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# **Report to the Secretary of State for Transport**

**by I Jenkins BSc CEng MICE MCIWEM**

**an Inspector appointed by the Secretary of State for Transport**

**Date: 16 October 2017**

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## **HIGHWAYS ACT 1980**

### **ACQUISITION OF LAND ACT 1981**

**THE LIVERPOOL CITY COUNCIL (A565 HIGHWAY IMPROVEMENTS PHASE I)-COMPULSORY PURCHASE ORDER 2016**

**THE LIVERPOOL CITY COUNCIL (A565 HIGHWAY IMPROVEMENTS PHASE II)-COMPULSORY PURCHASE ORDER 2016**

**THE SEFTON METROPOLITAN BOROUGH COUNCIL (A565 HIGHWAY IMPROVEMENTS)-COMPULSORY PURCHASE ORDER 2016**

**THE LIVERPOOL CITY COUNCIL (A565 CLASSIFIED ROAD HIGHWAY IMPROVEMENTS)(NO 2)(SIDE ROADS) ORDER 2016**

**THE LIVERPOOL CITY COUNCIL (A565 HIGHWAY IMPROVEMENTS PHASE I)(NO 2)-COMPULSORY PURCHASE ORDER 2016**

Inquiries: 1-3 August 2017

Ref: NATTRAN/NW/LAO 119 & 120 (DPI/Z4310/17/3)

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## 1 CASE DETAILS

- **The Liverpool City Council (A565 Highway Improvements Phase I)-Compulsory Purchase Order 2016** was made under sections 239, 240, 246, 250 and 260 of the *Highways Act 1980 (as amended)* and there were 3 objections outstanding to it at the commencement of the local Inquiries.

**Summary of Recommendations: I recommend that, subject to the modifications identified in the Inspector's recommendations below, the Order be confirmed.**

- **The Liverpool City Council (A565 Highway Improvements Phase II)-Compulsory Purchase Order 2016** was made under sections 239, 240, 246, 250 and 260 of the *Highways Act 1980 (as amended)* and there were 8 objections outstanding to it at the commencement of the local Inquiries.

**Summary of Recommendations: I recommend that, subject to the modifications identified in the Inspector's recommendations below, the Order be confirmed.**

- **The Sefton Metropolitan Borough Council (A565 Highway Improvements)-Compulsory Purchase Order 2016** was made under sections 239, 240, 246, 250 and 260 of the *Highways Act 1980 (as amended)* and there was 1 duly made objection outstanding to it at the commencement of the local Inquiries.

**Summary of Recommendations: I recommend that, subject to the modifications identified in the Inspector's recommendations below, the Order be confirmed.**

- **The Liverpool City Council (A565 Classified Road Highway Improvements)(No 2)(Side Roads) Order 2016** was made under sections 14 and 125 of the *Highways Act 1980 (as amended)* and there were 9 objections outstanding to it at the commencement of the local Inquiries.

**Summary of Recommendations: I recommend that, subject to the modifications identified in the Inspector's recommendations below, the Order be confirmed.**

- **The Liverpool City Council (A565 Highway Improvements Phase I)(No 2)-Compulsory Purchase Order 2016** was made under sections 239, 240, 246, 250 and 260 of the *Highways Act 1980 (as amended)*. There were no objections outstanding to it at the commencement of the local Inquiries.

**Summary of Recommendations: I recommend that, subject to the modifications identified in the Inspector's recommendations below, the Order be confirmed.**

## **2 PREAMBLE**

### **2.1 *The Inquiries and site visits***

2.1.1 I have been appointed by the Secretary of State for Transport (the Secretary of State) to conduct concurrent Inquiries for the purpose of hearing representations and objections concerning the Orders. I held those Inquiries at the Cunard Building, Water Street, Liverpool on the 1-3 August 2017, following a pre-Inquiries meeting held at the same location on 24 May 2017. I carried out an accompanied site visit on 31 July 2017 and unaccompanied site visits on the 31 July and 2 August 2017.

