour authority powers, and their application in relation to the CPO, would avoid any future doubt regarding their relevance to the CPO Scheme. [381, 387, 404, 405, 485, 645-656]
7. For protective provisions to be effective, they would need to provide adequate notice of proposed works and sufficient information for MSCCL to come to a view, and/or make an informed decision, on them. In relation to injurious affection, MSCCL’s proposed wording would go beyond that within Schedule 13 to the 1991 Act, but MSCCL draws on the wording of the Planning Act 2008 to support its position. It would be a cautious approach, and it is the one adopted in the Planning Act 2008. The broad screening that results from it enables a detailed assessment of the likelihood of injurious affection to be made by the Upper Tribunal. [388, 389, 391-395, 398, 400-403, 592, 594, 658-666, 672-676, 695-697]
8. In this case, and in its legal context, MSCCL’s proposed use of a wider scope for the consideration of potential effects from the Acquiring Authority’s intended works would be subject to the protection provided by the dispute resolution mechanism. Therefore, MSCCL’s proposed wording would enable a comprehensive assessment to be made of proposed works, while providing a mechanism that would ensure that MSCCL’s consent would not be unreasonably withheld. [388, 389, 391-394, 400-403, 659-666]
9. Both parties have addressed the need for prior notice of proposed work. MSCCL’s proposed Schedule ([MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf)) provides a means of responding to emergency works, and in the following paragraph of the Schedule, the dispute resolution mechanism would appear to be sufficiently flexible and responsive to be effective in such a situation. [391, 395, 398, 399, 657-659, 671-676, 695-697]
10. There are no remaining concerns regarding rights of access to land around the stadium. Concerns have been raised regarding access to the Canal locks next to the Order Scheme’s outfall. MSCCL’s proposed Schedule would provide a means of ensuring that access is maintained, and as with a number of other matters, MSCCL draws on the Acquiring Authority’s APA with Highways England to support its approach. There would appear to be no good reason for having a separate approach to this issue, and to other matters that also are the subject of the APA with Highways England. Therefore, MSCCL’s proposed Schedule would be the most appropriate means of ensuring that vehicular access across the Order Lands is maintained for MSCCL’s undertaking. [467, 468, 698-700, 703, 706, 709, 713]
11. For the reasons given above, it is the Schedule proposed by MSCCL that would provide the most appropriate protective provisions for the Order Scheme, except in relation to the proposed discharge proviso which is dealt with below. They should ensure that the acquired rights can be exercised without serious detriment to the carrying on of MSCCL’s undertaking. [382-386, 677-736]

**Serious detriment**

1. Turning now to the tests of whether the Order would cause serious detriment to the carrying on of the MSCCL undertaking. As set out above, for land, this is within the latter part of s.16(2)(b) of the 1981 Act, and the more straightforward form of the test within s.16(2)(a); and for rights, the test is reflected in paragraph 3(2) of Part II to Schedule 3 of the 1981 Act. [315-323, Footnote 62, 517, 536, 537, 840, 841]
2. New borehole data accompanied the Acquiring Authority’s closing submissions. It added to existing evidence regarding the ground conditions next to and under the lock (wing) wall that would be in close proximity to the proposed outfall and Shaft 04. MSCCL’s comments on the new borehole evidence concluded that damage due to differential settlement remains a risk, but protective provisions could address that risk. The Acquiring Authority has explained why it disagrees with MSCCL’s conclusions and considers such settlement to be unlikely due to the expected construction technique, and that the settlement would be unlikely even if dewatering, that is of concern to MSCCL, were to be carried out. It is apparent that both parties consider any construction related risk to (the structural integrity of) the lock wing wall, could be addressed by the design and monitoring of proposed works and associated protective provisions. [1, 500-511, 828-831]
3. Both parties have reached a “common understanding” on a number of matters, including:
4. “Rights to assemble and disassemble plant and pontoons (at Irlam Wharf)” [405 d., 843 d.]; and,
5. in relation to the “Tethering of boats and barges” and the “Right to compel operation of the lock”, under the proposed provisions these will remain subject to the harbour master’s powers [405 a. and b., 843 a. and b.].

[405, 648-650, 843]

1. On other matters:
2. in relation to the “Right to carry out dredging”, there is agreement that the right of dredging should be added to the rights of navigation and mooring in the Acquiring Authority’s Schedule [405 c., 843 c.];
3. regarding the “Registration of vessels”, MSCCL considers the Acquiring Authority’s submissions to accept that section 53 of the Manchester Ship Canal Act 1952 would apply to vessels exercising the rights that the Acquiring Authority seeks to acquire [405 f, 843 f.]; and,
4. for “Cranes oversailing the navigable channel” of the MSC from works associated with the Order Scheme, MSCCL welcomes the additional wording that is now proposed by the Acquiring Authority for paragraph 2 of its Schedule [405 g., 843 g.].

[405, 648-650, 843]

1. However, the parties continue to have differing positions in relation to matters concerning “Works to support, repair, remove or reinstate the ground and structures” [650 e., 843 e.].
2. In relation to Highways England’s infrastructure, the works that were of concern to Highways England included: the construction of a shaft and tunnelling works at junction 11 of the M60, which have been completed; and, tunnelling beneath the Barton High Level Bridge that would be carried out as part of the Order Scheme. The APA between the Acquiring Authority and Highways England addresses these matters. [291-295, 337, 596-598]
3. MSCCL has assets, such as Barton Locks, that would be in close proximity to tunnelling, shaft construction and associated works within the Order Scheme. An APA was required for Highways England’s AIP process, and while that agreement was with another party and had differing specific circumstances, both Highways England and MSCCL would have an infrastructural asset close to similar construction works within the Order Scheme. [337]
4. The Highways England and MSCCL assets in the vicinity of the Order Scheme are quite different in their form and construction. Nevertheless, both would be potentially vulnerable to the consequences of the poor design or implementation of works close to them. While works within the Order Scheme would be expected to be carried out responsibly (as they appear to have been in the completed parts of the Full Scheme), the risk would remain. It is therefore reasonable that MSCCL would wish to ensure that there would be an appropriate mechanism in place to address the protection of the Canal. The Acquiring Authority notes that an APA could be sought prior to MSCCL’s consent being given for certain works. There is no requirement for an APA to be in place prior to a CPO being made, although an APA may help to demonstrate an absence of serious detriment to the carrying on of an undertaking. [337, Footnote 69, 576-578, 598-601, 677-686]
5. MSCCL has provided examples of Orders that have included an APA prior to confirmation of a compulsory purchase order. MSCCL’s position is that, as there is no APA between MSCCL and the Acquiring Authority, MSCCL’s proposed modification of the Order is necessary to enable the Secretary of State to be satisfied that there would be no serious detriment. That modification, contained within Appendix 1 to MSCCL’s closing submissions [[MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf)], addresses matters that otherwise would have been included within an APA. The need for any modification of the protective provisions currently provided within the Order is contested by the Acquiring Authority, and especially given the failure of some of MSCCL’s evidence to withstand testing through cross-examination. In addition, the Acquiring Authority questions whether the examples provided as Appendices to MSCCL’s closing submissions are relevant to the circumstances of this case. [325, 524, 525, 538, 539]
6. The lack of an APA between the Acquiring Authority and MSCCL has resulted in MSCCL’s suggested Schedule of protective provisions within [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf). While the Acquiring Authority already has an APA with Highways England in regard to the Order Scheme, an APA is not a requirement and it is not the only means of achieving a suitable level of asset protection, that is, if there is a need for provisions to extend beyond the scope of those within Schedule 13 of the 1991 Act. Consequently, the matter before the Secretary of State is the possible need for the corresponding provisions proposed by MSCCL, rather than whether or not there should have been an APA with MSCCL for the Order Scheme. [329-339, 524, 525, 538, 539, 551, 635, 677-736]
7. In regard to the potential for there to be serious detriment, MSCCL continues to rely on the evidence of its witnesses, even though some was only presented in writing and was not subject to cross-examination. While this reduces the weight that can be attributed to that untested evidence, the matters that MSCCL wish to be addressed are the subject of its proposed additional clauses. [326, 327, 498, 822-827]
8. And indeed, even though some MSCCL witnesses did not present their evidence, it became increasingly apparent that many of the matters they (and others) were dealing with had been resolved and/or had become the subject of draft protective provisions.
9. Both parties remaining at the end of the Inquiry have addressed the statutory tests within paragraph 3(2) of Schedule 3 of the 1981 Act regarding the possible effects of the acquisition of new rights over special kinds of land, including on statutory undertakings. The Acquiring Authority is clear that it considers it to have demonstrated that: there would be no material detriment to the MSCCL’s statutory undertaking to engage the second test on paragraph 3(2)(b); let alone a ‘serious detriment’ for the Order to fail the first of the statutory tests in paragraph 3(2)(a) of Schedule 3 of the 1981 Act. The evidence in this case, as concluded on above, supports this. If the Order were to be confirmed with the protective provisions addressed above: there would be adequate opportunity for MSCCL to address the scope of the works notified to it; and, there should be no material detriment to the MSCCL undertaking. [518, 536, 548, 633]
10. For the reasons given above, neither the nature and extent of potential interference from the Order Scheme, nor the likely effects of that interference on the undertaking (taking into account any safeguards and/or mitigation) have been shown to be likely to cause serious detriment to the carrying on of MSCCL’s undertaking.

[340, 484, 517, 518, 536-539, 541, 542, 548, 556, 576, 582, 602, 609, 630, 715, 732, 822, 823, 839-842]

**Dispute over the Discharge Proviso**

1. MSCCL have proposed the inclusion of a discharge proviso through paragraph 3 of Schedule 1 within [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf). In doing so, MSCCL notes that the justification for the discharge proviso is independent from the evidence that had been heard during the Inquiry as the protections it seeks to provide are already a matter of general law. However, the evidence to the Inquiry includes the Acquiring Authority’s case, which is the basis of its view that the discharge proviso is not required. [409-411, 738]
2. The Acquiring Authority is unambiguous that it is the right to discharge that resulted in the need for this Inquiry as other matters could have been addressed through the powers provided under s.159 of the 1991 Act. The company is also clear in its view that MSCCL’s proposed discharge proviso is an unnecessary addition to the Order, not least as any discharge would be regulated. Water quality in the Canal and other watercourses that feed into it, such as Salteye Brook, are regulated by the Environment Agency. Also, the Acquiring Authority has dealt with the meaning of s.186 of the 1991 Act, including its application as set out in s.186(1). Consequently, the discharge proviso’s reference to s.186 of the 1991 Act would seek to duplicate the regulation that already applies to these watercourses and would do to the proposed outfall. And in any event, and as set out in the detailed legal view provided at paragraph 415 of this report, it has not been shown that s.186 is applicable to the Order Scheme. [48, 72, 74, 102, 137-140, 298, 299, 406-408, 411- 413, 415, 434, 547, 550, 737, 738, 740-777, 815, 824]
3. Turning to the discharge proviso’s reference to s.117(5) and (6) of the 1991 Act. The Acquiring Authority notes: this Inquiry to have provided the independent scrutiny sought of the potential interference with private rights resulting from acquisition under s.155; that s.117 is intended to be applied to rights exercisable through other sections of the 1991 Act, rather than s.155 which is the subject of this Inquiry; the relevance of environmental permitting as set out above; that as a result of these, constraining a private right would be unnecessary; and, the proviso would be unreasonable and unnecessary as the water quality evidence that sought to support it has been abandoned. I find the Acquiring Authority’s arguments on this matter to be convincing. [408, 413, 414, 737, 738, 740-777]
4. The Acquiring Authority has also addressed the proposed inclusion of reference to Schedule 12(4) of the 1991 Act in the discharge proviso and noted MSCCL’s previous query regarding Schedule 12’s relevance for its protection. It is clear from paragraph 1 of Schedule 12, that Schedule 12 protections do not apply to s.155 of the 1991 Act and were not intended to be used as MSCCL propose in its Schedule 1 to the Order ([MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf)). As noted above, discharges from the new outfall would be regulated by the Environment Agency and be the subject of an environmental permit. In addition, compensation would be payable for any damage sustained from the Order Scheme. Accordingly, paragraph 3 should be deleted from Schedule 1 of MSCCL’s proposed protective provisions. [416-421, 743-760]

**Requirement for the Order**

1. The starting point for justification of the Order is the s.155(1) test of being required by the undertaker for the purposes of, or in connection with, the carrying out of its functions. The Inquiry heard extensive evidence from the Acquiring Authority regarding the background to the Order Scheme and the regulatory environment that has shaped the Acquiring Authority’s decision-making.
2. The background to the case includes the historic development in this part of Greater Manchester, which resulted in the Canal and combined sewerage systems that now feed into Eccles WwTW before discharge into the Canal. In addition, while there have been sewer flooding incidents in the locality around the WwTW, the existing combined sewer overflows in the area have, and do, provide a means of protecting the WwTW and the areas around it from such flooding. [16, 35, 116]
3. The Acquiring Authority is the statutory water and sewerage undertaker for the North West of England and is obliged to drain its areas and to meet regulatory requirements for its discharge. The Order Scheme is part of the ongoing investment to improve quality of water courses in the catchment, including Salteye Brook. It was the EA’s preferred option to divert the Eccles WwTW’s final effluent discharges from Salteye Brook to the Canal to improve the water quality in Salteye Brook. The Order Scheme would achieve this through a gravity system that reduces the need for pumping. [17, 25, 30, 44, 47, 73-83, 101, 104, 105, 116-118, 145, 164, 173-193, 422, 423, 427, 431]
4. Environmental regulation of the Acquiring Authority’s operations is closely aligned with the economic regulation of the company. This has provided the Acquiring Authority with clear objectives for improving the drainage of its areas. The works that are needed to meet those objectives are planned within the context of the company’s five-year AMP cycle. Requests to change the 28 February 2015 date for meeting the EA’s regulatory objectives have been turned down, and the missed regulatory delivery date is a matter that highlights the Order Scheme is required. [74, 102, 104-108, 120-122]
5. Possible alternatives to the Order Scheme were addressed during the Inquiry, as was the use of WLC to assess each option for meeting regulatory requirements. WLC takes into account capital and operational expenditure, and other costs. It was demonstrated to the Inquiry that the WLC approach, along with the consideration of ‘buildability’, enables a financially appropriate and practicable solution to be identified for the meeting of regulatory objectives. [113, 114, 119, 137-138, 140-141, 146-149, 158-173, 298-301]
6. It is apparent that the use of WLC to assess the options within the optioneering report has ensured that the Order Scheme would provide an appropriate investment for meeting regulatory objectives. [41, 109]
7. Alternative options have been considered by the Acquiring Authority, and suggested during the Inquiry. None have been shown to be preferable to the Order Scheme for the meeting of current regulatory requirements. There is no remaining objection in relation to alternatives. [115, 116-120, 140-144, 150, 432, 433, 824]
8. The Acquiring Authority’s description of key parts of the scheme confirms, in broad terms, what the Order Lands would be required for. [67, 253]

Land that is not required for the Order Scheme: Plot 3 and areas within Plot 5T

1. The modifications proposed for the Order Scheme would reduce the area of Plot 5T and remove Plot 3. Plot 3 was considered to be unnecessary, and indeed other plots within the Order Scheme would provide access to the relevant areas around the stadium site and to the Order Lands around Barton High Level Bridge. Exchanges during the Inquiry questioned the need for the area of land within Plot 5T originally sought through the Order Scheme as described in [CD/CPO/2.1](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/CD.CPO_.2.1-Order-Map-Plan-1.pdf). Given the scale of the works that would be required to construct the outfall into the Canal and the methods described to the Inquiry, it was not apparent that all of the land within Plot 5T would be necessary for the construction compound. [6, 10, 71, 253-260]
2. Efficiencies identified during the Inquiry through (re)consideration of the project design revealed that the northern part of Plot 5T would be no longer required. As a consequence, the area of the site compound has been reduced to minimise the effect of construction on the land. The much-reduced area of Plot 5T would ‘square-off’ the other Order Lands plots that would form the compound area for construction of the outfall into the Canal. Reducing the area of Plot 5T in this way would create a coherent working area for the compound. [255]
3. This is reflected in the revised Order, its Schedules and the mapping of the Order Lands [[AA/INQ/83.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles_CPO_Plans_Rev_27_10.01.2019.pdf) and [AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf)]. These confirm: a reduction in the area of Plot 5T; and, the removal of Plot 3. [6, 10, 71, 253-260]

Conclusion on Requirement

1. Due to the nature of the works proposed, the ground conditions on the Order Lands (including any matters arising from historic land uses) have been fully considered by the Acquiring Authority. Evidence presented to the Inquiry confirmed there to be no apparent reason to doubt the technical deliverability of the works within the Order Scheme.
2. The Order Scheme is required to enable the delivery of the Full Scheme and the public interest (and environmental) benefits that would be realised by completing the Full Scheme. In doing so, the Order Scheme would provide necessary infrastructure that would enable regulatory objectives for Eccles WwTW to be met. [422, 423, 427, 430, 461-463]
3. The land and rights sought have made allowance for the uncertainties associated with construction of the types contained within the Order Scheme. These ‘uncertainties’ are to be expected, and the Order Scheme would ensure that sufficient land (and the associated rights) would be available to deliver the project. [68]
4. The evidence, and the testing of it during the Inquiry, demonstrated that: there is a clear regulatory (and environmental) requirement for the Order Scheme; it is the most appropriate option for meeting that need; and, it has been shown that the Order Lands, apart from Plot 3 and areas of Plot 5T, are required to deliver the works set out within the Order Scheme. [6, 101, 123-126, 173, 253-260]
5. Consequently the Order Scheme and the lands within it, subject to amendments detailed in the Annex below, meet the requirement test in s.155(1) of the 1991 Act.

**Whether the proposed purpose fits with the adopted planning framework and other controls**

1. In relation to what justification is needed to support an order for land acquisition, and to demonstrate that there are no planning or other impediments to the implementation of the scheme, paragraph 104 of the CPO Guidance notes the planning framework that provides justification for an order should be as detailed as possible. Unlike, for example, large urban regeneration schemes that might include compulsory purchase under s.226 of the Town and County Planning Act 1990, the Order is under s.155 of the 1991 Act and would enable the completion of a discrete project that largely would be underground. Therefore, the planning framework for the Order Scheme differs from that which would be expected for a larger more diverse scheme facilitated by a CPO under s.226 of the Town and Country Planning Act 1990.
2. In any event, planning permission was granted for the outfall structure on 7 June 2018. All other works within the Order Scheme would either not be acts of ‘development’ or could be carried out under the Acquiring Authority’s permitted development rights. [14, 288-290, 435, 436, 464, 465]
3. The Acquiring Authority considers that if the Order were to be confirmed, there would be no impediments that would prevent the Order Scheme proceeding, and none are apparent to me. This includes risk of flooding, which would not materially increase as a result of the Order Scheme. MSCCL has confirmed that the withdrawal of its in-principle objection encompassed “…impediments to implementation…”. [286, 288-309, 466, 482, 824]

**Could the purpose for which the Acquiring Authority is proposing to acquire the land be achieved by some other means?**

1. Paragraph 106 of the CPO Guidance addresses what factors the Secretary of State will take into account in decisions on whether to confirm a CPO. These factors include “…*whether the purpose for which the Acquiring Authority is proposing to acquire the land could be achieved by any other means*…”. The nature of the alternatives considered by the Acquiring Authority were explored during the Inquiry. [446]
2. The Work Package Plans in Appendix 2 to the SoR groups the plots within the Order Lands ([CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf)). The nature of the activities that each Work Package seeks to address are described by the titles of the Work Package Plans, with further details of each Work Package provided in section 3 of the Acquiring Authority’s Statement of Case ([CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf)).
3. It is clear from the evidence and exchanges during the Inquiry that negotiations have taken place between the Acquiring Authority and MSCCL, and the Acquiring Authority and a number of other interested parties, including Highways England and other Peel Group companies. These discussions have addressed the design of the Order Scheme, including the route of the tunnel and the location of the outfall in the canal bank. [63, 64, 66, 220-222, 224-228, 291-309]
4. Other options for meeting the regulatory and environmental objectives that resulted in the Order Scheme have been investigated, along with other means of achieving the works now proposed, and alternative options have been regularly reviewed by the Acquiring Authority. The Order Scheme resulted from extensive negotiations with interested parties, some of whom attended the Inquiry. For the reasons set out above, it is apparent that the design of the Order Scheme, and the resulting land and rights sought through the Order, reflect the interests, objectives and technical requirements of those that could be affected by the works within the Order Scheme. [432, 433, 445-455]

**Financial viability**

1. Paragraph 106 of the CPO Guidance also advises that considerations should include the financial viability of the scheme for which the land is being acquired.
2. As noted above, environmental and financial regulation of the Acquiring Authority is closely aligned and has shaped the Order Scheme. The infrastructure within the Order Scheme would be used to deliver the Acquiring Authority’s service to its customers. Such works are set within the context of the relevant AMP period and the revenues that result from the Ofwat regulation of the company. Finance for the Order Scheme would come entirely from the Acquiring Authority, and the works are within the Company Business Plan. Consequently, the funds necessary to implement the project are immediately available, and it has been shown that sufficient resources would be available to deliver the scheme. [101, 105, 106, 109-112, 310-314, 442-444, 483]

**Reasonable steps to acquire all of the land and rights**

1. Paragraph 2 of the CPO Guidance sets out when compulsory purchase powers should be used, and this includes when reasonable steps have been taken to acquire the land and rights by agreement. The evidence and submissions to the Inquiry, along with exchanges during open Inquiry sessions, demonstrate that the Acquiring Authority has been involved in lengthy negotiations with MSCCL and other parties. These discussions concerned the land and rights that would be necessary for the delivery of a new outfall, and they led to the modified proposals that are within the Order Scheme. Therefore, the Acquiring Authority has demonstrated that it has taken reasonable steps to acquire all of the land and rights in the Order by agreement. [196, 220-223, 438, 469-472, 602-604]

**Compelling case in the public interest**

1. Paragraph 2 of the CPO Guidance confirms that an Acquiring Authority should use CPO powers where it is expedient to do so, but a CPO should only be made where there is a compelling case in the public interest. While MSCCL has raised concerns on two matters, which are dealt with above, no objector now disputes the need for the Order or the compelling case in the public interest for it to be confirmed. [24, 424, 437-439, 441, 523]
2. Paragraph 106 of the CPO Guidance confirms the factors the Secretary of State will take into account in decisions on whether to confirm a CPO to include the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area. These matters were addressed by the Acquiring Authority’s evidence in this case and are summarised in my conclusions on ‘Requirement’ above. [425-429]
3. As set out above, alternatives to the Order Scheme have been explored, both in terms of: the method by which regulatory and environmental objectives would be met; and for the option chosen, the broad design principles for what is now proposed. [432, 433, 445-455]
4. The Inquiry heard extensive evidence regarding: the operation of the Eccles WwTW; the steps taken to improve the quality of water courses in the catchment that includes the Canal and Salteye Brook; and, how the Order Scheme would contribute to the economic, social and environmental well-being of the area. The Order Scheme would provide the improvements in water quality sought for Salteye Brook, and while the new outfall would discharge directly into the Canal, it would nonetheless have an overall beneficial effect on the Canal and the environment around it. [33, 47, 117-120, 124, 456-463, 824]
5. In addition to the environmental improvements in relation to water quality, the proposed option would be a better use of resources that would result in economic benefits for both the undertaker and its customers. The astute and convincing fiscal argument for the chosen option, along with the resulting efficient use of resources, would result in social benefits from economic efficiency, and that would be expected to be reflected in reduced bills to the Acquiring Authority’s customers. Social benefit would also be derived from a reduction in the level of flood risk to properties on Peel Green Road that connect to the sewer network upstream of Eccles WwTW. [30, 114, 151, 152, 164, 168, 171, 433, 452, 824]
6. Given the Acquiring Authority’s statutory function, and the regulatory requirements it seeks to meet through the Order Scheme, a compelling case in the public interest has been clearly made for confirmation of the Order. [16-19, 25, 29, 30, 75-83, 422-436, 480, 495, 824]

**Human Rights**

1. Paragraph 2 of the CPO Guidance confirms that when making or confirming an order “…*acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected*…”.
2. The Acquiring Authority draws attention to benefits that would result from the Order Scheme, including: addressing the need to improve the water quality of Salteye Brook; provision of upgraded sewerage infrastructure next to a regionally significant site; and benefits for the locality, which would include flood risk in the Peel Green Road area. Further details on the Order Scheme’s social, economic and environmental benefits are set out above. Also, compensation would be available to those entitled to it.
3. The evidence, along with exchanges during the Inquiry and submissions to it, demonstrate that the Acquiring Authority has considered realistic alternative approaches that were discounted for various reasons and eventually led to selection of the option that is the Order Scheme. In regard to the European Convention on Human Rights and the Human Rights Act 1998, it is apparent that the benefits of the Order Scheme, which would be gained through the purposes for which the compulsory purchase order is made, would justify any interference in interests otherwise protected by Convention rights. [Section 13 of the SoR [CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf), 474-477]

Equalities Act 2010

1. I have had due regard to the Public Sector Equality Duty contained in s.149 of the Equality Act 2010 (‘the 2010 Act’), which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
2. The Acquiring Authority has addressed s.149 of the 2010 Act directly, setting out the actions it took to address the requirements of the 2010 Act. It is not apparent that confirmation of the Order would give rise to differential impacts on groups with protected characteristics, and as there would be no adverse effect, mitigation is not necessary. [478, 479]

**Recommendation**

1. Accordingly, I recommend that the Order is confirmed with the MSCCL and Acquiring Authority amendments as set out in these conclusions and the Annex to this report. [5, 32, 486, 521]

Clive Sproule

INSPECTOR

**Annex**

**Recommended Modifications to the Order**

|  |  |
| --- | --- |
| **Report Paragraph(s)** | **Recommended modifications** |
| 920-922 | That Plot 3 is removed from the Order and Plot 5T is reduced in area as described in the revised Order, Schedules and mapping of the Order Lands [[AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf) and [AA/INQ/83.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles_CPO_Plans_Rev_27_10.01.2019.pdf)]. |
| 862 | Remove any stated right to “remain” from the Order. |
| 867 | Replace Schedule 1 of the revised Order (within [AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf)) with the protective provisions of Schedule 1 within [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf). |
| 911 | Delete paragraph 3 (the ‘Discharge Proviso’) of Schedule 1 of [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf) when it is included on the Order. |

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**INQUIRY DOCUMENTS LIST**

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| **INQUIRY DOCUMENTS** | |
| [ID/1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles-WwTW-CPO-PIM-Minutes.pdf) | Minutes of the Pre-Inquiry Meeting |

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| **UNITED UTILITIES** | |
| [AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf) | Proof of evidence of Keith Haslett |
| [AA/1/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_B-Keith-Haslett-Summary-Proof-FINAL.pdf) | Summary proof of evidence of Keith Haslett |
| [AA/1/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_C-KH-appendices.pdf) | Appendices to proof of evidence of Keith Haslett |
| [AA/1/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_R-Keith-Haslett-Rebuttal.pdf) | Rebuttal proof of evidence of Keith Haslett |
| [AA/2/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_2_A-Gary-Baron-Proof-of-Evidence.pdf) | Proof of evidence of Gary Baron |
| [AA/2/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_2_R-Gary-Baron-Rebuttal.pdf) | Rebuttal proof of evidence of Gary Baron |
| [AA/3/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Keith-Hendry-Proof-PDF.pdf) | Proof of evidence of Keith Hendry |
| [AA/3/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_3_B-Summary-Proof-of-Evidence-Keith-Hendry.pdf) | Summary proof of evidence of Keith Hendry |
| [AA/3/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendics-to-Proof-of-Evidence-amended.pdf) | Appendices to proof of evidence of Keith Hendry |
| [AA/3/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_3_R-Keith-Hendry-Rebuttal-.pdf) | Rebuttal proof of evidence of Keith Hendry |
| [AA/3/R1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_3_R-Appendix-to-Keith-Hendry-Rebuttal-United-Utilities-Review-of-Biogeochemical-Modelling-SJK-04.05.18-Technical-Note.pdf) | Appendix 1 – Review of Biogeochemical Modelling, Technical Note |
| [AA/3/R2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_3_R-Appendix-2-Eccles-CPO__-Outfall-Tunnel-DB-Technical-Memo-v02.pdf) | Appendix 2 – Outfall Tunnel Technical Memo |
| [AA/4/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_4_A-Luke-Pearson-Proof.pdf) | Proof of evidence of Luke Pearson |
| [AA/4/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_4_B-Luke-Pearson-Summary-Proof.pdf) | Summary proof of evidence of Luke Pearson |
| [AA/4/C1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_4_C-LP-Appendix-1.pdf) | Appendix 1 - Water Quality Consenting Standards – AMP2 Guidelines |
| [AA/4/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_4_B-LP-Appendix-2.xls) | Appendix 2 |
| [AA/4/C3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA__C-LP-Appendix-3.pdf) | Appendix 3 |
| [AA/4/C4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_4_B-LP-Appendix-4.xls) | Appendix 4 - Details of UIDS Included In Change Protocol "C" |
| [AA/4/C5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_4_C-LP-Appendix-5.pdf) | Appendix 5 - Notes of meeting between UUWL and EA 27/11/2014 |
| [AA/4/C6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_4_C-LP-Appendix-6.pdf) | Appendix 6 - Statement of Obligations |
| [AA/4/C7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/LP-Appendix-7-Ministerial-River__-Basin-Planning-Guidance-AA_4_C.pdf) | Appendix 7 - Ministerial River Basin Planning-Guidance |
| [AA/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Parsons-Proof-_renumber-appx2.pdf) | Proof of evidence of Anthony Parsons (amended) |
| [AA/5/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_C-Anthony-Parsons-FINAL-Appendices.pdf) | Appendices to proof of evidence of Anthony Parsons |
| [AA/5/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_R-Tony-Parsons-Rebuttal.pdf) | Rebuttal proof of evidence of Anthony Parsons |
| [AA/6/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_6_A-Roderick-McKimm-Proof-of-Evidence.pdf) | Proof of evidence of Roderick McKimm |
| [AA/6/B1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/RM-Appendix-1-CV-AA_06_B.pdf) | Appendix 1 - CV of Roderick McKimm |
| [AA/6/B2.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/RM-Appendix-2-FIG-A2.1-AA_6_B-Route-Plans-Sections-and-Ground-Profile.pdf) | Appendix 2.1 - AA 6 B Route Plans Sections and Ground Profile |
| [AA/6/B2.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/RM-Appendix-2-FIG-A2.2-AA_6_B-Route-Plans-Sections-and-Ground-Profile.pdf) | Appendix 2.2 - AA 6 B Route Plans Sections and Ground Profile |
| [AA/6/B3.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/RM-Appendix-3-Settlement-Predictions-AA_6_B.pdf) | Appendix 3.1 - Settlement predictions after tunnel alignment revision |
| [AA/6/B3.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/RM-Appendix-3-DRAFT_Manchester-Trunk-UID-Preliminary-Report_Rev-AA.pdf-AA_6_B.pdf) | Appendix 3.2 - Manchester Trunk UID Project Preliminary Impact Assessment Report |
| [AA/6/B3.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/RM-Appendix-3-Settlement-Report-AA_6_B.pdf) | Appendix 3.3 - Parsons Brinckerhoff Settlement Report - October 2014 |
| [AA/6/B4.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/RM-Appendix-4-BH-series-boreholes-AA_6_B.pdf) | Appendix 4.1 - Allied Exploration & Geotechnics Limited - Borehole Record |
| [AA/6/B4.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/RM-Appendix-4-BL-series-boreholes-AA_6_B.pdf) | Appendix 4.2 - Exploratory Hole Log |
| [AA/6/B4.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/RM-Appendix-4-Mersey-River-Board-BH1-and-BH2_boreholes-AA_6_B.pdf) | Appendix 4.3 - Borehole 1 and 2 Diagrams |
| [AA/6/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_6_R-Roderick-McKimm-Rebuttal.pdf) | Rebuttal proof of evidence of Roderick McKimm |
| [AA/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_A-Peter-Nicholson-Proof.pdf) | Proof of evidence of Peter Nicholson |
| [AA/7/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_B-Peter-Nicholson-Appendices.pdf) | Appendices to proof of evidence of Peter Nicholson |
| [AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf) | Rebuttal proof of evidence of Peter Nicholson |
| [AA/7/R1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Appendix-1-Ship-Stability-for-Masters-and-Mates-extract.pdf) | Appendix 1 - Ship Stability for Masters and Mates (extract) |
| [AA/7/R2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Appendix-2-The-Manchester-Ship-Canal-Company.-Bunkering-Guidelines-and-Regulations..pdf) | Appendix 2 - The Manchester Ship Canal Company. Bunkering Guidelines and Regulations |
| [AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf) | Proof of evidence of David Sephton |
| [AA/8/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_B-Dave-Sephton-Summary__-Proof-of-Evidence-renumbering-appendices.pdf) | Summary proof of evidence of David Sephton |
| [AA/8/C1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt1-Final-version-30.05.2018.pdf) | Part 1 of Appendices to proof of evidence of David Sephton |
| [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) | Part 2 of Appendices to proof of evidence of David Sephton |
| [AA/8/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_R-Sephton-Rebuttal-FINAL.pdf) | Rebuttal proof of evidence of David Sephton |
| [AA/8/R1](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/AA_8_R-Rebuttal-Appendix-CENTURION-LN20.pdf) | Appendix to rebuttal proof of evidence of David Sephton |
| [AA/9/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_9_A-Tim-Spencer-Proof-of-Evidence.pdf) | Proof of evidence of Tim Spencer |
| [AA/9/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_9_B-Tim-Spencer-Summary-Proof-of-Evidence.pdf) | Summary proof of evidence of Tim Spencer |
| [AA/9/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_9_C-Tim-Spencer-Proof-Appendices.pdf) | Appendices to proof of evidence of Tim Spencer |
| [AA/10/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_10_A-Colin-Smith-Proof-FINAL.pdf) | Proof of evidence of Colin Smith |
| [AA/10/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_10_B-Colin-Smith-Summary-FINAL.pdf) | Summary proof of evidence of Colin Smith |
| [AA/10/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_10_C-Colin-Smith-Appendix-FINAL.pdf) | Appendix to proof of evidence of Colin Smith |
| [AA/10/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_10_R-Colin-Smith-Rebuttal.pdf) | Rebuttal proof of evidence of Colin Smith |
| [AA/11/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_11_A-Simon-Pemberton-Planning-Proof-of-Evidence.pdf) | Proof of evidence of Simon Pemberton |
| [AA/11/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_11_B-Simon-Pemberton-Planning-Proof-of-Evidence.pdf) | Summary proof of evidence of Simon Pemberton |
| [AA/11/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_11_C-Simon-Pemberton-Planning-Proof-of-Evidence-Appendices-3.pdf) | Appendices to proof of evidence of Simon Pemberton |
| [AA/12/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_12_R-Joanne-Rands-Rebuttal.pdf) | Rebuttal proof of evidence of Joanne Rands |
| [AA/12/R1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_12_R-Joanne-Rands-appendix.pdf) | Appendix to rebuttal proof of evidence of Joanne Rands |