### **2.2 *Description of the locality and purpose of the Orders***

2.2.1 The A565 corridor is a north-south commuter and freight traffic route between Liverpool City Centre and the north of Liverpool, leading into Sefton<sup>1</sup>. Liverpool City Council (LCC) is the Highways Authority for the A565 up to the boundary of its administrative area, the road known as Bedford Place, whilst Sefton Metropolitan Borough Council (SMBC) is the Highways Authority for the A565 from its junction with Bedford Place northwards. The Compulsory Purchase Orders (CPOs), referred to in the Case Details above, include parcels of land running to the east of the current A565, associated for the most part with business, rather than residential, properties.

2.2.2 The Orders have been made to facilitate 2 packages of measures, the Orders scheme, that form part of the North Liverpool Key Corridor improvement scheme:

- a) A565 Great Howard Street highway improvements -this includes the conversion of current sections of single carriageway to dual carriageway with associated junction improvements and changes to right hand turns, generally between its junctions with Chadwick Street to the south and Blackstone Street to the north; and,
- b) A565 Derby Road highway improvements - this includes the conversion of current sections of single carriageway to dual carriageway with associated junction improvements and changes to right hand turns, generally between its junctions with Bankfield Street and Bedford Place, within the administrative area of LCC, and between its junctions with Bedford Place and Millers Bridge, within the administrative area of SMBC.

2.2.3 The following is a brief description of the Orders and what they seek to achieve:

- a) *The Liverpool City Council (A565 Highway Improvements Phase I)- Compulsory Purchase Order 2016 (LCC CPO1)*

This Order would have the effect of authorising LCC to purchase

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<sup>1</sup> CD14 page 208 Figure 2.1.

compulsorily land and new rights over land within its administrative area, identified by the LCC CPO1 for the purposes of: improvement of part of the A565 Great Howard Street, generally between its junctions with Chadwick Street to the south and Blackstone Street to the north; improvement or development of frontages to Great Howard Street or of land adjacent to it; carrying out of drainage works in connection with the improvement of Great Howard Street; use of the land by LCC in connection with the construction and improvement of Great Howard Street and other highways in its vicinity; and, mitigating any adverse effects arising from the proposed works;

- b) *The Liverpool City Council (A565 Highway Improvements Phase II)-Compulsory Purchase Order 2016 (LCC CPO2)*

This Order would have the effect of authorising LCC to purchase compulsorily land and new rights over land within its administrative area, identified by the LCC CPO2 for the purposes of: improvement of part of the A565 Derby Road, generally between its junctions with Bankfield Street to the south and Bedford Place to the north; improvement or development of frontages to Derby Road or of land adjacent to it; carrying out of drainage works in connection with the improvement of Derby Road; use of the land by LCC in connection with the construction and improvement of Derby Road and other highways in its vicinity; and, mitigating any adverse effects arising from the proposed works;

- c) *The Sefton Metropolitan Borough Council (A565 Highway Improvements)-Compulsory Purchase Order 2016 (SMBC CPO)*

This Order would have the effect of authorising SMBC to purchase compulsorily land and new rights over land within its administrative area, identified by the SMBC CPO for the purposes of: improvement of part of the A565 Derby Road, generally between its junctions with Bedford Place to the south and Millers Bridge to the north; improvement or development of frontages to Derby Road or of land adjacent to it; carrying out of drainage works in connection with the improvement of Derby Road; use of the land by SMBC in connection with the construction and improvement of Derby Road and other highways in its vicinity; and, mitigating any adverse effects arising from the proposed works.

- d) *The Liverpool City Council (A565 Classified Road Highway Improvements)(No 2)(Side Roads) Order 2016 (LCC SRO)*

This Order would provide for, in relation to a section of the A565 within LCC's administrative area, generally between its junctions with Chadwick Street in the south and Bedford Place in the north, the improvement of highways, stopping up of highways, the stopping up of private means of access and the provision of new private means of access.