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| **UNITED UTILITIES – INQUIRY DOCUMENTS** | |
| [AA/INQ/1](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/PML-Programme-Officer-06.06.2018.pdf) | Letter to the PO from Pinsent Masons regarding site notices dated 6 June 2018 |
| [AA/INQ/2](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/CD_UU-PP_3.30-Decision-Notice-17_70871.pdf) | Decision Notice, Land West of A J Bell Stadium and North of the Manchester Ship Canal, 1 November 2017 |
| [AA/INQ/3](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/UU-OPENING-FINAL.pdf) | Opening submissions by United Utilities |
| [AA/INQ/4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_4-Letter-from-Pinsent-Masons-to-Walker-Morris-regarding-Plot-5T-with-enclosure-dated-19-May-2018.pdf) | Letter from Pinsent Masons to Walker Morris regarding Plot 5T (with enclosure) dated 19 May 2018 (submitted 14 June 2018) |
| [AA/INQ/5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_5-Plans-showing-the-proposed-reduction-of-Plot-5T-as-sent-by-email-to-Walker-Morris-on-6-June.pdf) | Plans showing the proposed reduction of Plot 5T, as sent by email to Walker Morris on 6 June 2018 (submitted 14 June 2018) |
| [AA/INQ/6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_6-Letter-from-Pinsent-Masons-to-BDB-regarding-MSCCLs-statutory-undertaking-dated-8-June-2018.pdf) | Letter from Pinsent Masons to BDB regarding MSCCL's statutory undertaking dated 8 June 2018 (submitted 14 June 2018) |
| [AA/INQ/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_7-Letter-from-Pinsent-Masons-to-BDB-regarding-MSCCLs-statutory-undertaking-with-enclosure-dated-13%25.pdf) | Letter from Pinsent Masons to BDB regarding MSCCL's statutory undertaking (with enclosure) dated 13 June 2018 (submitted 14 June 2018) |
| [AA/INQ/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_8-Preston-TPS-photo.jpg) | Preston TPS photo (submitted 14 June 2018) |
| [AA/INQ/9](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_9-Full-scheme-layout-plan.pdf) | Full scheme layout plan (submitted 14 June 2018) |
| [AA/INQ/10](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_10-Letter-from-Pinsent-Masons-to-BDB-regarding-Steve-Gavins-proof-dated-15-June-2018.pdf) | Letter from PM to BDB dated 15 June 2018 requesting information. (submitted 15 June) |
| [AA/INQ/11](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/AA_INQ_11-L-06.06.2018-from-EA-to-SCC-re-planning-application.pdf) | Letter from the Environment Agency to Salford Council dated 6 June (submitted 20 June 2018) |
| [AA/INQ/12](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/AA_INQ_12-PM-L+-Bircham-Dyson-Bell-LLP-Eccles-WWTW-CPO-20.06-2018.pdf) | Letter from PM to BDB dated 20 June in response to letter from BDB from 18June (submitted 20 June 2018) |
| [AA/INQ/13](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/AA_INQ_13-Hochtief-drawing-of-proposed-UU-culvert-diversion-drainage-layout.pdf) | Hochtief drawing of proposed UU culvert diversion drainage layout (submitted 21 June) |
| [AA/INQ/14](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_14-PM-L-+-BDB-Responses-to-requests-25062018.pdf) | Letter from Pinsent Masons to BDB regarding requests for information dated 25 June 2018 (submitted 26 June 2018) |
| [AA/INQ/14.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_14.1-United-Utilities-Eccles-UID-Study-Network-Model-Build-and-Verification-Report-October-2002.pdf) | United Utilities Eccles UID Study Network Model Build and Verification Report October 2002 (submitted 26 June 2018) |
| [AA/INQ/14.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_14.2-Environment-Agency-Manchester-Trunk-UID-Study-Audit-Audit-Report-May-2003-Entec-UK-Limited.pdf) | Environment Agency, Manchester Trunk UID Study Audit, Audit Report May 2003 Entec UK Limited (submitted 26 June 2018) |
| [AA/INQ/14.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_14.3-NM04-Wastewater-Network-Modelling-Issue-2-September-2011.pdf) | NM04 - Wastewater Network Modelling, Issue 2, September 2011(submitted 26 June 2018) |
| [AA/INQ/15](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_INQ_15-Note-to-Inquiry-on-Turbidity.pdf) | Note to Inquiry on turbidity sampling (submitted 26 June 2018) |
| [AA/INQ/15.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_INQ_15.1-Appendix-1-Eccles__-FE-Turbidity-Analysis-Data.pdf) | Appendix 1 - Eccles FE turbidity analysis data (submitted 26 June 2018) |
| [AA/INQ/15.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_INQ_15.2-Appendix-2-Particle-size-analysis.pdf) | Appendix 2 – Particle size analysis (submitted 26 June 2018) |
| [AA/INQ/15.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_INQ_15.3-Appendix-3-Eccles-samples-June-2018.pdf) | Appendix 3 - Eccles samples June 2018 (submitted 26 June 2018) |
| [AA/INQ/15.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_INQ_15.4-Appendix-4-Basic__-principles-of-particle-size-analysis.pdf) | Appendix 4 – Basic principles of particle size analysis (submitted 26 June 2018) |
| [AA/INQ/16](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_INQ_16-Eccles-WWTW-Ammonia-Data-2005-to-2016.pdf) | Eccles WWTW Ammonia Data - 2005 to 2016 (submitted 26 June 2018) |
| [AA/INQ/17](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_INQ_17-PM-L+-Bircham-Dyson-Bell-LLP-Eccles-WWTW-CPO-26.06-2018.pdf) | - Letter from Pinsent Masons to BDB regarding requests for information dated 26 June 2018 (submitted 27 June 2018) |
| [AA/INQ/17.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA-INQ-17.1.pdf) | Email from Environment Agency to UU dated 7 November 2006 (submitted 27 June 2018) |
| [AA/INQ/17.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_INQ_17.2-Appendix-2-Statutory-Requirements-Change-Protocol-Submission-No3-DRAFT-Sept-05-with-Eccles-WwTW.xlsx) | Spreadsheet enclosed to email dated 7 November 2006 (submitted 27 June 2018) |
| [AA/INQ/18](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_18-PM-L+-Bircham-Dyson-Bell-LLP-Eccles-WWTW-CPO-26.pdf) | Letter from PM to BDB dated 26 June 2018 (submitted 27 June) |
| [AA/INQ/19](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_19-PM-L+-Bircham-Dyson-Bell-LLP-Eccles-WWTW-CPO-27.06-2018.pdf) | Letter from PM to BDB dated 27 June 2018 (submitted 27 June) |
| [AA/INQ/20](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_20-Letter-from-Pinsent-Masons-to-BDB-dated-28-06-2018.pdf) | Letter from PM to BDB dated 28 June 2018 (submitted 28 June) |
| [AA/INQ/21](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_21-BHLB-OAIP-BD2-12-FINAL-rev-6-with-cert.pdf) | SAL0018 Manchester Trunk UID’s M60 Crossing at Barton High Level Bridge Outline Approval in Principle June 2018 (submitted 28 June) |
| [AA/INQ/22](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_22-PM-L-BDB-ARFI-06072018.pdf) | Letter from PM to BDB dated 5 July 2018 (submitted 5 July) |
| [AA/INQ/23](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_23-PM-L-BDB-Responses-to-requests-5-July-10072018.pdf) | Letter from PM to BDB dated 9 July 2018 regarding technical note from Joanne Rands (submitted 10 July) |
| [AA/INQ/23.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_23.1-Joanne-Rands-Technical-Note-10-07-18.pdf) | Technical note from Joanne Rands (submitted 10 July) |
| [AA/INQ/24](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_24-Letter-from-Pinsent-Masons-to-BDB-dated-11-July-2018.pdf) | Letter from PM to BDB regarding Schedule of Rights and Compensation and Discharges into Salteye Brook (submitted 11 July) |
| [AA/INQ/25](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_25-Taylor-Taylor-v-North-West-Water-1995-70-PCR-94.pdf) | Taylor & Taylor v North West Water [1995] 70 P&CR 94 (submitted 12 July) |
| [AA/INQ/26](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_26-Port-of-London-Authority-v-Transport-for-London-2008-RVR-93.pdf) | Port of London Authority v Transport for London [2008] RVR 93 (submitted 12 July) |
| [AA/INQ/27](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_27-PM-L-BDB-Mr-Perrys-Proof-13072018.pdf) | Letter from PM to BDB dated 13 July 2018 regarding Mr Perry’s proof (submitted 13 July) |
| [AA/INQ/28](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_28-PM-L-Mr-Sproule-16072018.pdf) | Letter from PM to BDB dated 16 July 2018 regarding correspondence between the EA and UU (submitted 16 July and all attachments) |
| [AA/INQ/28.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-028.1.pdf) | Email and attachment dated 26 June 2018 |
| [AAINQ/28.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-028.2.pdf) | Email dated 28 June 2018 |
| [AA/INQ/28.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-028.3.pdf) | Email and attachment dated 5 July 2018 |
| [AA/INQ/28.3a](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles-Tunnel-Re-Run-EA-Response-04.07.2018.pptx) | Email and attachment dated 5 July 2018 |
| [AA/INQ/28.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-028.4.pdf) | Email and attachment 5 July 2018 (letter omitted from AA/INQ/28.3) |
| [AA/INQ/28.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-028.5.pdf) | Email and attachment 6 July 2018 |
| [AA/INQ/28.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-028.6.pdf) | Email and attachment dated 9 July 2018 |
| [AA/INQ/28.6a](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles-Tunnel-Re-Run-Response-to-EA-email-06.07.2018.pptx) | Email and attachment dated 9 July 2018 |
| [AA/INQ/28.7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-028.7.pdf) | Email dated 13 July 2018 |
| [AA/INQ/28.8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-028.8.pdf) | Email dated 16 July 2018 |
| [AA/INQ/29](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_29-PM-L-BDB-+-Responses-to-requests-for-information-4-July-17062018.pdf) | Letter from PM to BDB dated 16 July (submitted 17 July) |
| [AA/INQ/29.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_29.1-SuDS-Clarification-Note.pdf) | SuDS clarification note |
| AA/INQ/29.2 | (See AA/INQ/28.1 – 28.8) |
| [AA/INQ/029.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-029.3.pdf) | Manchester Ship Canal Aeration AMP5AMP6 meeting |
| [AA/INQ/29.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_29.4-BDB-RFI-12-Flow-Plots-09.07.18-1.pptx) | BDB RFI 12 Flow plots 9 July 2018 |
| [AA/INQ/29.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_29.5-Right-to-Remain-Note.pdf) | Right to remain |
| [AA/INQ/30](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_30-PM-L-BDB-+-Response-to-requests-for-information-4-July-second-letter-16072018.pdf) | Letter from PM to BDB dated 16 July regarding Wastewater Network Modelling (submitted 17 July 2018) |
| [AA/INQ/30.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_30.1-NM04-i4-Specification.pdf) | Wastewater Network Modelling (submitted 17 July 2018) |
| [AA/INQ/31](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_31-Weather-data-from-Wunderground-website-Eccles-Barton-Aero-21052018.pdf) | Weather data from Wunderground website (submitted 17 July 2018) |
| [AA/INQ/32](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_32-Environment-Agency-Fluvial-Design-Guide.pdf) | EA Fluvial Design guide – Chapter 11 (submitted 17 July 2018) |
| [AA/INQ/33](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_33-Addendums-to-FE-North-Storm-A.pdf) | Addendums to “FE NORTH STORAM A” UU Initial response (submitted 17 July 2018) |
| [AA/INQ/34](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_34-Extracts-from-Environmental-Management.pdf) | Extracts from Wastewater Treatment Technologies (submitted 17 July 2018) |
| [AA/INQ/34.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_34.1-Authors-of-Environmental-Management.pdf) | Authors of Environmental Management (submitted 17 July 2018) |
| [AA/INQ/35](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_35-Preston-TPS.pdf) | Preston TPS (submitted 19 July) |
| [AA/INQ/36](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_36-Retention-Times-2.pdf) | Retention Times (submitted 19 July) |
| [AA/INQ/37](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA.INQ_.37.pdf) | Letter from BDB to PM dated 12 July (all submitted 20 July) |
| [AA/INQ/37.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA.INQ_.37.1.pdf) | Letter from PM to DBD dated 13 July |
| [AA/INQ/37.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA.INQ_.37.2.pdf) | Letter from BDB to PM dated 13 July |
| [AA/INQ/37.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA.INQ_.37.3.pdf) | Email from Laura Thornton to Trevor Perry dated 11 July |
| [AA/INQ/37.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA.INQ_.37.4.pdf) | Email from Trevor Perry to Laura Thornton dated 11 July |
| [AA/INQ/38](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-038.pdf) | Letter from PM to BDB dated 13 September (submitted 13 September) |
| [AA/INQ/39](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-BDB-Eccles-CPO-26.09.2018.pdf) | Letter from PM to BDB dated 26 September (submitted 26 September) |
| [AA/INQ/40](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-40.pdf) | Letter from PM to BDB & WM to carry out Bore Hold surveys dated 28 September (submitted 28 September) |
| [AA/INQ/41](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Jessica-Hobbs-United-Utilities-Water-Limited-4-October-request-acknowledgement-09-10-2018.pdf) | Letter from PM to BDB dated 10 October responding to letter from 4 October from BDB (submitted 10 October) |
| [AA/INQ/42](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Jessica-Hobbs-United-Utilities-Water-Limited-10-October-letter-response-11-10-2018.pdf) | Letter from PM to BDB dated 11 October responding to letter from 10 October from BDB (submitted 11 October) |
| [AA/INQ/43](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Laura-Thornton-United-Utilities-Water-Limited-4-October-Responses-19-10-2018-1.pdf) | Letter from PM to DBD dated 19 October in response to DBD letter of 4 October (all submitted 19 October) |
| [AA/INQ/43.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/2a.-Parsons-Brinckerhoff-Ground-Investigation-Report-Sept-2014.pdf) | Document 2a – Parsons Brinkerhoff ground investigation report – September 2014 |
| [AA/INQ/43.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/3a.-Mott-Macdonald-Ground-Conditions-Note-14.08.2018.pdf) | Document 3a – Mott Macdonald – Ground conditions report – 14 August 2018 |
| [AA/INQ/43.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/6a.-Salteye-Brook-flow-rates.pdf) | Salteye Brook flow rates |
| [AA/INQ/44](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Laura-Thornton-United-Utilities-Water-Limited-response-to-letter-dated-5-October-2018-23-10-2018.pdf) | Letter to BDB from PM dated 23 October in response to letter from BDB of 5th October (MP/INQ/35); (submitted 23 October) |
| [AA/INQ/44.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Shortened-Option-List-231018.pdf) | Costs summary referred to in the penultimate paragraph AA/INQ/044 |
| [AA/INQ/45](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_45-Eccles-Separation-Opportunities-23.10.18.pdf) | Note to Inquiry on surface water separation opportunities (submitted 24 October) |
| [AA/INQ/46](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_46-42062-Barton-Locks-Revised-NPPF-Note-17-August-2018.pdf) | Note to Inquiry in relation to the revised National Planning Policy Framework (‘NPPF’) (submitted 24 October) |
| [AA/INQ/47](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_47-11000m3-Storage-Technical-Note-V1-Issued.pdf) | Note to Inquiry in relation to the requirement for storage in connection with UU CPO Option 3 (submitted 24 October) |
| [AA/INQ/47.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_47.1-Appendix-A-TWLs-Inlet-CSO-Baseline.pdf) | Appendix A – TWLs Inlet CSO Baseline |
| [AA/INQ/47.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_47.2-Appendix-B-TWLs-Inlet-CSO-Full-Scheme-Complete.pdf) | Appendix B – TWLs Inlet CSO Full Scheme Complete |
| [AA/INQ/48](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_48-Large-UU-Pumping-Stations.pdf) | Note to Inquiry containing examples of large pumping stations within United Utilities (submitted 24 October) |
| [AA/INQ/49](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L+-Yvonne-Parker-United-Utilities-Water-Limited-Compulsory-Purchaser-Order-23.10.2018_.pdf) | Letter to the Programme Officer from PM dated 24 October, regarding submission of additional documents AA/INQ/45-AA/INQ/48 (submitted 24 October) |
| [AA/INQ/50](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-50.pdf) | Cover email from Luke Pearson to Matt Harris (submitted 24 October) |
| [AA/INQ/50.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Sediment-Report-FINAL.pdf) | Sediment Report prepared by UU |
| [AA/INQ/50.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/DJB-Opinion-Final.pdf) | Opinion prepared by Professor David Balmforth |
| [AA/INQ/51](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Jess-Hobbs-25-October.pdf) | Letter to BDB from PM dated 25 October, regarding the supplementary proofs (submitted 25 October) |
| [AA/INQ/52](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles-PM-Ltr-to-BDB-8-11-18.pdf) | Letter to BDB from PM dated 8 November, in response to their letters of 12, 19 October and 2 November (submitted 8 November) |
| [AA/INQ/53](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Laura-Thornton-United-Utilities-Water-Limited-response-to-8-November-letter-from-BDB-14-11-2018.pdf) | Letter to BDB from PM dated 14 November, in response to their letter of 8 November (submitted 14 November) |
| [AA/INQ/54](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-54.pdf) | Letter to BDB from PM dated 16 November, in response to their first letter of 12 November (submitted 20 November) |
| [AA/INQ/55](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_55-UU-EA-Correspondence.pdf) | Correspondence between UU and the EA between 16 July 2018 and 24 October 2018 (submitted 20 November) |
| [AA/INQ/56](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_56-COMPILED-Canal-Model-Build-and-Calibration-Report-December-2008.pdf) | Canal Model Build and Calibration Report (submitted 20 November) |
| [AA/INQ/57](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-dated-16-November-only-AA_INQ_57.pdf) | Letter to BDB from PM dated 16 November, in response to their letter of 2 November (submitted 16 November) |
| [AA/INQ/57.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-to-letter-dated-16-November-AAI_NQ_57.1.pdf) | Appendix 1 – Access to Barton Locks |
| [AA/INQ/57.2a](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-to-letter-dated-16-November-Drawing-1-AA_INQ_57.2-2.pdf) | Appendix 2 – Cofferdam Installation sheet 1 |
| [AA/INQ/57.2b](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-to-letter-dated-16-November-Drawing-2-AA_INQ_57.2-1.pdf) | Appendix 2 – Cofferdam Installation sheet 2 |
| [AA/INQ/58](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_58-Cost-Estimate-Update-FINAL.pdf) | Cost Estimate Update (submitted 20 November) |
| [AA/INQ/59](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_59-.pdf) | Letter to BDB from PM dated 16 November, in response to their second letter of 12 November (submitted 20 November) |
| [AA/INQ/60](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Response-to-PS-Supplementary-Proof-20.11.2018-AA_INQ_60.pdf) | Response to the Supplementary proof of evidence of Philip Studds (submitted 20 November) |
| [AA/INQ/61](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_61-Note-to-Inquiry-on__-Ground-Investigationsfinalpdf.pdf) | Note of Rory Mckimm to the Inquiry in respect of ground investigations (submitted 24 November) |
| [AA/INQ/62](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_62-Borehole-sketch.pdf) | Sketch showing the position of the boreholes undertaken and rockhead levels (submitted 24 November) |
| [AA/INQ/63](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_63-UU-Ground-Investigation-Report.pdf) | Preliminary Ground Investigation Report by Geotechnics (submitted 24 November) |
| [AA/INQ/64](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_64-Water-quality__-planning-identifying-measure-for-the-PR14-National-Environment__-Programme.pdf) | Environment Agency, Water quality planning: identifying measure for the PR14 National Environment Programme, 2013 (submitted 26 November 2018) |
| [AA/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_65-UKTAG-Environmental__-Standards-Phase-3-Final-Report-04112013.pdf) | UK Technical Advisory Group on the Water Framework Directive, Updated Recommendations on Environmental Standards: river basin management 2015-2021, November 2013 (submitted 26 November 2018) |
| [AA/INQ/66](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_66-Evidence-Review-of__-urban-pollution-management-standards-against-WFD-requirements.pdf) | Environment Agency, Evidence: Review of urban pollution management standards against WFD requirements, October 2012 (submitted 26 November 2018) |
| [AA/INQ/67](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_67-Water-companies__-environmental-permits-for-storm-overflows-and-emergency-overflows.pdf) | Environment Agency, Water companies: environmental permits for storm overflows and emergency overflows, September 2018 (submitted 26 November 2018) |
| [AA/INQ/68](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_68-Ch.6-Dissolved-Oxygen.pdf) | Summary of Chapter 6 'Dissolved Oxygen' from 'Water Quality Criteria for Freshwater Fish' by J.S. Alabaster, published by arrangement with the Food and Agriculture Organization of the United Nations (submitted 26 November 2018) |
| [AA/INQ/69](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_69-Impact-of-different__-options-on-Salteye-Brook-BOD-v2-4.pdf) | Impact of CSO scheme MSCCL and MSCCL Option 3 on BOD concentration in Salteye Brook (submitted 27 November 2018) |
| [AA/INQ/70](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_70-Revised-Table-1-from__-Dr-Studds_-supplementary-proof-4.pdf) | Revised Table 1 from Dr Studds’ supplementary proof (submitted 27 November 2018) |
| [AA/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_71-Number-of-helixors-needed-in-Pound-3-3.pdf) | Helixors – number needed and impact of 6% reduction in ammonia (submitted 27 November 2018) |
| [AA/INQ/72](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_72-Recalculation-of__-nitrification-oxygen-demand-in-Pound-3-version-2-2.pdf) | Recalculation of oxygen demand by nitrification in Pound 3 (submitted 27 November 2018) |
| [AA/INQ/73](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_73-Cause-of-fish-death-on-13-July-2015-3.pdf) | Fish – cause of death on 13 July 2015 (submitted 27 November 2018) |
| [AA/INQ/74](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_74-Detecting-changes-in__-ammonia-in-the-MSC-26.11.18-4.pdf) | Impact of Eccles ammonia permit options on the Canal (submitted 27 November 2018) |
| [AA/INQ/75](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_75-NOTE-TO-INQUIRY-re__-davyhulme-permit-condition-dates.pdf) | Note to Inquiry regarding Davyhulme Permit Conditions (submitted 29 November 2018) |
| [AA/INQ/75.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_75.1-10.06.10-Let-from__-EA-re-Regulatory-Control-of-NEP-in-AMP5.pdf) | Letter from the Environment Agency, dated 10 June 2010, regarding regulatory control of NEP in AMP5 (submitted 29 November 2018) |
| [AA/INQ/76](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_76-PM.pdf) | Letter to BDB from PM dated 30 November, regarding borehole 7 (submitted 30 November) |
| [AA/INQ/76.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_76.1-Barton-Locks-GI-PLAN-2-29112018-1.pdf) | Barton Locks shaft 04 and outfall ground and site investigation plan (submitted 30 November) |
| [AA/INQ/77](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_77-Extension-to-Davyhulme-Sewage-Works.pdf) | The extensions to the Davyhulme Sewage Works (1957-67), G L Symes (para 89 only) (submitted 30 November) |
| [AA/INQ/78](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_78-Note-to-the-Inquiry__-in-relation-to-low-water-level-incidents.pdf) | Note to the Inquiry in relation to low water level incidents (submitted 3 December 2018) |
| [AA/INQ/79](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Laura-Thornton-United__-Utilities-Water-Limited-Ltr-dated-4.12.18....pdf) | Letter to BDB from PM dated 4 December 2018, in response to their letter of 4 December 2018 (submitted 4 December 2018) |
| [AA/INQ/80](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_80-1.pdf) | Proposed form of CPO Order (Draft only) (submitted 6 December 2018) |
| [AA/INQ/81](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_81.pdf) | United Utilities Access - plan showing Deeds of Grant Rights CoSCoS (submitted 6 December 2018) |
| [AA/INQ/82](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L+-Helen-Wilson-11.1-1.pdf) | Letter from PM to the Programme Officer dated 11 January 2019 regarding further borehole investigations at Borehole 7 |
| [AA/INQ/82.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Supplementary-note-re-BH7-FINAL.pdf) | Supplementary Note to the Inquiry on Ground Investigations (BH7) by  Rory Mckimm |
| [AA/INQ/82.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PN183904-BH7-Logs-DRAFT-20190107.pdf) | Borehole Record – Rotary Core |
| [AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf) | Closing submissions on behalf of United Utilities, dated 11 January 2019 |
| [AA/INQ/83.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-Eccles-CPO-and-Schedule.pdf) | Appendix 1 – Eccles CPO and Schedule |
| [AA/INQ/83.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-Mark-up-of-Order-Schedule.pdf) | Appendix 2 – Mark up of Order Schedule |
| [AA/INQ/83.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles_CPO_Plans_Rev_27_10.01.2019.pdf) | Appendix 3 – Eccles CPO Plans rev27 10 January 2019 |
| [AA/INQ/83.4.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/22.05.2018-PM-to-BDB.pdf) | Appendix 4.1 – Email dated 22 May 2018 from PM to BDB |
| [AA/INQ/83.4.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/23.05.2018-DB-to-PM.pdf) | Appendix 4.2 - Email dated 23 May 2018 from BDB to PM |
| [AA/INQ/83.4.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/11.10.2018-PM-to-BDB.pdf) | Appendix 4.3 - Email dated 11 October 2018 from PM to BDB |
| [AA/INQ/83.4.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/19.10.2018-BDB-to-PM.pdf) | Appendix 4.4 - Email dated 19 October 2018 from BDB to PM |
| [AA/INQ/83.4.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/16.11.2018-PM-to-BDB.pdf) | Appendix 4.5 – Email dated 16 November 2018 from PM to BDB |
| [AA/INQ/83.4.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/26.11.2018-BDB-to-PM.pdf) | Appendix 4.6 - Email dated 26 November 2018 from BDB to PM |
| [AA/INQ/84](http://www.hwa.uk.com/site/wp-content/uploads/2018/11/UU-Note-in-response-to-MSCCL-8-February-2019.pdf) | Response to MSCCL’S “Note in Response to United Utilities’ closing submissions” on Behalf of United Utilities (UU), dated 8 February 2019 |