- e) *The Liverpool City Council (A565 Highway Improvements Phase I)(No 2)-Compulsory Purchase Order 2016 (LCC CPO1(2))*

This Order would have the effect of authorising LCC to purchase

compulsorily land and new rights over land within its administrative area, identified by the LCC CPO1(2) for the purposes of: improvement of existing highway at Stone Street and Sherwood Street; improvement or development of frontages to the highway or of land adjacent to it; carrying out of drainage works in connection with the improvement of the highway; and, mitigating any adverse effects arising from the proposed works.

## 2.3 ***Objections to the Orders***

2.3.1 Of the 14 duly made objections, 4 had been withdrawn prior to the Inquiries: Scottish Power Design Section Liverpool District; United Utilities Water Limited; Clear Channel UK Limited; and, Barry's Skip Hire Limited. During the Inquiries a number of parties withdrew their objections in writing. They included W J Leech & Sons Limited, as a result of which there were no outstanding objections to the SMBC CPO. The other letters of withdrawal were received from: Liverpool Water Witch Marine & Engineering Company Limited; and, Morrison Gas Related Products Limited. Those parties did not give evidence at the Inquiries and I have not considered their withdrawn objections further.

2.3.2 The outstanding objections, duly made and not withdrawn at the close of the Inquiries, were as follows:

- 1) Wild Thang Limited - LCC CPO1, CPO2 and SRO;
- 2) DMI Fabrications Limited - LCC CPO2 and SRO;
- 3) Sal Fuel Retailers Limited - LCC CPO2 and SRO;
- 4) Raiscorp Limited - LCC CPO2 and SRO;
- 5) GMAC UK Plc - LCC CPO2 and SRO;
- 6) General Motors UK Limited - LCC CPO2 and SRO; and,
- 7) Peter Jonathan Morris - LCC CPO1 and SRO.

## 2.4 ***Suggested alternative routes***

2.4.1 In the Notice notifying interested parties about the Public Local Inquiries, dated 27 April 2017, the Secretary of State directed that any person who intends to submit at the Inquiries that any highway or proposed highway to which the Orders, or either of them, relate should follow an alternative route, or that, instead of improving, diverting or altering a highway to which the Orders, or either of them, relate, a new highway should be constructed on a particular route, shall send to him at the Department for Transport (DfT), not later than 4 July 2017, sufficient information about the alternative route or the route of the new highway, as the case may be, to enable it to be identified. I understand that no such notifications were received by the DfT.

## 2.5 ***Scope of this Report***

- 2.5.1 This report contains a brief description of the site and its surroundings, the gist of the evidence presented and my conclusions and recommendations. Lists of Inquiries appearances, documents and abbreviations used are attached as appendices. Proofs of evidence were added to at the Inquiries through oral evidence. Italic text is used within the summaries of cases for my factual comments to assist the reader.

## 3 **LEGAL/PROCEDURAL SUBMISSIONS**

### 3.1 ***Statutory formalities***

- 3.1.1 At the Inquiries, LCC/SMBC confirmed that all of the statutory formalities had been complied with and this was not disputed by any of the other parties present.

### 3.2 ***Appearances***

- 3.2.1 When the Inquiries opened, Mr Cannock, Counsel representing Wild Thang Limited (WTL), indicated that WTL's objection was not to the highway scheme per se, but the absence of an advance agreement with LCC providing comfort that fundable and viable mitigation measures can be put in place to mitigate the impact of the loss of WTL's office space, which would result from the proposed highway widening scheme. He confirmed that draft Heads of Terms of such an agreement had now been agreed and he requested a short adjournment to allow those Heads of Terms to be signed by the parties. He indicated, if that was done, it would not be his intention to call any witnesses or test the evidence of the Council through cross-examination, although the written submissions made by WTL prior to the Inquiries should still be taken into account as written representations. The request for a short adjournment was supported by Mr Carter, Counsel representing the Councils and there were no objections raised by others. I agreed to a short adjournment, on the basis that the scenario outlined by Mr Cannock may save significant Inquiries time. When the Inquiries then resumed on the first morning, it was confirmed by the representatives of the Councils and WTL that the Heads of Terms<sup>2</sup> had been signed and Mr Cannock excused himself and those he would otherwise have called to give evidence from taking any further part in the Inquiries.
- 3.2.2 At the start of the Inquiries, Ms J Gunnion, acting on behalf of Liverpool Water Witch Marine & Engineering Company, confirmed that it was the company's intention to withdraw its objection and a letter to that effect

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<sup>2</sup> AA/INQ/006.

would be submitted to the Inquiries. It was received later the same day<sup>3</sup>.

#### **4 THE JOINT CASE FOR LIVERPOOL CITY COUNCIL AND SEFTON METROPOLITAN BOROUGH COUNCIL** (the Councils)

*The gist of the material points made by the Councils in their written and oral submissions were:*

##### **4.1 Introduction**

4.1.1 The Councils submit that nothing in any objector's material and no evidence given at the Inquiries has undermined the case for the confirmation of the Orders, which the Inspector and the Secretary of State have to consider. No objector has produced any material which seeks to challenge the principle of the scheme, the need for it or the benefits which the Councils say that it would bring.

4.1.2 The extent of the challenge to the Orders has been for objectors to question the need for the inclusion of plots of land in which they have an interest in the relevant compulsory purchase order or in relation to the side roads order. The Councils have set out in their evidence why none of those objections should stand in the way of confirmation of the Orders or of the execution of the scheme.

##### **4.2 The Orders Scheme overview**

4.2.1 The scheme for which the Orders are necessary (the Orders scheme) forms part of the North Liverpool Key Corridor (NLKC) improvement scheme, which itself forms part of the Atlantic Avenue Initiative; an on-going project which began in 1994 and involves a package of measures aimed at facilitating and encouraging development in the north Liverpool area. Significant work has already been done<sup>4</sup>. In relation to the highways aspects of the initiative, the Orders scheme forms part of a long-standing commitment on the part of the Councils to upgrade the A565 in the vicinity of north Liverpool and the southern part of the Borough of Sefton. Most of the A565 from Central Liverpool to the A5036 at Seaforth has been upgraded to dual carriageway standard in four phases. The details of these earlier phases are set out in paragraphs 3.3 to 3.5 of the Joint Statement of Case<sup>5</sup>. The Orders scheme comprises the dualling of the two remaining sections of single carriageway.

4.2.2 The first section is the conversion of the current section of single carriageway at the A565 Great Howard Street to dual carriageway with

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<sup>3</sup> WD2.

<sup>4</sup> CD14 para 1.2.2.

<sup>5</sup> CD33.



associated junction improvements and limitations to right turns off the A565. The LCC CPO1 and the LCC CPO1(2) deal with the land and interests required to achieve this part of the scheme.

- 4.2.3 The second element is the conversion of the current section of single carriageway at the A565 Derby Road to dual carriageway with associated junction improvements and limitations upon right hand turns. The works affecting the length of the A565 from the junction with Bankfield Street in the south to the junction with Bedford Place in the north would be secured by the LCC CPO2. The works further north up to the junction with Millers Bridge are within Sefton and the SMBC CPO would secure the necessary land and interests for that area.
- 4.2.4 Although not part of the Orders scheme, other works which inform the context for the scheme and form part of the NLKC improvements include the upgrading of Regent Road. Regent Road runs broadly parallel to and a short distance to the west of the lengths of highway the subject of the Orders scheme. In that case, the upgrading works include the provision of a segregated cycleway for people moving north-south. There would also be improved connections, including cycling provision, between the A565 and Regent Road along a number of the routes connecting the two highways, including Paisley Street, Oil Street, Saltney Street, Walter Street and Blackstone Street<sup>6</sup>. These works would all be within current highway land and no further statutory authorisation for them is needed. Their funding is secured by the same funding arrangements as apply to the scheme subject of the Orders. This provision is relevant because some objectors have referred to the lack of cycle provision proposed along the A565 as part of the scheme. The lack of such provision is justified given the provision which would be made along Regent Road and side streets linking it to the A565 as part of the wider NLKC improvements scheme.