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| **MANCHESTER SHIP CANAL COMPANY LIMITED AND PEEL INVESTMENTS (NORTH) LIMITED** | |
| [MP/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_1_A-Proof-of-Evidence-of-Trevor-Perry.pdf) | Proof of evidence of Trevor Perry |
| [MP/1/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_1_B-Summary-Proof-of-Evidence-Trevor-Perry.pdf) | Summary proof of evidence of Trevor Perry |
| [MP/1/C.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.1-Appendix-1-CV.pdf) | Appendix 1 - Trevor Perry Curriculum Vitae |
| [MP/1/C.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.2-Appendix-2-Archimedean-Screw-Pump-Details.pdf) | Appendix 2 - Archimedean Screw Pump Details |
| [MP/1/C.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.3-Appendix-3-DO-Sampling-in-Salteye-Brook.pdf) | Appendix 3 - DO Sampling in Salteye Brook |
| [MP/1/C.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.4-Appendix-4-Extract-from-item-16-Capital-Investment-Committee-PRG3-Full-Project-Sanction-Request-Manchester-Trunk-UIDs.pdf) | Appendix 4 - Extract From 16. Capital Investment Committee |
| [MP/1/C.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.5-Appendix-5-Nereda-Process-at-United-Utilities.pdf) | Appendix 5 - Nereda Process at United Utilities |
| [MP/1/C.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.6-Appendix-6-Photographs-of-Eccles-WwTW-Humus-Tanks.pdf) | Appendix 6 - 9 - 26 March Photographs of Eccles WwTW Humus |
| [MP/1/C.7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.7-Appendix-7-Potential-Development-Plan.pdf) | Appendix 7 - Potential Development Plan, Area Adjacent to AJ Bell Stadium |
| [MP/1/C.8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.8-Appendix-8-The-Ideal-Sedimentation-Basin.pdf) | Appendix 8 - The Ideal Sedimentation Basin |
| [MP/1/C.9](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.9-Appendix-9-Observation-on-UU-method-of-Entry-to-the-CPO-tunnel.pdf) | Appendix 9 - Observation on UU Method of Entry to the CPO Tunnel |
| [MP/1/C.10](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.10-Appendix-10-MetOffice-rainfall-data-for-1-to-7-March-2018.pdf) | Appendix 10 - Metoffice Rainfall Data for 1 to 7 March 2018 |
| [MP/1/C.11](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.11-Appendix-11-Proportional-Discharge.pdf) | Appendix 11 - Proportional Discharge |
| [MP/1/C.12](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.12-Appendix-12-Davyhulme-Modernisation-Project.pdf) | Appendix 12 - Davyhulme Modernisation Project |
| [MP/1/C.13](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.13-Appendix-13-UUWLs-drawing-New-Site-Layout-New-Outfall-Tunnel-Number-SAL0018_80023696_01_17_2001_C.pdf) | Appendix 13 - UUWL’s Drawing New Site Layout |
| [MP/1/C.14](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.14-Appendix-14-CPO-Tunnel-Hydraulic-Calculations.pdf) | Appendix 14 - CPO Tunnel Hydraulic Calculations |
| [MP/1/C.15](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.15-Appendix-15-Alternative-Solution-Matrix.pdf) | Appendix 15 - Alternative Solution Matrix |
| [MP/1/C.16](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.16-Appendix-16-High-level-cost-and-power-estimates.pdf) | Appendix 16 - High Level Cost and Power Estimates |
| [MP/1/C.17](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.17-Appendix-17-Tables-of-costs-and-power-for-alternatives-dischargung-final-effluent-and-stormwater.pdf) | Appendix 17 - Tables of Costs and Power for Alternatives Discharging Final Effluent and Stormwater |
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| [MP/1/C.21](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.21-Appendix-21-List-of-documents-reviewed.pdf) | Appendix 21 - List of Documents Reviewed |
| [MP/1/C.22](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP1C.22-Appendix-22-Larger-Scale-Drawings.pdf) | Appendix 22 - Larger Scale Drawings |
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| [MP/2/C.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_2_C.2-Documents-relied-on-in-Proof.pdf) | Appendix 2 - Documents Relied on in Proof of Evidence |
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| [MP/3/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_3_B-Sumnmary-Proof-of-Evidecne-of-Phil-Studds.pdf) | Summary proof of evidence of Phil Studds |
| [MP/3/C.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_3_C.1-to-M_3_C.12-Phil-Studds-Appendices-v2.pdf) | Appendices to proof of evidence of Phil Studds |
| [MP/3/C.12.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Phil-Studds-Appendix-9-amended-October-2018-Tracked.pdf) | Tracked version of amended Appendix 9 |
| [MP/3/D](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_3_D-PHIL-STUDDS-Supplemetary-Proof-of-Evidence.pdf) | Supplementary proof of evidence of Phil Studds |
| [MP/3/F.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_3_F.1-PHILL-STUDDS-APPENDIX-1.pdf) | Appendix 1 - Effect of ammonia concentration on the dissolved oxygen concentration in the MSC |
| [MP/3/F.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_3_F.2-PHIL-STUDDS-APPENDIX-2.pdf) | Appendix 2 - Assessment of the flow rates recorded from the Eccles WwTW when low flow is observed in the MSC |
| [MP/3/F.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_3_F.3-PHIL-STUDDS-APPENDIX-3.pdf) | Appendix 3 - Mass Balance Calculations |
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| [MP/3/R1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_3_R.1-Appendix-A-Hendry-Paper.pdf) | Appendix A – Hendry Paper |
| [MP/3/R2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_3_R.2-Appendix-B-BiogeochemicalMod_24May18.pdf) | Appendix B - Biogeochemical modelling, May 2018 |
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| [MP/4/A.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Stephen-West-Proof-of-evidence__-amended-October-2018-Tracked.pdf) | Tracked version of amended proof of evidence of Stephen West |
| [MP/4/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_4_B-Stephen-West-Summary-proof-of-evidence.pdf) | Summary proof of evidence of Stephen West |
| [MP/4/C.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP.4.C.1-Glossary.pdf) | Appendix 1 - Glossary of Terms |
| [MP/4/C.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP.4.C.2-Figures.pdf) | Appendix 2 - Figures |
| [MP/4/C.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP.4.C.3-British-Geological-Survey-Borehole-Logs.pdf) | Appendix 3 - British Geological Survey Borehole Logs |
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| [MP/5/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_5_B-Summary-Proof-of-Evidence-Nicholas-Clarke.pdf) | Summary proof of evidence of Nicholas Clarke |
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| [MP/5/C.1b](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_5_C.1-Appendix-1-Figure-2.pdf) | Appendix 1, Figure 2 |
| [MP/5/C.1c](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_5_C.1-Appendix-1-Figure-3-–-Location-of-rights-to-be-taken-for-the-outfall-construction.pdf) | Appendix 1, Figure 3 Location of Rights to be Taken for the Outfall Construction |
| [MP/5/C.1d](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_5_C.1-Appendix-1-Figure-4-–-Location-of-rights-for-oversailing-relating-to-the-outfall-construction.pdf) | Appendix 1, Figure 4 Location of Rights for Oversailing Relating to the Outfall Construction |
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| MP/5/C.1g | Appendix 1, Figure 7 – Not used |
| [MP/5/C.1h](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_5_C.1-Appendix-1-Figure-8-–-Example-of-crane-pitching-the-first-area-of-sheet-piles-@-Normal-Water-Level.pdf) | Appendix 1, Figure 8 Example of Crane Pitching the First Area of Sheet Piles @ Normal Water Level |
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| [MP/5/R1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_5_R.1-Appendix-Nick-Clarke-rebuttal.pdf) | Appendix - Visualisation (Looking West from the Lock) of the Works with a Passing Vessel |
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| [MP/6/A.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Steve-Gavin-Proof-of-Evidence-__-amended-October-2018-Tracked.pdf) | Tracked version of amended proof of evidence of Steve Gavin |
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| [MP/6/C.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP.6.C.2-Appendix-B-Modern-plan-of-Manchester-Ship-Canal.pdf) | Appendix B – Modern Plan |
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| [MP/6/C.10.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP.6.C.10.3-Appendix-J-EAMS-SWI-0358-Lock-Capstan-Mechanical-Anunal-Inspection.pdf) | Appendix J - Lock Capstan Mechanical Annual Inspection |
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| [MP/6/C.13](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP.6.C.13-Appendix-M-Irlam-Wharf-Quay-Cross-Section.pdf) | Appendix M - Irlam Wharf Quay Cross Section |
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| [MP/6.C/16](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP.6.C.16-Appendix-P-Figures.pdf) | Appendix P - Figures |
| [MP/6/D](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_D-STEVE-GAVIN-Supplementary-Proof-of-Evidence.pdf) | Supplementary proof of evidence of Steve Gavin |
| [MP/6/F](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_F-STEVE-GAVIN-APPENDIX-1.pdf) | Appendix 1 – Borehole report |
| [MP/6/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_R-Rebuttal-of-Stephen-Gavin.pdf) | Rebuttal proof of evidence of Steve Gavin |
| [MP/6/R1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_R.1.pdf) | Appendix 1 – Construction of Outfall, Media City |
| [MP/6/R2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_R.2.pdf) | Appendix 2 – Water Level Regime of Canal Ponds |
| [MP/6/R3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_R.3.pdf) | Appendix 3 – Works Licence, Media City |
| [MP/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_7_A-Proof-of-Evidence-of-Joe-Blythe-V.2.pdf) | Proof of evidence of Joe Blythe |
| [MP/7/A.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Joe-Blythe-Proof-of-Evidence-__-amended-October-2018-Tracked.pdf) | Tracked version of amended proof of evidence of Joe Blythe |
| [MP/7/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_7_B-Summary-Proof-of-Evidence-Joe-Blythe-MP_7_B.pdf) | Summary proof of evidence of Joe Blythe |
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| [MP/7/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_7_C.1-Appendices-to-Proof-of-Evidence-of-Joe-Blythe-.pdf) | Appendices to proof of evidence of Joe Blythe |
| [MP/7/D](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_7_D-JOE-BLYTHE-Supplementary-Proof-of-Evidence.pdf) | Supplementary proof of evidence of Joe Blythe |
| [MP/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_7_R-–-rebuttal-proof-of-evidence-Joe-Blythe.pdf) | Rebuttal proof of evidence of Joe Blythe |
| [MP/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_A-John-Rhodes-Proof-of-Evidence.pdf) | Proof of evidence of John Rhodes |
| [MP/8/A.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/John-Rhodes-Proof-of-Evidence-__-amended-October-2018-Tracked.pdf) | Tracked version of amended proof of evidence of John Rhodes |
| [MP/8/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_B-John-Rhodes-Summary-Proof-of-Evidence.pdf) | Summary proof of evidence of John Rhodes |
| [MP/8/B.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/John-Rhodes-Summary-Proof-__-amended-October-2018-Tracked.pdf) | Tracked version of amended summary proof of evidence of John Rhodes |
| [MP/8/C.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.1-Appendix-1-Background-Note-The-Charging-Regime-for-Discharges-to-the-MSC.pdf) | Appendix 1 - Background Note: The Charging Regime for Discharges to the Manchester Ship Canal |
| [MP/8/C1.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C1.1-MSCCL-Schedule-of-Port-Charges-2018.pdf) | Appendix 1.1 - MSCCL Schedule of Port Charges 2018 |
| [MP/8/C1.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C1.2-PWSL-Charging-Scheme-Summary-2018-19.pdf) | Appendix 1.2 - Peel Water Services Limited Charging Scheme 2018 – 2019 |
| [MP/8/C.1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.1.3-UUWL-2012-2013-charges-scheme.pdf) | Appendix 1.3 - United Utilities Charges Scheme 2012/2013 |
| [MP/8/C1.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C1.4-UUWL-2017-2018-Wholesale-Sewerage-Charges-scheme.pdf) | Appendix 1.4 - 2017 / 2018 Wholesale Sewerage Charges Scheme |
| [MP/8/C.1.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.1.5-UUWL-2017-2018-Water-Plus-Charges.pdf) | Appendix 1.5 - UUWL 2017/2018 Water Plus Charges |
| [MP/8/C1.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C1.6-UUWL-2018-2019-Water-Plus-Non-Household-Charges-scheme.pdf) | Appendix 1.6 - 2018/2019 Water Plus Non-Household Charges Scheme |
| [MP/8/C.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.2.-Appendix-2-Note-on-the-regulatory-context-of-wastewater-treatment-and-discharges.pdf) | Appendix 2 - Note on Regulatory Context of Wastewater Treatment and Discharges |
| [MP/8/C.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.3-Appendix-3-Optioneering-Timeline.pdf) | Appendix 3 - Optioneering Timeline |
| [MP/8/C.3.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.3.1-Optioneering-Timeline-Plans.pdf) | Appendix 3.1 - Optioneering Timeline Plans |
| [MP/8/C.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.4-Appendix-4.pdf) | Appendix 4 – Environment Agency’s Letter to Salford City Council, dated 9 May 2018 |
| [MP/8/C.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.5-Appendix-5-MSCCL-and-PINL-Land-and-Rights-Schedule-and-plans.pdf) | Appendix 5 - MSCCL and PINL Land and Rights Schedule and Plans |
| [MP/8/C.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.6-Appendix-6-MSCCL-Options-Appraisal.pdf) | Appendix 6 - Options Appraisal |
| [MP/8/C.6(1)](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/John-Rhodes-Appendix-6-__-Options-appraisal-amended-October-2018-Tr....pdf) | Tracked version of amended Appendix 6 - Options Appraisal |
| [MP/8/C.6.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.6.1-Long-list-filter.pdf) | Appendix 6.1 - Long-List Filter |
| [MP/8/C.6.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.6.2.-RAG-Matrix.pdf) | Appendix 6.2 - Rag Matrix |
| [MP/8/C.7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_C.7-Appendix-7-Full-set-of-figures.pdf) | Appendix 6 - Schematic of Manchester Ship Canal |
| [MP/8/D](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_D-JOHN-RHODES-Supplementary-Proof-of-Evidence.pdf) | Supplementary proof of evidence of John Rhodes |
| [MP/8/F](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_F-JOHN-RHODES-APPENDIX-1.pdf) | Appendix 1 – RAG matrix |
| [MP/8/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_R-Rebuttal-Proof-of-Evidence-of-John-Rhodes.pdf) | Rebuttal proof of evidence of John Rhodes |
| [MP/8/R.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/John-Rhodes-Rebuttal-Proof-__-amended-October-2018-Tracked.pdf) | Tracked version of amended rebuttal proof of evidence of John Rhodes |

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| **MANCHESTER SHIP CANAL COMPANY LIMITED AND PEEL INVESTMENTS (NORTH) LIMITED – INQUIRY DOCUMENTS** | | |
| [MP/INQ/1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L+-Bircham-Dyson-Bell-LLP-__-Eccles-WWTW-CPO-Open-Offer-22-05-2018....pdf) | | Letter to Bircham Dyson Bell from Pinsent Masons, 22 May 2018 |
| [MP/INQ/1.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles-WwTW-Heads-of-Terms-MSCCL-and-SCPL-21.05.18.pdf) | | Draft Heads of Terms MSCCL and SCPL (was ID/2a) |
| [MP/INQ/1.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-1-rights-to-be-granted__-by-the-Manchester-Ship-Canal-Company-L....pdf) | | Appendix 1 - Rights to be Granted by Manchester Ship Canal Company Limited (was ID/2b) |
| [MP/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-provisions-for-the__-protection-of-MSCCL-21.05.18-1.pdf) | | Appendix 2 – Provisions for the Protection of MSCCL (was ID/2c) |
| [MP/INQ/2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-23-May-2018.pdf) | | Letter to Pinsent Masons from Bircham Dyson Bell, 23 May 2018 (was ID/3) |
| [MP/INQ/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Michael-Pocock-Pinsent__-Masons-2nd-Letter-04_06_2018.pdf) | | Letter to Pinsent Masons from Bircham Dyson Bell, 4 June 2018, regarding draft heads of agreement for an asset protection agreement (was ID/4) |
| [MP/INQ/3.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Draft-Heads-of-Agreement-for__-Protection-of-MSCCL-Assets-and-Undertaking.pdf) | | Draft Heads of Agreement for Protection of MSCCL Assets and Undertaking (enclosure to Bircham Dyson Bell letter dated 4 June 2018) (was ID4/a) |
| [MP/INQ/4](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Eccles-CPO-Opening-Submissions-MSCCL-_-PINL.pdf) | Opening submissions by Manchester Ship Canal Company Limited and Peel Investments (North) Limited | |
| [MP/INQ/5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_5-Addendum-to-Trevor-Perry_s-Proof.pdf) | Addendum note to Trevor Perry’s proof (submitted 18 June 2018) | |
| [MP/INQ/6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_6-Addendum-to-Leon-Fields_-Proof.pdf) | Addendum note to Leon Fields’ proof (submitted 18 June 2018) | |
| [MP/INQ/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_7-Addendum-to-John-Rhodes__-Proof.pdf) | Addendum note to John Rhodes’s proof (submitted 18 June 2018) | |
| [MP/INQ/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MSC-INQ-8.pdf) | Letter from BDB to Pinsent Masons dated 18 June 2018 (with enclosures) (submitted 18 June 2018) | |
| [MP/INQ/9](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MSC-INQ-9.pdf) | Second letter from BDB to Pinsent Masons dated 18 June 2018 (with enclosures) (submitted 18 June 2018) | |
| [MP/INQ/10](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-21-June-2018.pdf) | Letter from BDB to PM dated 21 June 2018 (submitted 21 June 2018) | |
| [MP/INQ/11](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11-Letter-to-Pinsent-Masons-26.06.18.pdf) | Letter Bircham Dyson Bell to Pinsent Masons dated 26 June 2018 (all parts of this document submitted 26 June 2018) | |
| [MP/INQ/11.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.1-Barton-65ft-lock-downstream-north-quay-wall-surveyth-18th-May-2018.pdf) | Barton 65ft lock downstream north quay wall survey 18th May 2018 | |
| [MP/INQ/11.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.2-Barton-Lock-Crane-Load-Calculations.pdf) | Barton Lock Crane Load Calculations | |
| [MP/INQ/11.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.3-Barton-Lock-MBES-Laser.pdf) | Barton Lock MBES & Laser | |
| [MP/INQ/11.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.4-Irlam-Wharf-Reach-Stacker-Loads.pdf) | Irlam Wharf Reach Stacker Loads | |
| [MP/INQ/11.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.5-IS-4515-2002.pdf) | IS 4515 2002 | |
| [MP/INQ/11.6a](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.6-Part-1-Photographic-Condition-Report-for-MSCCL-2016-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2016 Barton Lock Excerpt – Part 1 | |
| [MP/INQ/11.6b](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.6-Part-2-Photographic-Condition-Report-for-MSCCL-2016-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2016 Barton Lock Excerpt – Part 2 | |
| [MP/INQ/11.6c](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.6-Part-3-Photographic-Condition-Report-for-MSCCL-2016-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2016 Barton Lock Excerpt – Part 3 | |
| [MP/INQ/11.6d](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.6-Part-4-Photographic-Condition-Report-for-MSCCL-2016-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2016 Barton Lock Excerpt – Part 4 | |
| [MP/INQ/11.6e](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.6-Part-5-Photographic-Condition-Report-for-MSCCL-2016-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2016 Barton Lock Excerpt – Part 5 | |
| [MP/INQ/11.6f](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.6-Part-6-Photographic-Condition-Report-for-MSCCL-2016-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2016 Barton Lock Excerpt – Part 6 | |
| [MP/INQ/11.6g](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.6-Part-7-Photographic-Condition-Report-for-MSCCL-2016-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2016 Barton Lock Excerpt – Part 7 | |
| [MP/INQ/11.6h](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.6-Part-8-Photographic-Condition-Report-for-MSCCL-2016-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2016 Barton Lock Excerpt – Part 8 | |
| [MP/INQ/11.6i](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.6-Part-9-Photographic-Condition-Report-for-MSCCL-2016-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2016 Barton Lock Excerpt – Part 9 | |
| [MP/INQ/11.7a](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.7-Part-1-of-3-Photographic-Condition-Report-for-MSCCL-2018-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2018 Barton Lock Excerpt – Part 1 | |
| [MP/INQ/11.7b](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.7-Part-2-of-3-Photographic-Condition-Report-for-MSCCL-2018-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2018 Barton Lock Excerpt – Part 2 | |
| [MP/INQ/11.7c](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_11.7-Part-3-of-3-Photographic-Condition-Report-for-MSCCL-2018-Barton-Lock-Excerpt.pdf) | Photographic Condition Report for MSCCL 2018 Barton Lock Excerpt – Part 3 | |
| [MP/INQ/11.8](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.8-The-Structural-Design-of-Heavy-Duty-Pavements.pdf) | The Structural Design of Heavy Duty Pavements | |
| [MP/INQ/11.9](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.9-T_14_1490-CL1902-F1-Drainage-Layout-Sheet-2.pdf) | T\_14\_1490-CL(19)02-F1 - Drainage Layout Sheet 2 | |
| [MP/INQ/11.10](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.10-T_14_1490-CL1903-C1-Outfall-Long-Section.pdf) | T\_14\_1490-CL(19)03-C1 - Outfall Long Section | |
| [MP/INQ/11.11](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.11-T_14_1490-CL1903-F1-Outfall-Long-Section.pdf) | T\_14\_1490-CL(19)03-F1 - Outfall Long Section | |
| [MP/INQ/11.12](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.12-T_14_1490-CL1904-C2-Outfall-Headwall-Detail.pdf) | T\_14\_1490-CL(19)04-C2 - Outfall Headwall Detail | |
| [MP/INQ/11.13](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.13-T_14_1490-CL1904-F1-Outfall-Headwall-Detail.pdf) | T\_14\_1490-CL(19)04-F1 - Outfall Headwall Detail | |
| [MP/INQ/11.14](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.14-T-14-1490-MC-BB-82-Outfall-Cofferdam-Backfill.pdf) | T-14-1490 - MC-BB-82 - Outfall Cofferdam Backfill | |
| [MP/INQ/11.15](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.15-Hochtief-UK-Construction-MSCL-159.pdf) | Hochtief UK Construction MSCL 159 | |
| [MP/INQ/11.16](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.16-Hochtief-UK-Construction-WGIS-MSCL097.pdf) | Hochtief UK Construction WGIS MSCL097 | |
| [MP/INQ/11.17](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.17-Hochtief-UK-Construction-WGIS-MSCL121.pdf) | Hochtief UK Construction WGIS MSCL121 | |
| [MP/INQ/11.18](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.18-Hochtief-UK-Construction-WGIS-MSCL151.pdf) | Hochtief UK Construction WGIS MSCL151 | |
| [MP/INQ/11.19](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.19.-MSCC-WORKS-LICENCE-APPLICATION-v1-21.08.17-signedIssued.pdf) | MSCC Works Licence Application v1 21.08.17 (signed)(Issued) | |
| [MP/INQ/11.20](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.20-MSCC-WORKS-LICENCE-MSCL-157-Tower-demolition-Extension.pdf) | MSCC Works Licence - MSCL 157 Tower demolition (Extension) | |
| [MP/INQ/11.21](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/MP_INQ_11.21-WGIS-MS-Lift-Bridge-Rev-B.pdf) | WGIS MS Lift Bridge Rev B | |
| [MP/INQ/12](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_12-Wessex-Water-Disposal-Design-Specification.pdf) | Wessex Water Disposal Design Specification (submitted 28 June 2018) | |
| [MP/INQ/13](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-3-July-2018.pdf) | Letter from BDB to PM dated 3 July 2018 (all parts of this document submitted electronically 3 July 2018) | |
| [MP/INQ/13.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.1-Appendix-A-and-Appendix-B.pdf) | Appendix A and B to letter from BDB to PM dated 3 July 2018 | |
| [MP/INQ/13.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.2-Barton-Lock-PM.pdf) | Barton Lock PM | |
| [MP/INQ/13.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.3-Barton%20Sluice%20Boom%20Inspection%2020.03.20181.pdf) | Barton Sluice Boom Inspection 20 03 2018 | |
| [MP/INQ/13.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.4-01864AF_D_105H.pdf) | Drawing 01864AF\_D\_105H | |
| [MP/INQ/13.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.5-North-Bank-MSC-Sections2004incservicepro-Phase-1.pdf) | North Bank of the Canal Sections 2004 Phase 1 | |
| [MP/INQ/13.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.6-North-Bank-MSC-Sections2004incservicepro-Phase-2.pdf) | North Bank of the Canal Sections 2004 Phase 2 | |
| [MP/INQ/13.7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.7-North-Bank-MSC-Sections2004incservicepro-Phase-3.pdf) | North Bank of the Canal Sections 2004 Phase 3 | |
| [MP/INQ/13.8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.8-North-Bank-MSC-Sections2004incservicepro-Phase-4.pdf) | North Bank of the Canal Sections 2004 Phase 4 | |
| [MP/INQ/13.9](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.9-North-Bank-MSC-Sections2004incservicepro-Phase-5.pdf) | North Bank of the Canal Sections 2004 Phase 5 | |
| [MP/INQ/13.10](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.10-North-Bank-MSC-Sections2004incservicepro-Phase-6.pdf) | North Bank of the Canal Sections 2004 Phase 6 | |
| [MP/INQ/13.11](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.11-North-Bank-MSC-Sections2004incservicepro-Phase-7.pdf) | North Bank of the Canal Sections 2004 Phase 7 | |
| [MP/INQ/13.12](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_13.12-Media-City-SW-Outfall-Plan.pdf) | Media City SW Outfall Plan | |
| [MP/INQ/14](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-July-2018.pdf) | Letter from BDB to PM dated 4 July 2018 re the CIRCA Report R141 (submitted 4 July 2018). | |
| [MP/INQ/14.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Report141.pdf) | CIRCA Report R141 | |
| [MP/INQ/15](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Second-Letter-to-Pinsent-Masons-4-July-2018.pdf) | Second letter dated 4 July from BDB to PM dated 4 July regarding required information (submitted 4 July 2018) | |
| [MP/INQ/16](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-5-July-2018.pdf) | Letter from BDB to PM dated 5 July requesting information (RFIs) (submitted 5 July 2018) | |
| [MP/INQ/16.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Formulae-Table-Enclosure-to-letter-to-Pinsent-Masons-dated-5-July-2018.pdf) | Copy of Table AA/INQ/15.3 with formulas (submitted 5 July 2018) | |
| [MP/INQ/17](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_17-Letter-to-Pinsent-Masons-9-July-18.pdf) | Letter from BDB to PM dated 9 July (submitted 9 July 2018) | |
| [MP/INQ/17.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_17.1-Note-on-volume-flow-rate-for-the-River-Irwell-River-Irk-and-River-Medlock.pdf) | Note of volume flow rate for the River Irwell, River Irk and River Medlock | |
| [MP/INQ/17.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_17.2-Note-on-weather-conditions-in-MSCCL's-biogeotechnical-sediment-modelling.pdf) | Note on weather conditions in MSCCL’s biogeotechnical sediment modelling | |
| [MP/INQ/18](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_18-Second-letter-to-Pinsent-Masons-9-July-2018.pdf) | Letter from BDB to PM dated 9 July (submitted 9 July) with update on Schedule of Rights and Compensation and Discharges into Salteye Brook (submitted 9 July 2018) | |
| [MP/INQ/19.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_19.1-SCC-Officer-Report-1770871FUL-June-2018.pdf) | Salford City Council’s Officer’s Report (June 2018) (submitted 11 July 2018) | |

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| [MP/INQ/19.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_19.2-SCC-Officer-Report-Additional-Information-June.pdf) | Salford City Council’s Additional Info Officer’s Report (June 2018) (submitted 11 July 2018) |
| [MP/INQ/20](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_20-LB-Bexley-v-SoS-for-the-Environment-Transport-and-the-Regions-2001-EWHC-Admin-323.pdf) | Copy of the case London Borough of Bexley v Secretary of State for the Environment, Transport and the Regions and others; Sainsburys Supermarkets Ltd v Secretary of State for the Environment, Transport and the Regions and others [2001] EWHC Admin 323, referred to in Simon Pemberton’s Proof of Evidence but not included in the Core Documents (submitted 11 July 2018) |
| [MP/INQ/21](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_21-Letter-to-Pinsent-Masons-12-July-2018.pdf) | Letter from BDB to PM dated 12 July regarding land transferred from Ship Canal Properties (submitted 12 July 2018) |
| [MP/INQ/21.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_21.1-Schedule-of-CPO-Plots-showing-new-rights-over-land.pdf) | Updated version of Appendix 2 to SoC and Appendix 5 to John Rhodes Proof of evidence |
| [MP/INQ/22](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_22-Letter-to-Pinsent-Masons-13-July-2018.pdf) | Letter from BDB to Pinsent Masons dated 13 July (submitted 13 July 2018) |
| [MP/INQ/22.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_22.1-Appendices_5.1_-_11.1_and_glossary.pdf) | Bristol Water plc: A reference under section 12(3)(a) of the Water Industry Act 1991 - Appendices 5.1 – 11.1 and glossary (submitted 13 July 2018) |
| [MP/INQ/23](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_23-Second-Letter-to-Pinsent-Masons-13-July-2018-rpc-comments.pdf) | Second Letter from BDB to Pinsent Masons dated 13 July (submitted 13 July 2018) |
| [MP/INQ/24](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_24-Note-in-response-to-AA_INQ_15-Turbidity-Results.pdf) | Note in response to AA/INQ/15 Turbidity results (submitted 13 July 2018) |
| [MP/INQ/25](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_25-Second-Addendum-to-Trevor-Perry_s-Proof-13.07.18.pdf) | Second Addendum note to Trevor Perry’s proof (submitted 13 July 2018) |
| [MP/INQ/26](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_26-Second-Addendum-to-Leon-Fields-Proof-13.07.18.pdf) | Second Addendum note to Leon Fields’ proof (submitted 13 July 2018) |
| [MP/INQ/27](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_27-Replacement-to-John-Rhodes-Appendix-2.pdf) | Replacement to John Rhodes’s Appendix 2 (submitted 13 July 2018) |
| [MP/INQ/28](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-UU-22-August-2018-1.pdf) | Letter to PM dated 22 August 2018 (submitted 22 August 2018) |
| [MP/INQ/28.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/The-London-Borough-of-Sutton-Orchard-Hill-Woodmansterne-Road-Access-Lan....pdf) | The London Borough of Sutton (Orchard Hill Woodmansterne Road Access Land) Compulsory Purchase Order 2010 |
|  | Please note that MP/INQ/029.1-029.3 have been linked to MP/INQ/029 for clarity |
| [MP/INQ/029](http://www.hwa.uk.com/site/wp-content/uploads/2018/06/MP-INQ-029.pdf) | Letter from BDB dated 26 July 2018 (submitted to Inspector 14 September 2018) |
| [MP/INQ/029.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/06/MP-INQ-029.1-1.pdf) | Enclosure: Mark up of UU protective provisions dated 22 May 2018 (submitted 14 September 2018) |
| [MP/INQ/029.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/06/MP-INQ-029.2-1.pdf) | Enclosure Proposed protective schedule dated 26 July 2018 (submitted 14 September 2018) |
| [MP/INQ/30](http://www.hwa.uk.com/site/wp-content/uploads/2018/06/MP-INQ-029.3.pdf) | Letter to PM dated 13 September (submitted 13 September 2018) |
| [MP/INQ/031](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP-INQ-030.pdf) | Letter to PM dated 14 September (submitted 14 September 2018) |
| [MP/INQ/32](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-2-October-2018-APA.pdf) | Letter to PM dated 2 October (submitted 2 October 2018) |
| [MP/INQ/032.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP-INQ-031.1.pdf) | Mersey Gateway Bridge Order 2011 Schedule 10 part 1 |
| [MP/INQ/032.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP-INQ-031.2.pdf) | Trafford Park Extension Order 2016 |
| [MP/INQ/033](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP-INQ-032.pdf) | Second Letter to PM dated 2 October (submitted 2 October 2018) |
| [MP/INQ/033.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP-INQ-032.1.pdf) | Blank revised Manchester Ship Canal Licence v3 |
| [MP/INQ/34](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP-INQ-33.pdf) | Letter from BDB to Pinsent Masons dated 4 October (submitted 4 October 2018) |
| [MP/INQ/35](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Mr-Clive-Sproule-5-October-2018.pdf) | Letter from BDB to the Inspector dated 5 October (submitted 5 October 2018) |
| [MP/INQ/36](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-10-October-2018.pdf) | Letter from BDB to PM dated 10 October in response to PM letter of 10 October (submitted 10 October 2018) |
| [MP/INQ/37](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-12-October-2018-1.pdf) | Letter from BDB to PM dated 12 October in response to PM letter of 26 September (submitted 12 October 2018) |
| [MP/INQ/38](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-22-October-2018.pdf) | Letter from BDB to PM dated 22 October in response to PM letter of 26 June 2018 (submitted 12 October 2018) |
| [MP/INQ/39](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-24-October-2018.pdf) | Letter from BDB to PM dated 24 October in response to PM letter of 19 October 2018 (submitted 24 October 2018) |
| [MP/INQ/40](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-2-November-2018-1.pdf) | Letter from BDB to PM dated 2 November in response to PM letter of 12 & 19 October (submitted 2 November 2018) |
| [MP/INQ/41](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-8-November-2018.pdf) | Letter from BDB to PM dated 8 November in response to PM letter of 19 & 24 October (submitted 8 November 2018) |
| [MP/INQ/42](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-9-November-2018-1.pdf) | Letter from BDB to PM dated 9 November in response to PM letter of 23 & 24 October (submitted 9 November 2018) |
| [MP/INQ/43](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-12-November-20181.pdf) | Letter from BDB to PM dated 12 November (submitted 12 November 2018) |
| [MP/INQ/44](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_44-Ofwat-Setting-Price-Controls-for-2015-20-August-2014.pdf) | Ofwat Setting Price Controls for 2015-20 (August 2014) (submitted 12 November 2018) |
| [MP/INQ/45](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_45-Ofwat-Setting-Price-Control-2015-20-Technical-Appendix-August-2014.pdf) | Ofwat Setting Price Control 2015-20 -Technical Appendix (August 2014) (submitted 12 November 2018) |
| [MP/INQ/46](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_46-UUWL-2017-Annual-performance-report-2016-17.pdf) | UUWL (2017) Annual performance report 2016-17 (submitted 12 November 2018) |
| [MP/INQ/47](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_47-UUWL-2018-Annual-performance-report-2017-18.pdf) | UUWL (2018) Annual performance report 2017-18 (submitted 12 November 2018) |
| [MP/INQ/48](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_48-UUWL-PR19-Business-Plan-Executive-Summary-Sept-2018.pdf) | UUWL PR19 Business Plan, Executive Summary (Sept 2018) (submitted 12 November 2018) |
| [MP/INQ/49](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_49-UUWL-PR19-Business-Plan-2020-25-Chapter-9-Sept-2018.pdf) | UUWL PR19 Business Plan 2020-25 Chapter 9 (Sept 2018) (submitted 12 November 2018) |
| [MP/INQ/50](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_50-Email-from-EA-to-BDB-19.07.18.pdf.pdf) | Email from the EA to BDB, 19 July 2018 (submitted 12 November 2018) |
| [MP/INQ/50.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_50.1-Fish-Kill-NIRS-extract-2013-18-Barton-Locks.xlsx) | Fish Kill NIRS extract 2013-18, Barton Locks (submitted 12 November 2018) |
| [MP/INQ/51](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_51-Errata-Sheet-for-Phil-Studds-Supplementary-Evidence.pdf) | Errata Sheet for Phil Studds’ Supplementary Evidence (submitted 12 November 2018) |
| [MP/INQ/51.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_51.1-Phil-Studds-Amended-Table-6.pdf) | Amended Table 6 to Phil Studds’ Evidence (submitted 12 November 2018) |
| [MP/INQ/52](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-12-November-2018-second-letter.pdf) | Second Letter from BDB to PM dated 12 November (submitted 12 November 2018) |
| [MP/INQ/53](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-16-November-2018.pdf) | Letter from BDB to PM dated 16 November in response to PM letter of 14 November (submitted 16 November 2018) |
| [MP/INQ/54](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-SoS-Eccles-WwTW-CPO-Inquiry-16-November-2018-1.pdf) | Letter from BDB to the Secretary of State dated 16 November (submitted 16 November 2018) |
| [MP/INQ/55](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-20-November-2018-1.pdf) | Letter from BDB to PM dated 20 November in response to PM letter of 8 November (submitted 20 November 2018) |
| [MP/INQ/56](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP-INQ-56.pdf) | Second letter from BDB to PM dated 20 November (submitted 20 November 2018) |
| [MP/INQ/56.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_56.1.pdf) | Updated EA website data Irwell Manchester Ship Canal (Irk to confluence with Upper Mersey) Overview |
| [MP/INQ/57](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_57-Note-to-address-AA_INQ_60-1.pdf) | Note to address AA/INQ/60 (submitted 23 November 2018) |
| [MP/INQ/57.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_57.1-WRc-2005-compiled-extracts.pdf) | Default and Sensitivity Values for use in Simplified UPM Modelling Studies - WRc 2005 compiled extracts (submitted 23 November 2018) |
| [MP/INQ/57.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_57.2-Recalculation-Final__-Table-6-Assessment-of-contaminant-loa....pdf) | Tracked Tables 6a and 6b Final effluent and spill volumes entering the Salteye Brook and Manchester Ship Canal (submitted 23 November 2018) |
| [MP/INQ/57.2.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_57.2.1-Recalculation__-Final-Table-6-Assessment-of-contaminant-l....pdf) | Clean Tracked Tables 6a and 6b Final effluent and spill volumes entering the Salteye Brook and Manchester Ship Canal (submitted 23 November 2018) |
| [MP/INQ/57.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_57.3-Amended-Errata__-Sheet-for-Phil-Studds-Supplementary-Evide....pdf) | Amended Errata Sheet to Phil Studds’ Supplementary Evidence (MP/3/D, F.1, F.2 and F.3) (submitted 23 November 2018) |
| [MP/INQ/58](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_58-Note-from-Phil-Studds__-in-response-to-request-for-information.pdf) | Note from Phil Studds, in response to request for information (submitted 26 November 2018) |
| [MP/INQ/58.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_58.1-RNLI-Coventina-Part-B6-Q10b-H1-Risk-Assessment.pdf) | RNLI Coventina Part B6, Q10b - H1 Risk Assessment (submitted 26 November 2018) |
| [MP/INQ/58.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_58.2-RNLI-Permit-2014.pdf) | RNLI Permit 2014 (submitted 26 November 2018) |
| [MP/INQ/58.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_58.3-MG-Discharge-consent-Celtic-Tech.pdf) | MG Discharge Consent – Celtic Technologies Limited (submitted 26 November 2018) |
| [MP/INQ/59](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_59-Letter-to-EA-13-November-2017.pdf) | Letter from DBD to the EA dated 13 November 2017  (submitted 26 November 2018) |
| [MP/INQ/60](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_60-Update-Summary-of__-Ground-Conditions-in-Supplementary-Investigations-evid.._.pdf) | Summary of Ground Conditions in Supplementary Investigations – Revised Table 3 from AA/INQ 61 (submitted 29 November 2018) |
| [MP/INQ/61](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_61-Borehole-logs-relative-wing-wall.pdf) | Ground Conditions at base of northern steps of Wing Wall (submitted 29 November 2018) |
| [MP/INQ/62](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_62-Letter-to-Pinsent-Masons-30-November-2018.pdf) | Letter from BDB to PM dated 30 November 2018 in response to PM letter of 30 November 2018 (submitted 30 November 2018) |
| [MP/INQ/62.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_62.1.pdf) | Related email correspondence dated 2 November 2018 (submitted 30 November 2018) |
| [MP/INQ/63](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_63-Photo-Elevation-view__-of-Figure-10-of-MP_6_C.16-Appendix-P.pdf) | Photograph – elevation view of Figure 10 of MP/6/C.16 – appendix p (submitted 30 November 2018) |
| [MP/INQ/64](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_64.pdf) | “The Manchester Ship-Canal-Irlam Division” By William Oliver Evelyn Meade-King (submitted 30 November 2018) |
| [MP/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-December-2018-1.pdf) | Letter from BDB to PM dated 4 December 2018, regarding their  proposal for resolving the outstanding issues remaining between the parties (submitted 4 December 2018) |
| [MP/INQ/66](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_66-COMPARITE-BDB-Draft-Schedule-WITH-APA.pdf) | Comparite Draft Schedule with APA (submitted 6 December 2018) |
| [MP/INQ/67](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_67-COMPARITE-BDB-Draft-Schedule-WITHOUT-APA.pdf) | Comparite Draft Schedule without APA (submitted 6 December 2018) |
| [MP/INQ/68](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_68-List-of-Ship-Canal-Enactments-and-powers.pdf) | MSCCL’s Provisional List of Ship Canal Enactments and Powers of the harbour master/authority required to be retained (submitted 6 December 2018) |
| [MP/INQ/69](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_69-BDB-Draft-Schedule-WITHOUT-APA.pdf) | Clean Draft Schedule without APA (submitted 6 December 2018) |
| [MP/INQ/70](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_70-BDB-Draft-Schedule-WITH-APA.pdf) | Clean Draft Schedule with APA (submitted 6 December 2018) |
| [MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf) | Closing submissions on behalf of Manchester Ship Canal Company Limited, dated 14 December 2018 |
| [MP/INQ/71.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.1-MSCCL-Closing-Submissions-Appendix-1.pdf) | Appendix 1 to closing submissions on behalf of Manchester Ship Canal Company Limited |
| [MP/INQ/71.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.2-MSCCL-Closing-Submissions-Appendix-2.pdf) | Appendix 2 to closing submissions on behalf of Manchester Ship Canal Company Limited |
| [MP/INQ/71.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.3-MSCCL-Closing-Submissions-Appendix-3.pdf) | Appendix 3 to closing submissions on behalf of Manchester Ship Canal Company Limited |
| [MP/INQ/71.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.4-MSCCL-Closing-Submissions-Appendix-4.pdf) | Appendix 4 to closing submissions on behalf of Manchester Ship Canal Company Limited |
| [MP/INQ/71.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.5-MSCCL-Closing-Submissions-Appendix-5.pdf) | Appendix 5 to closing submissions on behalf of Manchester Ship Canal Company Limited |
| [MP/INQ/71.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71.6-MSCCL-Closing-Submissions-Appendix-6.pdf) | Appendix 6 to closing submissions on behalf of Manchester Ship Canal Company Limited |
| [MP/INQ/72](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MSCCL-Note-in-response-to-UUWL-Closing-Submissions-1.pdf) | Response to the closing submissions of United Utilities, dated 25 January 2019 |
| [MP/INQ/72a](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-Stephen-West-Note-in-response-to-Borehole-7-Information-2-1.pdf) | Appendix - note by Stephen West in response to Borehole 7 information |

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| **PEEL INVESTMENTS (NORTH) LIMITED – INQUIRY DOCUMENT** | |
| [PINL/INQ/1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Let-PINL-to-SoS-19.11.18.pdf) | Letter from Walker Morris to the Secretary of State on behalf of Peel Investments (North) Limited, dated 19 November 2018, confirming withdrawal of their objection |

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| **CITY OF SALFORD COMMUNITY STADIUM LIMITED & PORT SALFORD LAND LIMITED** | |
| [PS/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-A-Robert-Longworth-of-Mott-MacDonald-Proof.pdf) | Proof of evidence of Robert Longworth |
| [PS/1/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-B-Robert-Longworth-of-Mott-MacDonald-Summary.pdf) | Summary proof of evidence of Robert Longworth |
| [PS/1/C1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-A-Tunnel-route-thro-CoSCoS.pdf) | Appendix A - Tunnel route through CoSCoS |
| [PS/1/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-B-Ground-Conditions.pdf) | Appendix B - Ground Conditions along the Tunnel Route |
| [PS/1/C3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-C-Land-Ownership.pdf) | Appendix C - Land Ownership |
| [PS/1/C4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-D-WGIS-highways.pdf) | Appendix D - WGIS Highways |
| [PS/1/C5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-E-Consented-rail-infrastucture.pdf) | Appendix E - Consented rail infrastructure |
| [PS/1/C6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-F-Meeting-record-BHLB-220218.pdf) | Appendix F - Meeting record Barton High Level Bridge 220218 |
| [PS/1/C7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-G-Port-Salford_Proposed-Site-Plan.pdf) | Appendix G - Port Salford Proposed Site Plan |
| [PS/1/C8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-H-Topographical-Survey-Salteye.pdf) | Appendix H - Topographical Survey Salteye |
| [PS/1/C9](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-I-Rail-masterplan-layout.pdf) | Appendix I - Rail Masterplan Layout |
| [PS/1/C10](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-J-Jacobs-rail-report.pdf) | Appendix J - Jacobs Rail Report |
| [PS/1/C11](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-K-Rail-masterplan-and-CPO-plots.pdf) | Appendix K - Masterplan and CPO Plots |
| [PS/1/C12](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-L-CoSCoS-masterplan.pdf) | Appendix L - CoSCoS Masterplan |
| [PS/1/C13](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-M-CPO-overall-plan.pdf) | Appendix M - CPO Overall Plan |
| [PS/1/C14](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-N-Plan-1-CPO-plots-east.pdf) | Appendix N - CPO Plots East |
| [PS/1/C15](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-O-Plan-2-CPO-plots-Stadium.pdf) | Appendix O - CPO Plots Stadium |
| [PS/1/C16](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-P-Plan-3-CPO-plots-Stadium-north.pdf) | Appendix P - CPO Plots Stadium North |
| [PS/1/C17](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-Q-Plan-4-CPO-plots-Port-Salford.pdf) | Appendix Q - CPO Plots Port Salford |
| [PS/1/C18](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-R-Plan-4a-_-CPO-freehold-plots.pdf) | Appendix R - Plan 4a – Freehold Plots |
| [PS/1/C19](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-S-Stadium-drainage-plan1.pdf) | Appendix S - Stadium Drainage |
| [PS/1/C20](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-Appendix-T-Anchor-retail-unit-plots.pdf) | Appendix T - Anchor Retail Unit Plot |
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| [PS/1/C22.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-Heads-of-Terms-03052018.pdf) | Appendix V.1 - Draft/ Heads Of Terms |
| [PS/1/C22.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-Offer-Schedule-2-5-18-Rev-B.pdf) | Appendix V.2 - Offer Schedule 2/5/18 Rev-B |
| [PS/1/C22.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-PORT-SALFORD-LAND-LIMITED-AND-COSCOS-LIMITED-2-5-18-rev-C-005.pdf) | Appendix V.3 - Port Salford Land Limited and CoSCos Limited |
| [PS/1/C22.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-XX-00-SK-Z-10001A-P7.pdf) | Appendix V.4 - Map 10001A - P7 |
| [PS/1/C22.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-XX-00-SK-Z-10001-P11.pdf) | Appendix V.5 - Map 10001 - P11 |
| [PS/1/C22.6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-XX-00-SK-Z-10002-P10.pdf) | Appendix V.6 - Map 10002 - P10 |
| [PS/1/C22.7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-392905_TN_Geo_001-Ground-Conditions.pdf) | Appendix V.7 - Ground Conditions along the Tunnel Route |
| [PS/1/C22.8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-392905_TN_Geo_003-Pile-Lateral-Displacement-Assessment.pdf) | Appendix V.8 - Tunnel-Pile Interaction |
| [PS/1/C22.9](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-392905_TN_GEO-005-Ground-Monitoring.pdf) | Appendix V.9 - Proposals for Ground Monitoring |
| [PS/1/C22.10](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-392905_TN-Geo_002-Piling-Assessment.pdf) | Appendix V.10 - Pile Capacity & Settlement Analysis for Bridging Slabs |
| [PS/1/C22.11](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-392905-MMD-00-000-SK-A-10036-P03.pdf) | Appendix V.11 - Design 10036-P03 |
| [PS/1/C22.12](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-392905-MMD-00-000-SK-A-10037-P04.pdf) | Appendix V.12 - Design 10037-P04 |
| [PS/1/C22.13](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-392905-STR-001-Building-Foundations.pdf) | Appendix V.13 - Building Foundation Options |
| [PS/1/C22.14](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-00-XX-DR-C-0001-P6.pdf) | Appendix V.14 - MMD 00 XX DR C 0001-P6 |
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| [PS/1/C22.16](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-00-XX-DR-C-0003-P6.pdf) | Appendix V.16 - MMD 00 XX DR C 0003-P6 |
| [PS/1/C22.17](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-00-XX-DR-C-0004-P6.pdf) | Appendix V.17 - MMD 00 XX DR C 0004-P6 |
| [PS/1/C22.18](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-00-XX-DR-C-0005-P6.pdf) | Appendix V.18 - MMD 00 XX DR C 0005-P6 |
| [PS/1/C22.19](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-00-XX-DR-C-0020-P7.pdf) | Appendix V.19 - MMD 00 XX DR C 0020-P7 |
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| [PS/1/C22.21](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-00-XX-DR-C-0022-P6.pdf) | Appendix V.21 - MMD 00 XX DR C 0022-P6 |
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| [PS/1/C22.24](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-00-XX-DR-C-0024-P6.pdf) | Appendix V.24 - MMD 00 XX DR C 0024-P6 |
| [PS/1/C22.25](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-00-XX-DR-C-0025-P6.pdf) | Appendix V.25 - MMD 00 XX DR C 0025-P6 |
| [PS/1/C22.26](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-00-XX-DR-C-0035-P2.pdf) | Appendix V.26 - MMD 00 XX DR C 0035-P2 |
| [PS/1/C22.27](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-XX-00-SK-Z-10046-P2.pdf) | Appendix V.27 - MMD XX 00 SK Z 10046-P2 |
| [PS/1/C22.28](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-293621-MMD-XX-00-SK-Z-10048-P2.pdf) | Appendix V.28 - MMD XX 00 SK Z 10048-P2 |
| [PS/1/C22.29](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-392905-GEO-004-Salt-Eye-Diversion-Technical-Note.pdf) | Appendix V.29 - Salt-Eye Brook Diversion Retaining Walls |
| [PS/1/C22.30](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-392905-STR-002-Building-Foundation-Options.pdf) | Appendix V.30 - Building Foundation Options |
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| [PS/1/C22.32](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-MMD-293621-Z-DR-00-XX-12090-P03.pdf) | Appendix V.32 - MMD 293621 Z DR 00 XX 12090-P03 |
| [PS/1/C22.33](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-C-Robert-Longworth-of-Mott-MacDonald-App-V-MMD-XX-00-SK-Z-10040-P02.pdf) | Appendix V.33 - MMD XX 00 SK Z 10040-P02 |
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| [PS/1/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-1-R.pdf) | Rebuttal proof of evidence of Robert Longworth |
| [PS/2/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-2-A-Garry-Rowlands-of-AFL__-Architects-Proof-of-Evidence.pdf) | Proof of evidence of Garry Rowlands |
| [PS/2/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-2-B-Garry-Rowlands-of-AFL__-Architects-Summary-Evidence.pdf) | Summary proof of evidence of Garry Rowlands |
| [PS/2/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-2-C-Garry-Rowlands-of-AFL-Architects-APPENDICES-front-cover.pdf) | Appendices front cover |
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| [PS/2/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-2-R.pdf) | Rebuttal proof of evidence of Garry Rowlands |
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| [PS/2/R1a](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Schedule-1.pdf) | Schedule 1 to the Draft Position Statement |
| [PS/2/R1b](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Schedule-2.pdf) | Schedule 2 to the Draft Position Statement |
| [PS/2/R1c](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Schedule-3.pdf) | Schedule 3 to the Draft Position Statement |
| [PS/3/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-3-A-Michael-Francis-of-Mott__-MacDonald-Proof-of-Evidence.pdf) | Proof of evidence of Michael Francis |
| [PS/3/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-3-B-Michael-Francis-of-Mott-MacDonald-Summary-proof.pdf) | Summary proof of evidence of Michael Francis |
| [PS/3/C1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-3-C-Michael-Francis-of-Mott-MacDonald-Annex-1-One-page-CV-Michael-Francis-2017.pdf) | Appendix 1 - CV |
| [PS/3/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-3-C-Michael-Francis-of-Mott-MacDonald-Annex-2-Geotechnical-conditions.pdf) | Appendix 2 - Ground Conditions along the tunnel route |
| [PS/3/C3.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-3-C-Michael-Francis-of-Mott-MacDonald-Annex-3-1-Thames-water-guidance-on-piling.pdf) | Appendix 3.1 - Guidance on piling, heavy loads, excavations, tunnelling and dewatering |
| [PS/3/C3.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-3-C-Michael-Francis-of-Mott-MacDonald-Annex-3-2-UK-Power-requirement-for-third-party-work.pdf) | Appendix 3.2 - Requirements for Third Party Works in the Vicinity of UK Power Networks Assets |
| [PS/3/C3.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-3-C-Michael-Francis-of-Mott-MacDonald-Annex-3-3-Chapman-et-al.pdf) | Appendix 3.3 - Chapman ET AL |
| [PS/3/C3.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-3-C-Michael-Francis-of-Mott-MacDonald-Annex-4-UU-tunnel-alignment-plan-drawings-Sheet-1-to-4.pdf) | Appendix 4 - UU tunnel alignment plan drawings Sheet 1 to 4 |
| [PS/3/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-3-R-Rebuttal-M-Francis.pdf) | Rebuttal proof of evidence of Michael Francis |
| [PS/4/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-A-Andy-Hall-of-Cushman-Wakefield-Proof-of-Evidence.pdf) | Proof of evidence of Andy Hall |
| [PS/4/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-B-Andy-Hall-of-Cushman-Wakefield-Summary.pdf) | Summary proof of evidence of Andy Hall |
| [PS/4/C1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendices-Front-Cover.pdf) | Appendix front cover |
| [PS/4/C1.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-1-MH1032-SK94-CoSCSL-Land.pdf) | Appendix 1 - MH1032 SK94 CoSCSL Land |
| [PS/4/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-2-MH1032-SK95-CoSCSL-Land-Constituent-Parts.pdf) | Appendix 2 - MH1032 SK95 CoSCSL Land Constituent Parts |
| [PS/4/C3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-3-CoSCS-Annual-Report-2017.pdf) | Appendix 3 - CoSCS Annual Report 2017 |
| [PS/4/C4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-4-COSCOS-Repayment-Schedule.pdf) | Appendix 4 - COSCOS Repayment Schedule |
| [PS/4/C5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-5-Plan-of-Competing-Sites.pdf) | Appendix 5 - Plan of Competing Sites |
| [PS/4/C6.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-6-9733-PL03-Rev-C-Proposed-Site-Plan_1.0.pdf) | Appendix 6.1 - 9733 PL03 RevC Proposed Site Plan 1.0 |
| [PS/4/C6.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-6-9733-PL04_A-Ground-Floor-Plan_1.0.pdf) | Appendix 6.2 - 9733 PL04 A Ground Floor Plan1.0 |
| [PS/4/C6.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-6-9733-PL05_A-Mezzanine-Floor-Plan_1.0.pdf) | Appendix 6.3 - 9733 PL05\_A Mezzanine Floor Plan 1.0 |
| [PS/4/C7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-7-MH1032-SK88-Existing-Sewer-Easement.pdf) | Appendix 7 - MH1032 SK88 Existing Sewer Easement |
| [PS/4/C8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-8-DEED-10-11-04.pdf) | Appendix 8 - Deed 10 November 2004 |
| [PS/4C9](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-9-Extract-from-Pinsent-Masons-Letter-19-01-17.pdf) | Appendix 9 - Extract from Pinsent Masons Letter 19 January 2017 |
| [PS/4/C10](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-4-C-Andy-Hall-of-Cushman-Wakefield-Appendix-10-MH1032-SK101-Option-1-Existing-Sewer-Retained.pdf) | Appendix 10 - MH1032-SK101 Option 1 Existing Sewer Retained |
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| [PS/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS_5_A-Doug-Hann-of-Indigo__-Planning-Planning-Proof-of-Evidence.pdf) | Proof of evidence of Doug Hann |
| [PS/5/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS_5_B-Doug-Hann-of-Indigo__-Planning-Summary-Planning-Proof-of-Evidence.pdf) | Summary proof of evidence of Doug Hann |
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| [PS/5/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS_5_C-Doug-Hann-of-Indigo-Planning-Planning-Appendix-7-A-E-10527121.pdf) | Appendices 7A-7E |
| [PS/5/C3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS_5_C-Doug-Hann-of-Indigo__-Planning-Planning-Appendix-7-F-Q.pdf) | Appendices 7F-7Q |
| [PS/5/C4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS_5_C-Doug-Hann-of-Indigo-Planning-Planning-Appendices-8-to-15.pdf) | Appendices 8-15 |
| [PS/5/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PS-5-R.pdf) | Rebuttal Proof of evidence of Doug Hann |
| [PS/INQ/1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Draft-Position-Statement-4.6.18.pdf) | Draft Position Statement, 4 June 2018 (was ID/5) |
| [PS/INQ/1.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Schedule-1.pdf) | Schedule 1 to the Draft Position Statement (was ID/5a) |
| [PS/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Schedule-2.pdf) | Schedule 2 to the Draft Position Statement (was ID/5b) |
| [PS/INQ/1.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Schedule-3.pdf) | Schedule 3 to the Draft Position Statement (was ID/5c) |
| [PS/INQ/2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pinsent-letter-11-June-2018.pdf) | Letter to Pinsent Masons from Walker Morris, 11 June 2018 (was ID/6) |
| [PS/INQ/3](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/ECCLES-WWTW-CPO-OPENING-COSCOS-PSL_.pdf) | Opening submissions by City of Salford Community Stadium Limited & Port Salford Land Limited |
| [PS/INQ/4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Let-CoSCoS-to-SoS-19.11.18.pdf) | Letter from Walker Morris to the Secretary of State on behalf of City of Salford Community Stadium Limited, dated 19 November 2018, confirming withdrawal of their objection |
| [PS/INQ/5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Let-PSLL-to-SoS-19.11.18.pdf) | Letter from Walker Morris to the Secretary of State on behalf of Port Salford Land Limited, dated 19 November 2018, confirming withdrawal of their objection |

1. MSCCL closing submissions [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)], at paras 74 and 80 [↑](#footnote-ref-1)
2. MSCCL withdrew any “in principle” objection to the CPO on day 28 of the Inquiry – see MSCCL closing submissions, at paragraph 5 [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)] (see also [[MP/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-December-2018-1.pdf)] and [[AA/INQ/79](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Laura-Thornton-United__-Utilities-Water-Limited-Ltr-dated-4.12.18....pdf)]). In its closing submissions, MSCCL suggests that it does not anticipate the Inspector and Secretary of State will need to deal with what are referred to as “*otherwise controversial issues*”. The only examples given are said to be the Acquiring Authority’s optioneering exercise, or the extent to which water quality is attributable to the Acquiring Authority assets rather than the structure of the Canal itself. The withdrawal of MSCCL’s objection in principle to the Order necessarily means that MSCCL no longer object to the principle of the Order in light of that evidence. There cannot be any “*controversial*” issues relevant to the principle of the Order at all. MSCCL is no longer challenging the validity of the Acquiring Authority’s selection of the Order Scheme through the optioneering that took place. In any event, the Acquiring Authority’s evidence on this topic has been heard and tested at the Inquiry. The Acquiring Authority has not withdrawn any of its evidence. The Acquiring Authority agrees that in light of MSCCL’s withdrawal of any ‘in principle’ objection, many issues MSCCL previously sought to raise are no longer ones that are likely to require detailed consideration by the Inspector or Secretary of State. But the Acquiring Authority certainly does not accept that issues such as the correct selection of the CPO Scheme by way of optioneering can properly be described as “*controversial*” anymore. [↑](#footnote-ref-2)
3. See Footnote 18 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] [↑](#footnote-ref-3)
4. See, in particular: the proof of evidence of Mr Haslett [[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)], at paras 6.11 to 6.17, section 8 and section 10; the rebuttal proof of evidence of Ms Rands [[AA/12/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_12_R-Joanne-Rands-Rebuttal.pdf)], at para 2.16; the proof of evidence of Mr Pearson [[AA/4/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_4_A-Luke-Pearson-Proof.pdf)], at para 4.5; the proof of evidence of Dr Hendry [[AA/3/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Keith-Hendry-Proof-PDF.pdf)], at para 9.2.1, along with Appendix 4 to that proof. [↑](#footnote-ref-4)
5. The Acquiring Authority would still require foot access through the operational area of the locks (via Plots 6W, 6AA, 6B, 6 and 4C) if any vessel engaged in the maintenance of the outfall were moored in Plot 6T. This is covered in the PSLL/PINL agreements. [↑](#footnote-ref-5)
6. The instrument appointing it as statutory undertaker under s.6 of the 1991 Act, the conditions of which are enforceable against the Acquiring Authority under s.18. [↑](#footnote-ref-6)
7. During the cross-examination of Mr Perry [↑](#footnote-ref-7)
8. Note that different considerations would apply to building over the pipe itself rather than routes of access to it, as the Building Regulations restrict building over sewers. [↑](#footnote-ref-8)
9. See cross-examination of Mr Perry. In this regard, although Mr Fields maintained his distinction between cost beneficial and cost effectiveness, he acknowledged that the Order Scheme is the most cost effective option before the Inspector and Secretary of State. [↑](#footnote-ref-9)
10. See the proof of evidence of Mr Haslett [[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)], at section 9. [↑](#footnote-ref-10)
11. See the rebuttal proof of Mr Baron [[AA/2/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/05/AA_2_R-Gary-Baron-Rebuttal.pdf)], at sections D, H and I. [↑](#footnote-ref-11)
12. See the Technical Note of Ms Rands, at Appendix 4 to Dr Hendry’s proof of evidence [[AA/3/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendics-to-Proof-of-Evidence-amended.pdf)], along with the rebuttal proof of Ms Rands [[AA/12/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_12_R-Joanne-Rands-Rebuttal.pdf)], at section 4. [↑](#footnote-ref-12)
13. See the proof of evidence of Mr Sephton [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)], at section 4. [↑](#footnote-ref-13)
14. For example, Mr Haslett’s proof of evidence [[AA/1/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_A-Keith-Haslett-Proof.pdf)] at para 9.16 and his rebuttal proof [[AA/1/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_1_R-Keith-Haslett-Rebuttal.pdf)] at section B. [↑](#footnote-ref-14)
15. Cross-examination of Mr Perry. See, further, the rebuttal proof of evidence of Mr Sephton [[AA/8/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_R-Sephton-Rebuttal-FINAL.pdf)], at paragraphs 31 and 32 where it is noted that although the hydraulic design criteria stated within BS EN 752 is not applicable to the proposed outfall tunnel, BS EN 752 Section D.2.5 – Need for Pumping, states that: “*Where part of a system cannot be effectively drained using a gravity system then consideration should be given to the use of one or more pumping installations. The optimum number of installations shall first be determined having regard to the whole life cost”*, which statement indicates that where practicable a gravity solution should be considered in preference to a pumped system. [↑](#footnote-ref-15)
16. Understood to be 2300mm nominal bore = internal diameter [↑](#footnote-ref-16)
17. See the proof of evidence of Mr Sephton [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)], at paragraph 4.69. [↑](#footnote-ref-17)
18. See the proof of evidence of Mr Sephton [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)], at section 7. [↑](#footnote-ref-18)
19. See the rebuttal proof of Mr Sephton [[AA/8/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_R-Sephton-Rebuttal-FINAL.pdf)], at paragraph 23. [↑](#footnote-ref-19)
20. See [[AA/3/R2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_3_R-Appendix-2-Eccles-CPO__-Outfall-Tunnel-DB-Technical-Memo-v02.pdf)], page 3. [↑](#footnote-ref-20)
21. These velocities are as per the velocities in the original guidance issued on 11 December 2012. [↑](#footnote-ref-21)
22. The Full Scheme does not include connecting existing or new catchments outside of the Eccles catchment to the existing public sewer network that currently discharges to Salteye Brook via the SAL0018 overflow or the WwTW outfall. Best practice development control will be employed to ensure that the volumes of surface runoff from new development within the Eccles catchment will not contribute to additional flows discharging to the Canal. Climate change will increase the volumes of surface water runoff that currently discharge to the combined sewers within the Eccles catchment. However, it should be noted that these increases would occur irrespective of whether the Full Scheme is implemented. There is no current proposal in the near future to increase the consented treatment capacity of Eccles WwTW. Therefore, the discharge rate of treated flows to the Canal is not anticipated to increase. However, the overall volume of treated effluent discharging to the Canal will increase marginally in relation to new development within the Eccles catchment. However, it should again be noted that these increases would occur irrespective of whether the Full Scheme is implemented. [↑](#footnote-ref-22)
23. See the proof of evidence of Mr Sephton [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)], at paragraph 7.11. [↑](#footnote-ref-23)
24. As presented in the Optioneering Solutions Report (May 2018) [[CD/OTH/33](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.OTH_.33-UU-Optioneering-Solutions-Report-09052018.pdf)] and in evidence given by Haslett, Baron and Rands [↑](#footnote-ref-24)
25. See letter dated 5 October 2018 [[MP/INQ/35](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Mr-Clive-Sproule-5-October-2018.pdf)]. [↑](#footnote-ref-25)
26. In the Optioneering Solutions Report (May 2018) [[CD/OTH/33](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.OTH_.33-UU-Optioneering-Solutions-Report-09052018.pdf)] [↑](#footnote-ref-26)
27. For the avoidance of doubt, that applies to whether one attempts to provide a SuDS solution as a substitute for the Order Scheme or whether one seeks to achieve some SuDS solutions in an effort to increase water separation and then attempts to use some alternative to the Order Scheme. [↑](#footnote-ref-27)
28. Such as survey works to establish underwater contours and the condition of the canal bank and bed at the outfall location, and the provision of a safety boat alongside the canal bank during construction. [↑](#footnote-ref-28)
29. The upstream approach route to the lock is open on the mid-channel side and bounded by a well fendered timber jetty structure to the canal bank. The downstream approach route is bounded by a near derelict mid-channel finger jetty with nothing to the landward side. There is an open recessed area of water between the navigable channel and the canal bank and this is where it is proposed the outfall will be sited. [↑](#footnote-ref-29)
30. Captain Nicholson’s evidence was that it is likely that a small tug will be able to act as both standby boat and barge shifting tug, as/when necessary. [↑](#footnote-ref-30)
31. See the proof of evidence of Mr Blythe [[MP/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_7_A-Proof-of-Evidence-of-Joe-Blythe-V.2.pdf)], at paras 16 to 34. [↑](#footnote-ref-31)
32. See the summary proof of evidence of Mr Blythe [[MP/7/B](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_7_B-Summary-Proof-of-Evidence-Joe-Blythe-MP_7_B.pdf)], at para 1.39. [↑](#footnote-ref-32)
33. See Letter from BDB to Pinsent Masons dated 20 November 2018 in response to Pinsent Masons letter of 8 November (submitted 20 November 2018) [[MP/INQ/55](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-20-November-2018-1.pdf)]. [↑](#footnote-ref-33)
34. See the proof of evidence of Mr Blythe [[MP/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_7_A-Proof-of-Evidence-of-Joe-Blythe-V.2.pdf)], at para 32. [↑](#footnote-ref-34)
35. In any event, if the Order is confirmed, the construction works would likely to be complete long before any hoped for rise in passing traffic at Barton Locks might materialise. But even if the level of frequency had increased by the time of construction, Captain Nicholson states that “it would not alter [his] conclusions that the construction can readily occur alongside the continued operation of the Barton Locks without any material impact”: see rebuttal proof of Captain Nicholson [[AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf)], at paragraph 2.5.4. [↑](#footnote-ref-35)
36. If it were necessary to load inspection/maintenance equipment on board a maintenance boat or barge, this could be easily, quickly and safely achieved at Irlam Wharf in the same way the construction equipment could be managed from there. [↑](#footnote-ref-36)
37. In particular, see the proof of evidence of Mr Sephton [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)], at section 12. [↑](#footnote-ref-37)
38. In particular, see the appendix to the proof of evidence of Mr Smith [[AA/10/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_10_C-Colin-Smith-Appendix-FINAL.pdf)]. [↑](#footnote-ref-38)
39. MSCCL’s closing submissions [[MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf)], at paragraphs 64 and 65. [↑](#footnote-ref-39)
40. MSCCL’s closing submissions, at paragraph 66. [↑](#footnote-ref-40)
41. MSCCL’s closing submissions, at paragraph 67. [↑](#footnote-ref-41)
42. MSCCL’s closing submissions, at paragraph 68. [↑](#footnote-ref-42)
43. See the proof of evidence of Mr McKimm [[AA/6/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_6_A-Roderick-McKimm-Proof-of-Evidence.pdf)], at paragraph 5.10.7 [↑](#footnote-ref-43)
44. MSCCL Statement of Case [[CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf)], at paragraph 10.16 [↑](#footnote-ref-44)
45. See the proof of evidence of Mr McKimm [[AA/6/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_6_A-Roderick-McKimm-Proof-of-Evidence.pdf)], at paragraph 5.10.8. [↑](#footnote-ref-45)
46. Which would seal the contact between them and prevent water flow into the cofferdam and hence groundwater drawdown in the canal bank. [↑](#footnote-ref-46)
47. In response to the very first questions of both evidence in chief. [↑](#footnote-ref-47)
48. In this regard, it is relevant to note that at the point of withdrawal, Walker Morris (rather than BDB) were the solicitors acting for PINL: see letter dated 16 November 2018 [[MP/INQ/54](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-SoS-Eccles-WwTW-CPO-Inquiry-16-November-2018-1.pdf)]. [↑](#footnote-ref-48)
49. MSCCL’s closing submissions, paragraph 255. [↑](#footnote-ref-49)
50. MSCCL’s closing submissions, paragraph 270. [↑](#footnote-ref-50)
51. MSCCL’s closing submissions, at paragraph 271. [↑](#footnote-ref-51)
52. Such as Shaft 04, retaining wall and part of outfall. [↑](#footnote-ref-52)
53. Indeed, it is inappropriate for MSCCL to be seeking to include a shopping list of what would be required for any consent scheme at all, given that Inspectors and the Secretary of State frequently recognise that such shopping lists are not necessary and inappropriate (see, for example, by analogy with conditions on planning permissions). [↑](#footnote-ref-53)
54. Furthermore, the evidence on flooding has confirmed that the risk of flooding is not materially increased as a result of the operation of the proposed outfall. The discharge rates and volumes will not be significantly higher than those currently experienced via Salteye Brook. [↑](#footnote-ref-54)
55. See, for example, letter from BDB to Environment Agency (copied to Salford City Council) on behalf of MSCCL and Peel Investments North Limited, dated 30 April 2018 [[CD/UU-PP/3.21](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.UU_.PP_.3.21-Planning-application-reference-17_70871_FUL-Letter-from-BDB-to-EA-dated-30-April-2018-with-enclosures.pdf)]. [↑](#footnote-ref-55)
56. Throughout the lifecycle of a project it will attend CIC multiple times – for initial sanction, and to request further incremental sanction as the project passes through various pre-defined gateways. These gateways are documented within the Project Delivery System Framework. In order to govern capital expenditure within the Acquiring Authority, the CIC’s powers are to give authorisations and approvals as delegated to it by the company’s Board in line with certain expenditure limits. The Acquiring Authority’s Company Secretariat attends CIC meetings and formally minutes the actions and decisions approved therein. As can be seen from the various CIC Papers in evidence [[CD/OTH/53 – CD/OTH/60](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Core-Documents-List-8-6-2018.pdf)], full business cases for consideration are circulated in advance of each CIC meeting to the members of the Committee. In addition, further briefing notes can be presented to CIC as deemed necessary to keep the CIC fully informed as a project evolves through its lifecycle and to request additional ad hoc financial sanction. This approach ensures that the CIC members have a thorough understanding of a project so as to enable them to make an informed business decision around whether or not to approve the requested sanction and project latest best estimate. [↑](#footnote-ref-56)
57. At which time the Board noted the project’s background along with the forecast costs associated with completing the future scope of works with the total estimated cost to deliver the Scheme now standing at £69 million. [↑](#footnote-ref-57)
58. See s.8 of the 1981 Act. [↑](#footnote-ref-58)
59. Inspector’s note: the text of s.155(1) and (4) is:

    “…***155.— Compulsory purchase.***

    *(1) A relevant undertaker may be authorised by the Secretary of State to purchase compulsorily any land anywhere in England and Wales which is required by the undertaker for the purposes of, or in connection with, the carrying out of its functions.*

    *(2) The power of the Secretary of State under subsection (1) above shall include power—*

    *(a) to authorise the acquisition of interests in and rights over land by the creation of new interests and rights; and*

    *(b) by authorising the acquisition by a relevant undertaker of any rights over land which is to be or has been acquired by that undertaker, to provide for the extinguishment of those rights.*

    *…*

    *(4) Subject to section 188 below, the Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by a relevant undertaker; and Schedule 3 to the said Act of 1981 shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights*….” [↑](#footnote-ref-59)
60. See s.16(1) of the 1981 Act. [↑](#footnote-ref-60)
61. See s.16(2) of the 1981 Act. [↑](#footnote-ref-61)
62. MSCCL’s closing submissions (at para 14 onwards) proceed on the basis that the test in s.16 of the 1981 Act and the test in paragraph 3 of Schedule 3 to the 1981 Act are engaged in this case. This is not in fact correct. The tests in these statutory provisions are only engaged where a statutory undertaker makes duly made representations relevant to each statutory provision respectively in time. In fact, MSCCL’s representations were made under s.16 of the 1981 Act only, not paragraph 3 of Schedule 3 to the 1981 Act, and have been identified as representations under s.16 of the 1981 Act. In these submissions and in its evidence, the Acquiring Authority does deal with both acquisition of MSCCL land and acquisition of rights over MSCCL land, demonstrating no material detriment at all. But strictly speaking, MSCCL only made objections in respect of the former (compulsory acquisition of its land) rather than the latter (acquisition of rights over its land). [↑](#footnote-ref-62)
63. Letter from PM to BDB dated 22 May 2018; Letter from BDB to PM dated 23 May 2018; Letter from BDB to PM dated 4 June 2018; Letter from PM to BDB dated 8 June (submitted 14 June 2018) [AA/INQ/6]; Letter from PM to BDB dated 13 June 2018 (submitted 14 June 2018) [AA/INQ/7]; Letter from BDB to PM dated 21 June 2018 [MP/INQ/10]; Letter from BDB to PM dated 9 July 2018 [MP/INQ/18]; Letter from PM to BDB dated 11 July 2018 [AA/INQ/24]; Letter from BDB to PM dated 26 July 2018 (submitted 14 September 2018) [MP/INQ/029, 029.1 and 029.2]; Letter from BDB to PM dated 13 September 2018 [MP/INQ/30]; Letter from BDB to PM dated 14 September [MP/INQ/31]; Letter from PM to BDB dated 26 September 2018 [AA/INQ/39]; Letter from BDB to PM dated 2 October 2018 [MP/INQ/32]; Letter from BDB to PM dated 12 October 2018 [MP/INQ/37]; Letter from BDB to PM dated 19 October 2018; Letter from BDB to PM dated 2 November 2018 [MP/INQ/40]; Letter from PM to BDB dated 8 November 2018 [AA/INQ/52]; Letter from BDB to PM dated 20 November 2018 [MP/INQ/55]. [↑](#footnote-ref-63)
64. In its closing submissions in the paragraphs leading up to paragraph 48, MSCCL has put forward a tendentious account of what occurred between the parties in relation to discussions regarding protections for MSCCL. The Acquiring Authority strongly disputes this tendentious account which leaves out basic points, such as the fact that MSCCL were objecting ‘in principle to the Order at that stage, and had indeed engaged in a pattern of behaviour of attempting to obstruct the delivery of the scheme (including objections to the planning permission and submission of technical evidence on which reliance has since been abandoned). By contrast, the proper account of what has occurred over the years demonstrates the extensive and repeated efforts the Acquiring Authority has made to reach reasonable agreement with MSCCL to go ahead, including details on the technical arrangements to ensure no difficulties for MSCCL (see, for example, Mr Sephton’s evidence). The Acquiring Authority does not propose to rehearse all of that evidence and detail again, but notes its strong disagreement with the mischaracterisation of what occurred as expressed in MSCCL’s closing submissions in such paragraphs. The same point should be noted about similar observations littered in MSCCL’s closing submissions elsewhere. For example, in paragraph 82 MSCCL refers to MHCLG guidance that an Acquiring Authority should be willing to be open and to treat the concerns of someone affected with respect. MSCCL then invite the Inspector to consider whether the Acquiring Authority’s approach has been consistent with this in relation to the evidence and the questions asked of MSCCL’s witnesses. This is a very unfortunate submission for MSCCL’s representatives to make. The Acquiring Authority has bent over backwards to deal with each and every concern raised by MSCCL, no matter how fanciful or unreasonable such concerns have proved to be. It has answered each and every point with detailed evidence. MSCCL has proved intractable and unreasonable in its approach, motivated as it has been by a desire to extract a huge and hugely controversial fee for any agreement for the right to discharge. It is only as a result of testing MSCCL’s witnesses that it was revealed that MSCCL evidence was seriously misleading or was advanced in a way which did not conform with the professional duties of a witness. MSCCL do not in fact identify anything which has been “*unnecessarily combative, dismissive and at times personal*”, but if they are referring to the fact that the Acquiring Authority’s evidence and questioning has demonstrated that MSCCL evidence was seriously misleading in critical areas, or MSCCL are seeking to ignore that fact, then it is MSCCL which is seriously at fault. It is deeply regrettable that MSCCL’s unfounded in principle objection was pursued based on such evidence, where it has had the direct consequence of delaying an important, environmental beneficial and necessary project in the public interest. [↑](#footnote-ref-64)
65. MSCCL’s closing submissions, at paragraph 11. [↑](#footnote-ref-65)
66. See the proof of evidence of Mr Rhodes [[MP/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_A-John-Rhodes-Proof-of-Evidence.pdf)], at paragraphs 3.65 and 5.24. [↑](#footnote-ref-66)
67. MSCCL’s closing submissions, at paragraph 16. [↑](#footnote-ref-67)
68. MSCCL’s closing submissions, at paragraph 17. [↑](#footnote-ref-68)
69. In its closing submissions (at paragraph 16), MSCCL suggest it is perplexed by what it claims were comments by Leading Counsel for the Acquiring Authority that one would not ordinarily expect to have asset protection agreements in place before a compulsory purchase order is made, and such agreements are not of particular relevance to the Secretary of State when confirming an order. This is not an accurate characterisation of the points made by Leading Counsel for the Acquiring Authority. For the reasons already set out in more detail, there is no requirement for asset protection agreements with statutory undertakers to be in place for a compulsory purchase order to be confirmed. Indeed, it is commonplace for compulsory purchase orders to be made without such asset protection agreements in place (contrary to what MSCCL assert in its closing submissions, at paragraph 17 onwards). In some cases, APAs are entered into prior to compulsory purchase orders being made. In other cases, no APAs are entered into at all, as statutory undertakers are satisfied that Acquiring Authority schemes will be undertaken competently. In other cases, APAs may come to be concluded between parties after a compulsory purchase order is made, but as part of a consent process equivalent to Schedule 13 when works come to be carried out. There is no standard process or requirement. The critical point is that APAs are not necessary in principle and the Secretary of State does not need to require APAs or be concerned with their terms. Where the evidence demonstrates a scheme will not cause material detriment, that is ordinarily sufficient to justify confirmation of an order. In other cases, the incorporation of a consent mechanism may in itself provide that requisite protection. Both scenarios apply here. The evidence demonstrates the Order Scheme can be carried out without material detriment. But in any event, the Acquiring Authority’s proposed schedule proposes a consent mechanism so that MSCCL can withhold consent, or impose conditions, to prevent serious detriment. [↑](#footnote-ref-69)
70. MSCCL’s closing submissions, in the heading above paragraph 75. [↑](#footnote-ref-70)
71. MSCCL’s closing submissions, paragraph 77. [↑](#footnote-ref-71)
72. Which is included in Appendix DS30 to the proof of evidence of Mr Sephton [[AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf)], at page 902 onwards. [↑](#footnote-ref-72)
73. As explained in detail in Section 3 of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)]. [↑](#footnote-ref-73)
74. MSCCL’s closing submissions, at paragraph 110. [↑](#footnote-ref-74)
75. See the Acquiring Authority’s opening submissions [[AA/INQ/3](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/UU-OPENING-FINAL.pdf)], paragraph 1.8. [↑](#footnote-ref-75)
76. MSCCL’s closing submissions, at paragraph 79 of [MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf). [↑](#footnote-ref-76)
77. MSCCL’s closing submissions, at paragraphs 92 and 101. [↑](#footnote-ref-77)
78. MSCCL’s closing submissions, at paragraph 93. [↑](#footnote-ref-78)
79. MSCCL’s closing submissions, at paragraph 98 of [MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf). [↑](#footnote-ref-79)
80. MSCCL’s closing submissions, at paragraph 10 of [MP/INQ/71](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_71-MSCCL-Closing-Submissions.pdf). [↑](#footnote-ref-80)
81. At various points, MSCCL claim that the Acquiring Authority’s attitude to protection has “*shifted on a number of occasions*” (see, for example, MSCCL’s closing submissions, at para 18 and the sub-paragraphs that follow). This too is a clear mischaracterisation of events and rewrites history. As identified elsewhere, the Acquiring Authority only promoted the underlying scheme after undertaking detailed and collaborative discussions with MSCCL on the scheme itself and its implementation by agreement, and how it could be done without causing detriment to MSCCL at all (see Mr Sephton’s detailed and unchallenged evidence). It was only after MSCCL withdrew cooperation because of its financial motivation that resort to the Order became necessary, but does not entitle MSCCL to ignore the detailed technical discussions and agreements that had been reached about the scheme itself. As to the statutory scheme, the Acquiring Authority has noted that Schedule 13 does not apply to s.155 of the 1991 Act (and the reasons why that is the case), but it has long made clear that it has been prepared to incorporate the equivalent protections to Schedule 13 anyway, along with provisions regarding the harbour master. That remains the case now. Regrettably, progress on the scheme has been prevented by MSCCL’s now withdrawn ‘in principle’ objection to the Order itself, rather than any issues regarding protective provisions. MSCCL’s selective account of the correspondence ignores the past discussions and does not take the issues forward. [↑](#footnote-ref-81)
82. MSCCL’s closing submissions, at paragraph 51. [↑](#footnote-ref-82)
83. MSCCL’s closing submissions, at paragraph 53. [↑](#footnote-ref-83)
84. MSCCL’s closing submissions, paragraph 53. [↑](#footnote-ref-84)
85. ***R v Rochdale MBC ex p. Milne (No. 1)*** [2000] Env. L.R. 1 and ***(No. 2)*** [2001] Env. L.R. 22. [↑](#footnote-ref-85)
86. As section 3 of PINS Advice Note Nine makes clear. [↑](#footnote-ref-86)
87. PINS Advice Note Nine, paragraph 4.12. [↑](#footnote-ref-87)
88. PINS Advice Note Nine, paragraph 4.15. [↑](#footnote-ref-88)
89. PINS Advice Note Nine, paragraph 4.16. [↑](#footnote-ref-89)
90. PINS Advice Note Nine, paragraph 5.8. [↑](#footnote-ref-90)
91. As to concessions in relation to there being no ‘in principle’ objection from an engineering or construction perspective, see section 4C of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] and above. [↑](#footnote-ref-91)
92. See, for examples, i) Mr West’s concessions in respect of the unrealistic assumptions underlying his Appendix 7; and ii) Mr Clarke’s concessions in respect of the suggested use of a jack-up barge and what this might mean by way of land or marine construction (and for both, section 4C of the Acquiring Authority’s closing submissions [[AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)] and above). [↑](#footnote-ref-92)
93. MSCCL’s closing submissions, at paragraph 51. [Inspector’s note: paragraph 573 below] [↑](#footnote-ref-93)
94. MSCCL’s closing submissions, at paragraph 80. [Inspector’s note: paragraph 601 below] [↑](#footnote-ref-94)
95. MSCCL’s closing submissions, at paragraphs 64 to 70. [Inspector’s note: paragraphs 585-591 of this report] [↑](#footnote-ref-95)
96. MSCCL’s closing submissions, at paragraph 111. [↑](#footnote-ref-96)
97. See, for example, MSCCL’s closing submissions, at paragraph 120. [↑](#footnote-ref-97)
98. MSCCL’s closing submissions, at paragraphs 71 to 73. [↑](#footnote-ref-98)
99. MSCCL’s closing submissions, paragraph 137. [↑](#footnote-ref-99)
100. By letter dated 26 September 2018 at [[AA/INQ/39](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-BDB-Eccles-CPO-26.09.2018.pdf)]. [↑](#footnote-ref-100)
101. As to which see MSCCL’s closing submissions, at paragraph 151. [↑](#footnote-ref-101)
102. By letter dated 12 October 2018 (point 4) at [[MP/INQ/37](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-12-October-2018-1.pdf)]. [↑](#footnote-ref-102)
103. MSCCL’s closing submissions, at paragraph 121. [Inspector’s note: paragraph 643 of this report] [↑](#footnote-ref-103)
104. MSCCL’s closing submissions, at paragraph 120. [Inspector’s note: paragraph 642 of this report] [↑](#footnote-ref-104)
105. By letters dated 26 September 2018 [[AA/INQ/39](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-BDB-Eccles-CPO-26.09.2018.pdf)] and 8 November 2018 [[AA/INQ/52](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles-PM-Ltr-to-BDB-8-11-18.pdf)]. [↑](#footnote-ref-105)
106. See letter dated 8 November 2018 [[AA/INQ/52](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles-PM-Ltr-to-BDB-8-11-18.pdf)], point 6. [↑](#footnote-ref-106)
107. MSCCL’s closing submissions, at paragraph 235. [Inspector’s note: paragraph 759 of this report] [↑](#footnote-ref-107)
108. MSCCL’s closing submissions, at paragraphs 230 and 31. [Inspector’s note: paragraphs 754 and 755 of this report] [↑](#footnote-ref-108)
109. MSCCL’s closing submissions, at paragraph 215. [Inspector’s note: paragraph 738 of this report] [↑](#footnote-ref-109)
110. MSCCL’s closing submissions, at paragraph 216. [Inspector’s note: paragraph 739 of this report] [↑](#footnote-ref-110)
111. These matters are detailed within Footnote 306 of the Acquiring Authority’s closing submissions ([AA/INQ/83](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/United-Utilities-Water-Limited-Closing-Submissions.pdf)). [↑](#footnote-ref-111)
112. See letter dated 19 October 2018 [[AA/INQ/83.4.4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/19.10.2018-BDB-to-PM.pdf)], which was expressly sent on an ‘open’ basis but not copied to the Programme Officer at that stage. [↑](#footnote-ref-112)
113. Indeed, and notwithstanding that Mr Rhodes’ written evidence failed to properly consider the public interest case in the round, in any event all those points relied upon by him to suggest that such a case did not exist have fallen away. Mr Rhodes was not even called as a witness. Therefore, the only meaningful – and tested - evidence on public interest that is before the Inspector and Secretary of State is that provided by Mr Pemberton and others on behalf of the Acquiring Authority. [↑](#footnote-ref-113)
114. See the rebuttal proof of Mr Rhodes [[MP/8/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_R-Rebuttal-Proof-of-Evidence-of-John-Rhodes.pdf)], at paragraph 3.18. [↑](#footnote-ref-114)
115. Cross-examination of Mr Perry. [↑](#footnote-ref-115)
116. See, for example, the proof of evidence of Mr Fields [[MP/2/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_2_A-Proof-of-Evidence-of-Leon-Fields.pdf)], at para 1.14 and the rebuttal proof of Mr Rhodes [[MP/8/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_R-Rebuttal-Proof-of-Evidence-of-John-Rhodes.pdf)], at para 3.4. [↑](#footnote-ref-116)
117. See the proof of evidence of Mr Pemberton [[AA/11/C](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_11_C-Simon-Pemberton-Planning-Proof-of-Evidence-Appendices-3.pdf)], at para 10.11. [↑](#footnote-ref-117)
118. The Acquiring Authority’s Option 2, the Acquiring Authority’s Option 3 and a variant of the Acquiring Authority’s Option 3 (where NSAF is used as the tertiary treatment, rather than BAFF). [↑](#footnote-ref-118)
119. See the proof of evidence of Mr Rhodes [[MP/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_A-John-Rhodes-Proof-of-Evidence.pdf)], at para 9.3. [↑](#footnote-ref-119)
120. See the rebuttal proof of Mr Rhodes [[MP/8/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_R-Rebuttal-Proof-of-Evidence-of-John-Rhodes.pdf)], para 2.15. [↑](#footnote-ref-120)
121. See the proof of evidence of Mr Rhodes [[MP/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_8_A-John-Rhodes-Proof-of-Evidence.pdf)], at para 9.8. [↑](#footnote-ref-121)
122. This was during an exchange in cross examination in which Dr Studds initially suggested that his “*professional duties*” were “*limited to* [his] *instructions*”, before the Inspector’s intervention that [given Dr Studds’ professional accreditations] he was “*not aware of acting on instruction being something that absolves you of the need to further good environmental practice*”. [↑](#footnote-ref-122)
123. See the proof of evidence of Mr Pemberton [[AA/11/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_11_A-Simon-Pemberton-Planning-Proof-of-Evidence.pdf)], at para 10.17. [↑](#footnote-ref-123)
124. The relevant parts of the Order Scheme have the benefit of planning permission reference 17/70871/FUL dated 7 June 2018. As such, the relevant parts of the Order Scheme have been fully – and very recently - assessed against and found to be in accordance with national and local planning policy, and the current and proposed uses for the Order Lands. All other parts of the Order Scheme are either not ‘development’ (as defined in the Town and Country Planning Act 1990, therefore not requiring planning permission) or the Acquiring Authority can carry them out under its permitted development rights. [↑](#footnote-ref-124)
125. See, for just one example in this regard, the discussion as to discharge velocities in the proof of evidence of Mr Sephton [[AA/8/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_8_A-Dave-Sephton-Proof-of-Evidence-renumbering-appendices.pdf)], at section 7. [↑](#footnote-ref-125)
126. See MSCCL Response, paragraph 10. [↑](#footnote-ref-126)
127. See MSCCL Response, paragraph 8. [↑](#footnote-ref-127)
128. See MSCCL Response, paragraphs 14 to 17. [↑](#footnote-ref-128)
129. [MP/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-December-2018-1.pdf) [↑](#footnote-ref-129)
130. [AA/INQ/79](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-Laura-Thornton-United__-Utilities-Water-Limited-Ltr-dated-4.12.18....pdf) [↑](#footnote-ref-130)
131. Found in the 1885 and subsequent Acts. [↑](#footnote-ref-131)
132. [CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf) Section 12 [↑](#footnote-ref-132)
133. It may be noted that UUWL has failed to include MSCCL in the list of statutory undertakers included in the General Entries in the Book of Reference, but the fact that MSCCL enjoys this status is not in issue as a matter of fact. [↑](#footnote-ref-133)
134. Applicable to the Order by virtue of section 155(4) Water Industry Act 1991. [↑](#footnote-ref-134)
135. Neither party to the Inquiry suggests that any detriment that exists can be remedied in this manner. [↑](#footnote-ref-135)
136. James Strachan QC (‘JSQC’) intervention in cross-examination of Stephen West, day 26. [↑](#footnote-ref-136)
137. JSQC oral submissions, day 29. [↑](#footnote-ref-137)
138. Extracts have been provided given the length of the decision letter. A full copy can be provided on request. [↑](#footnote-ref-138)
139. Extracts have been provided given the length of the decision letter. A full copy can be provided on request. [↑](#footnote-ref-139)
140. Extracts have been provided given the length of the decision letter. A full copy can be provided on request. [↑](#footnote-ref-140)
141. Extracts have been provided given the length of the decision letter. A full copy can be provided on request. [↑](#footnote-ref-141)
142. [CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf) [↑](#footnote-ref-142)
143. [CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf), [12.8] [↑](#footnote-ref-143)
144. [CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf), [12.10] [↑](#footnote-ref-144)
145. [CD/CPO/6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.6-Objection-dated-20-October-2016-on-behalf-of-MSCCL-PINL-SCPL-CoSCoS-and-PSLL.pdf) [↑](#footnote-ref-145)
146. [CD/CPO/6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.6-Objection-dated-20-October-2016-on-behalf-of-MSCCL-PINL-SCPL-CoSCoS-and-PSLL.pdf), [21]-[27] [↑](#footnote-ref-146)
147. Both the need to maintain continuous access to Barton Locks and for construction not to impact upon existing Canal bank infrastructure were accepted by UUWL’s witnesses. [↑](#footnote-ref-147)
148. [CD/COR](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Correspondence-List.pdf) Tab 435, pp.4-5 [↑](#footnote-ref-148)
149. [CD/COR](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Correspondence-List.pdf) Tab 435, p.8 [↑](#footnote-ref-149)
150. [CD/COR](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Correspondence-List.pdf) Tab 435, p.2 [↑](#footnote-ref-150)
151. [CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf) [↑](#footnote-ref-151)
152. [CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf), p.12 [↑](#footnote-ref-152)
153. [CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf), p.31 [↑](#footnote-ref-153)
154. [CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf), p.31 [↑](#footnote-ref-154)
155. [CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf), p.40. Original emphasis. [↑](#footnote-ref-155)
156. [CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf), pp.32-33 [↑](#footnote-ref-156)
157. [CD/COR](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Correspondence-List.pdf) Tab 514, p.12 (159). [↑](#footnote-ref-157)
158. [CD/RFI/BDB/117](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.RFI_.BDB_.117-RFI-159.pdf) [↑](#footnote-ref-158)
159. [CD/COR](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Correspondence-List.pdf) Tab 533 [↑](#footnote-ref-159)
160. [CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf) [↑](#footnote-ref-160)
161. [MP/INQ/1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L+-Bircham-Dyson-Bell-LLP-__-Eccles-WWTW-CPO-Open-Offer-22-05-2018....pdf) [↑](#footnote-ref-161)
162. [MP/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-provisions-for-the__-protection-of-MSCCL-21.05.18-1.pdf) [↑](#footnote-ref-162)
163. See further MSCCL’s letter of 18 June 2018 [[MP/INQ/9](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MSC-INQ-9.pdf)], which sets out the difference between the Schedule UUWL would later propose in place of its 22 May offer. [↑](#footnote-ref-163)
164. [MP/INQ/2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-23-May-2018.pdf) [↑](#footnote-ref-164)
165. [AA/INQ/4](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_4-Letter-from-Pinsent-Masons-to-Walker-Morris-regarding-Plot-5T-with-enclosure-dated-19-May-2018.pdf) [↑](#footnote-ref-165)
166. [AA/INQ/6](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_6-Letter-from-Pinsent-Masons-to-BDB-regarding-MSCCLs-statutory-undertaking-dated-8-June-2018.pdf) [↑](#footnote-ref-166)
167. [AA/INQ/3](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/UU-OPENING-FINAL.pdf) [↑](#footnote-ref-167)
168. [AA/INQ/3](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/UU-OPENING-FINAL.pdf), [1.28] [↑](#footnote-ref-168)
169. [AA/INQ/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_7-Letter-from-Pinsent-Masons-to-BDB-regarding-MSCCLs-statutory-undertaking-with-enclosure-dated-13%25.pdf) [↑](#footnote-ref-169)
170. Intervention of JSQC in cross-examination of Sephton, day 11 [↑](#footnote-ref-170)
171. [MP/INQ/10](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-21-June-2018.pdf) [↑](#footnote-ref-171)
172. [MP/INQ/29](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_INQ_49-UUWL-PR19-Business-Plan-2020-25-Chapter-9-Sept-2018.pdf) [↑](#footnote-ref-172)
173. [MP/INQ/30](http://www.hwa.uk.com/site/wp-content/uploads/2018/06/MP-INQ-029.3.pdf) [↑](#footnote-ref-173)
174. [MP/INQ/31](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP-INQ-030.pdf) [↑](#footnote-ref-174)
175. [MP/INQ/32](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-2-October-2018-APA.pdf) [↑](#footnote-ref-175)
176. [MP/INQ/37](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-12-October-2018-1.pdf) [↑](#footnote-ref-176)
177. [MP/INQ/40](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-2-November-2018-1.pdf) [↑](#footnote-ref-177)
178. See for example Advice Note 9: The Rochdale Envelope (Planning Inspectorate, July 2018). [↑](#footnote-ref-178)
179. For a useful illustration of this principle, see the judgment of Ouseley J in *Hertfordshire CC v Secretary of State for Communities and Local Government* 2011 EWHC 1572 Admin at [46]. [↑](#footnote-ref-179)
180. Day 11. Mr Sephton did not answer the question because of an intervention from Leading Counsel for UUWL. [↑](#footnote-ref-180)
181. [AA/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Parsons-Proof-_renumber-appx2.pdf) [9.4.1.2]-[9.4.1.7], section 10; [AA/5/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_R-Tony-Parsons-Rebuttal.pdf) [28] [↑](#footnote-ref-181)
182. [AA/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Parsons-Proof-_renumber-appx2.pdf), section 4 [↑](#footnote-ref-182)
183. [AA/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Parsons-Proof-_renumber-appx2.pdf), [7.12]; [AA/5/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_R-Tony-Parsons-Rebuttal.pdf), [16] [↑](#footnote-ref-183)
184. [AA/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Parsons-Proof-_renumber-appx2.pdf), [7.16]; [AA/5/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_R-Tony-Parsons-Rebuttal.pdf) [20]; [AA/6/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_6_R-Roderick-McKimm-Rebuttal.pdf) [1.7] [↑](#footnote-ref-184)
185. [AA/6/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_6_R-Roderick-McKimm-Rebuttal.pdf) [1.6] [↑](#footnote-ref-185)
186. [AA/5/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_R-Tony-Parsons-Rebuttal.pdf), [12]-[13]; evidence in chief and cross-examination of Mr Parsons, day 13 [↑](#footnote-ref-186)
187. [CD/COR](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Correspondence-List.pdf) Tab 435, pp.4-5 [↑](#footnote-ref-187)
188. This referred to the previous construction contract for the Phase 1 works. There is no contract in place as yet for the Order Scheme works. [↑](#footnote-ref-188)
189. However, in respect of points b. and c. Mr West confirmed in evidence in chief (day 25) that there is no realistic possibility of a contractor using a method of tunnelling other than one involving full face support, such that it can reasonably be relied upon, and similarly that even a ‘worst case’ construction method for the shaft will not give rise to unacceptable ground movement, such that the Inspector and Secretary of State need not be concerned about a less damaging method being secured. [↑](#footnote-ref-189)
190. As explained below, UUWL’s proposed Schedule is drafted in such a way as to imply that some of the existing powers would be overridden by the acquisition of private rights, which cannot be correct. [↑](#footnote-ref-190)
191. Confirmed by JSQC in response to a question by Ms Clutten prior to Re-examination of Mr West, day 25. [↑](#footnote-ref-191)
192. [AA/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Parsons-Proof-_renumber-appx2.pdf), [9.4.1.7] [↑](#footnote-ref-192)
193. [AA/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Parsons-Proof-_renumber-appx2.pdf), [10.13] [↑](#footnote-ref-193)
194. [AA/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Parsons-Proof-_renumber-appx2.pdf), [9.8.6]-[9.8.8] [↑](#footnote-ref-194)
195. [AA/5/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_R-Tony-Parsons-Rebuttal.pdf), [47], [54] and [94] [↑](#footnote-ref-195)
196. [AA/5/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_R-Tony-Parsons-Rebuttal.pdf), [92]; cross-examination of Mr Parsons, day 13 [↑](#footnote-ref-196)
197. Points f. to l. are all from the cross-examination of Mr Parsons on day 13 [↑](#footnote-ref-197)
198. [AA/5/A](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/Parsons-Proof-_renumber-appx2.pdf), [10.9] [↑](#footnote-ref-198)
199. Evidence in chief of Mr McKimm, day 15 [↑](#footnote-ref-199)
200. Points a. and b. both [AA/6/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_6_A-Roderick-McKimm-Proof-of-Evidence.pdf) [5.10.7]-[5.10.9];[6.1.4];[6.1.6.4] [↑](#footnote-ref-200)
201. Points d. to g. are all from the cross-examination of Mr McKimm on day 15 [↑](#footnote-ref-201)
202. From the cross-examination of Mr Sephton during days 11 and 12 [↑](#footnote-ref-202)
203. [AA/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_A-Peter-Nicholson-Proof.pdf) [4.1.1]; [AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf) [2.2.1]; and the cross-examination of Captain Nicholson, day 15 [↑](#footnote-ref-203)
204. [AA/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_A-Peter-Nicholson-Proof.pdf) [1.7]; [AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf) [2.24.2] [↑](#footnote-ref-204)
205. The cross-examination of Captain Nicholson, day 15 [↑](#footnote-ref-205)
206. The evidence in chief of Captain Nicholson, day 15 [↑](#footnote-ref-206)
207. The cross-examination of Captain Nicholson, day 15 [↑](#footnote-ref-207)
208. [AA/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_A-Peter-Nicholson-Proof.pdf) [4.1.3] [↑](#footnote-ref-208)
209. [AA/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_A-Peter-Nicholson-Proof.pdf) [4.1.5]; [AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf) [2.18.1]. [↑](#footnote-ref-209)
210. The cross-examination of Captain Nicholson, day 15 [↑](#footnote-ref-210)
211. [AA/7/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_A-Peter-Nicholson-Proof.pdf) [4.3.4]; [AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf) [2.4.12]. [↑](#footnote-ref-211)
212. The cross-examination of Captain Nicholson, day 15 [↑](#footnote-ref-212)
213. [AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf) [2.9.5] [↑](#footnote-ref-213)
214. The cross-examination of Captain Nicholson, day 15 [↑](#footnote-ref-214)
215. [AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf) [2.9.4] [↑](#footnote-ref-215)
216. [AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf) [2.15.1] [↑](#footnote-ref-216)
217. See the MP/series at MP/4-7 inclusive [↑](#footnote-ref-217)
218. Highways England is not listed as a statutory undertaker in the Book of Reference. [↑](#footnote-ref-218)
219. [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) Appendix DS30 (p.902 onwards). [↑](#footnote-ref-219)
220. Section C above refers [↑](#footnote-ref-220)
221. Cross-examination of Mr Smith, day 15. [↑](#footnote-ref-221)
222. Oral submissions of JSQC on protective provisions, day 29. [↑](#footnote-ref-222)
223. [CD/POL/20](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.POL_.20-Guidance-on-Compulsory-purchase-process-and-The-Crichel-Down-Rules-February-2018.pdf) p. 15 para. 17 [↑](#footnote-ref-223)
224. Including of Messrs West and Clarke, who were not presenting any part of the in-principle objection and who confirmed at the outset of their evidence in chief that they were not saying that UUWL’s scheme could not be built. [↑](#footnote-ref-224)
225. See e.g. [AA/10/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_10_A-Colin-Smith-Proof-FINAL.pdf) p. 4 [14] [↑](#footnote-ref-225)
226. JSQC oral submissions, day 29 [↑](#footnote-ref-226)
227. JSQC oral submissions, day 29 [↑](#footnote-ref-227)
228. S.159(1) gives sewerage undertakers the power (a) to lay a relevant pipe in any land and to keep it there; (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in such land; and (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within (a) or (b) above. [↑](#footnote-ref-228)
229. UUWL Opening Submissions [[AA/INQ/3](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/UU-OPENING-FINAL.pdf)] at pp. 2-3 [1.4]-[1.6] and p. 9 [1.30]. [↑](#footnote-ref-229)
230. Cross-examination of Mr Smith, day 15 [↑](#footnote-ref-230)
231. UUWL’s Opening Submissions [[AA/INQ/3](http://www.hwa.uk.com/site/wp-content/uploads/2017/10/UU-OPENING-FINAL.pdf)] at [5.3] [↑](#footnote-ref-231)
232. UUWL SoC [8.5.1]-[8.5.2] [[CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf)] [↑](#footnote-ref-232)
233. Cross-examination of Mr Smith, day 15 [↑](#footnote-ref-233)
234. [AA/10/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_10_A-Colin-Smith-Proof-FINAL.pdf) [14] [↑](#footnote-ref-234)
235. [AA/INQ/25](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_25-Taylor-Taylor-v-North-West-Water-1995-70-PCR-94.pdf) [↑](#footnote-ref-235)
236. [AA/10/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_10_A-Colin-Smith-Proof-FINAL.pdf) [15] [↑](#footnote-ref-236)
237. Page 100 [↑](#footnote-ref-237)
238. Using the words of the Lands Chamber at p. 107 to describe the legal result of the use of such powers. [↑](#footnote-ref-238)
239. [AA/INQ/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_7-Letter-from-Pinsent-Masons-to-BDB-regarding-MSCCLs-statutory-undertaking-with-enclosure-dated-13%25.pdf) [↑](#footnote-ref-239)
240. As we go on to explain below, UUWL’s Schedule in fact contains less protection than would be afforded by Schedule 13. [↑](#footnote-ref-240)
241. Normally in the form of an APA [↑](#footnote-ref-241)
242. For example if UUWL were to argue that the harbour master’s powers of direction only apply where the right of navigation being exercised is the public right of navigation. [↑](#footnote-ref-242)
243. [MP/INQ/55](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-20-November-2018-1.pdf) [↑](#footnote-ref-243)
244. [AA/7/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_7_R-Nicholson-Rebuttal.pdf) paragraph 2.16 [↑](#footnote-ref-244)
245. Cross-examination of Mr Nicholson, day 15 [↑](#footnote-ref-245)
246. Cross-examination of Mr Nicholson, day 15 [↑](#footnote-ref-246)
247. Section 3 of the Manchester Ship Canal Act 1960 provides that for the purposes of construing the term ‘vessels’ for the purposes of the Harbours Docks and Piers Clauses Act 1847, that term shall include pontoons. [↑](#footnote-ref-247)
248. See for example [CD/CPO/3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.3-UU-Statement-of-Reasons.pdf), referred to above, where UUWL stated that Order Scheme works would not injuriously affect the property of any statutory undertaker or the carrying on of any undertaking. [↑](#footnote-ref-248)
249. JSQC oral submissions, day 29 [↑](#footnote-ref-249)
250. A 42 day notice period is only imposed by s.159 of the 1991 Act in circumstances where the power is to be exercised for the purpose of altering an existing pipe: s.159(5)(b) refers. [↑](#footnote-ref-250)
251. [AA/INQ/39](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-BDB-Eccles-CPO-26.09.2018.pdf) PM letter 26.9.19, p. 3 ‘Thirdly’ [↑](#footnote-ref-251)
252. [MP/INQ/37](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-12-October-2018-1.pdf), p.2 at [3]. [↑](#footnote-ref-252)
253. [MP/INQ/37](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-12-October-2018-1.pdf),p. 2 at [3]. [↑](#footnote-ref-253)
254. See generally [CD/CPO/8.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8.5-Appendix-4-Note-on-past-discussions.pdf) at [2.14], [2.16], [3.17], [5.4]-[5.5], [5.17], [5.18] and [5.20]. [↑](#footnote-ref-254)
255. Letter BDB to PM 17.10.14 ([CD/COR](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Correspondence-List.pdf) 272) and letter PM to BDB 13.11.14 ([CD/COR](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Correspondence-List.pdf) 274) [↑](#footnote-ref-255)
256. [AA/INQ/39](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PM-L-BDB-Eccles-CPO-26.09.2018.pdf) [↑](#footnote-ref-256)
257. As suggested by JSQC in oral submissions on day 29. [↑](#footnote-ref-257)
258. See [AA/5/R](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_5_R-Tony-Parsons-Rebuttal.pdf) [47], [54] and [94] and Mr Parsons’ evidence in cross-examination on day 13 (references given in the Introductory section of these closing submissions). [↑](#footnote-ref-258)
259. [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) Appendix DS30 pp. 904-920, see clauses 2.9, 2.12, 2.13, 4.1-4.2, 6.1-6.5, 10 and 13 [↑](#footnote-ref-259)
260. [MP/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-provisions-for-the__-protection-of-MSCCL-21.05.18-1.pdf), clauses 2.1 and 10.1-10.2 [↑](#footnote-ref-260)
261. [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) Appendix DS30 pp. 904-920, see reference to Approval in Principle process in the definitions and at Appendix 2 [↑](#footnote-ref-261)
262. [MP/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-provisions-for-the__-protection-of-MSCCL-21.05.18-1.pdf), clauses 2.1-2.3, 3 and 9 [↑](#footnote-ref-262)
263. [AA/6/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_6_A-Roderick-McKimm-Proof-of-Evidence.pdf) [8.41]-[8.47] [↑](#footnote-ref-263)
264. Section D above refers [↑](#footnote-ref-264)
265. [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) Appendix DS30 pp. 904-920, see clause 5 [↑](#footnote-ref-265)
266. See evidence of Mr Sephton on day 12, where Mr Sephton confirmed that UUWL had taken sufficient rights that would enable it to undertake such works if an agreement could not be reached with MSCCL about the use of its existing mobile crane, which sits outside (and owing to loading issues) cannot move within the redline boundary. [↑](#footnote-ref-266)
267. [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) Appendix DS30 pp. 904-920, see 2.10 and 2.11 [↑](#footnote-ref-267)
268. [MP/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-provisions-for-the__-protection-of-MSCCL-21.05.18-1.pdf), clauses 2.3-2.5, 5.1-5.3, 6.1-6.2 [↑](#footnote-ref-268)
269. [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) Appendix DS30 pp. 904-920, see reference to Approval in Principle process in the definitions and at Appendix 2 and see clause 2.11 [↑](#footnote-ref-269)
270. [MP/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-provisions-for-the__-protection-of-MSCCL-21.05.18-1.pdf), clauses 2.35.1-5.3 [↑](#footnote-ref-270)
271. [MP/4/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_4_A-Stephen-West-Proof-of-Evidence.pdf), section 9.4. Mr West was not challenged on any of the content of section 9.4. [↑](#footnote-ref-271)
272. [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) Appendix DS30 pp. 904-920, see clause 2.13.3-2.13.4 [↑](#footnote-ref-272)
273. [MP/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-provisions-for-the__-protection-of-MSCCL-21.05.18-1.pdf), clauses 7.1-7.2 [↑](#footnote-ref-273)
274. [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) Appendix DS30 pp. 904-920, see clauses 2.5-2.8 and 3.1-3.2. [↑](#footnote-ref-274)
275. [MP/INQ/1.3](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Appendix-2-provisions-for-the__-protection-of-MSCCL-21.05.18-1.pdf), clauses 14.3 and 15 [↑](#footnote-ref-275)
276. Cross-examination of Mr Sephton, day 12 [↑](#footnote-ref-276)
277. It was put to Mr Sephton that MSCCL would have rights to go onto what would then be UUWL’s land and undertake any necessary works to support the canal bank under that legislation, and he was then asked what his response to MSCCL’s concerns would be if it had such rights. His response was “*Well they would be invalid concerns, if they had the right to access the land already.*” [↑](#footnote-ref-277)
278. JSQC oral submissions, day 29 [↑](#footnote-ref-278)
279. [CD/POL/20](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.POL_.20-Guidance-on-Compulsory-purchase-process-and-The-Crichel-Down-Rules-February-2018.pdf) pp. 140-141, paragraph 6 [↑](#footnote-ref-279)
280. i.e. all discharges being made as at 1 December 1991 from outfalls then in place; the creation and use of any later outfalls into private watercourses requires the consent of the owners – see *Manchester Ship Canal Company Ltd v United Utilities Water plc* [2014] UKSC 40; [2014] 1 WLR 2576 [↑](#footnote-ref-280)
281. [CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf) [↑](#footnote-ref-281)
282. [AA/INQ/52](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Eccles-PM-Ltr-to-BDB-8-11-18.pdf) p. 2 [↑](#footnote-ref-282)
283. [CD/CPO/7](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.7-Statement-of-Case-on-behalf-of-AA-1-November-2017.pdf) [↑](#footnote-ref-283)
284. [CD/RFI/BDB/43](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.RFI_.BDB_.42-RFI-73.pdf) [↑](#footnote-ref-284)
285. Currently the subject of litigation. [↑](#footnote-ref-285)
286. The drainage functions of the canal are described in the judgment of Moses LJ in R *(oao The Manchester Ship Canal Company Ltd v Environment Agency* [2013] EWCA Civ 542; [2013] JPL 1406 at [4] and [5]. MSCCL contends that it is a person draining land under a local statutory provision (the Manchester Ship Canal Act 1885 and related legislation) and is using the canal itself and its sluices, floodgates and other works for that purpose and is accordingly entitled to the protection of S186(1). [↑](#footnote-ref-286)
287. Cross-examination of Mr Sephton, day 12 [↑](#footnote-ref-287)
288. Cross-examination of Mr Sephton, day 12 [↑](#footnote-ref-288)
289. We note that in the months since this point was identified UUWL has not sought to extend the rights sought in relation to Plot 2J to include a right to “remain”, and must therefore be content that it is not needed in order effectively to exercise the rights that are sought. [↑](#footnote-ref-289)
290. See MSCCL’s SoC, [CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf) at pp. 34-35 [11.27] [↑](#footnote-ref-290)
291. JSQC oral submissions, day 12 [↑](#footnote-ref-291)
292. [AA/INQ/29.5](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_29.5-Right-to-Remain-Note.pdf) [↑](#footnote-ref-292)
293. [MP/INQ/43](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-12-November-20181.pdf) [Inspector’s note: MP/INQ/43 refers to the letter of 22 August 2018, which is [MP/INQ/28](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-UU-22-August-2018-1.pdf)] [↑](#footnote-ref-293)
294. [2007] UKHL 42 [↑](#footnote-ref-294)
295. [AA/INQ/54](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA-INQ-54.pdf) [↑](#footnote-ref-295)
296. On 22 January 2019 the Programme Officer however confirmed that the date for responding to the new borehole data introduced by UUWL was 28 January 2019. [↑](#footnote-ref-296)
297. See MSCCL’s Statement of Case, [CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf). [↑](#footnote-ref-297)
298. [MP/INQ/65](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-4-December-2018-1.pdf) [↑](#footnote-ref-298)
299. [AA/INQ/82.1](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Supplementary-note-re-BH7-FINAL.pdf) [↑](#footnote-ref-299)
300. [AA/INQ/82.2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/PN183904-BH7-Logs-DRAFT-20190107.pdf) [↑](#footnote-ref-300)
301. Table 2 of [AA/INQ/61](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/AA_INQ_61-Note-to-Inquiry-on__-Ground-Investigationsfinalpdf.pdf) [↑](#footnote-ref-301)
302. [AA/8/C2](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Pt2-Final-version-30.05.2018.pdf) Appendix DS43 [↑](#footnote-ref-302)
303. Inspector’s note: Of the letter dated 20 October 2016 [↑](#footnote-ref-303)
304. Inspector’s note: This may be a mis-referencing of paragraph ‘3.3’ of [CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf). Both land and rights are addressed by MSCCL’s Statement of Case ([CD/CPO/8](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/CD.CPO_.8-Statement-of-Case-on-behalf-of-MSCCL-and-PINL-1-May-2018.pdf)). Section 12 of the document deals with ‘serious detriment’. [↑](#footnote-ref-304)
305. [MP/INQ/55](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/Letter-to-Pinsent-Masons-20-November-2018-1.pdf) [↑](#footnote-ref-305)
306. Inspector’s note: My record of the relevant exchanges (and it is only a note), is that the land “…*would be returned*…”, and when taken to page 51 of Mr Gavin’s evidence [[MP/6/A](http://www.hwa.uk.com/site/wp-content/uploads/2018/02/MP_6_A-Steve-Gavin-Proof-of-Evidence.pdf)], Mr Sephton confirmed that MSCCL would have access to the locks and that this had been a subject of discussions over a number of years. [↑](#footnote-ref-306)