### 4.3 ***The Compulsory Purchase Orders***

- 4.3.1 The LCC CPO1 contains 34 plots. The CPO relates to land along the east side of the A565 Great Howard Street and together the plots amount to some 0.4191 hectares in area. The plots are required for a mixture of carriageway widening, footway provision and for the accommodation of temporary working areas.
- 4.3.2 The LCC CPO2 contains 19 plots. The land affected is on the east side of the A565 Derby Road and comprises some 0.4881 hectares in total. The purpose of the acquisition is the same as for the LCC CPO1, in addition to which land acquired at Ensor Street, which is proposed to have public rights of way stopped up, would be used in part to mitigate the effects of the order upon the Lookers' operation, which adjoins the

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<sup>6</sup> CD14 para 1.1.2.

- southern side of that street<sup>7</sup>.
- 4.3.3 The LCC CPO1(2) contains 4 plots on Sherwood Street and Stone Street, which are within the order to secure the provision of turning heads to allow for alterations to side roads. The total area affected is 0.0145 hectares.
- 4.3.4 The SMBC CPO includes 13 plots also along the east side of the A565 Derby Road comprising 0.2567 hectares of land. The purposes of the acquisition are for carriageway widening, footway provision and working areas.
- 4.3.5 All of the rights which are sought to be acquired would only be needed temporarily and in the present absence of any power to acquire temporary rights, the Acquiring Authorities must acquire permanent rights. However, if the Orders are confirmed, the new rights would be voluntarily extinguished when the scheme is completed. Ongoing maintenance would be achievable from within the widened highway which would by then exist.
- 4.3.6 All of the Orders scheme works involve the widening of the highway in an easterly direction to avoid heritage assets along parts of the western side of the A565. Much of the land affected by the scheme comprises safeguarded areas of undeveloped land. For the most part, effects on existing businesses and residences would be avoided. An exception is the land belonging to WTL, where the office element of their manufacturing facility stands in the way of the improved highway. Although land immediately in front of residential properties is affected by the SMBC CPO at plot 6, the present access to the properties is across land which is not currently highway land but would be highway land after the scheme was executed, thereby enabling continued access to the dwellings.
- 4.4 ***The Side Roads Order***
- 4.4.1 The Orders scheme will require some stopping up of existing highways and private means of access. The LCC SRO deals with those matters, as there is no requirement for such an order as regards those parts of the scheme in Sefton. In the order as made, the highways where lengths are proposed to be stopped up are Ensor Street, Stone Street and Sherwood Street. Whilst these current through routes would be stopped up, other highway routes would be available to traffic. One private means of access on Walter Street, west of the A565, would be stopped up and re-provided to allow for the construction of a new pedestrian crossing. The more detailed position as regards the Side Roads Order is as follows:
- a) Ensor Street would be stopped up at its western end for a distance of 65 metres from the A565. The requirements of section 14(6) of the

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<sup>7</sup> AA/GM/APPX GM10.

*Highways Act 1980* (the 1980 Act) are met because the remaining length of Ensor Street would be accessible via Haddock Street and Forth Street and traffic presently using Ensor Street to access Forth Street could do so via Haddock Street or Esk Street.

At the Inquiries, it was identified that the length of the highway affected by the LCC SRO as made is materially longer than that contained within the LCC CPO2, as the overlay produced by Mr McLarnon has demonstrated<sup>8</sup>. Therefore, an amendment is proposed to the LCC SRO to reduce its lateral extent to the east, such that the length to be stopped up will be reduced to 58 metres. At the eastern end of the area which is proposed to be stopped up, a new private means of access would be created to the Lookers' site to compensate for that which is proposed to be stopped up, allowing for transit from the retained highway onto land to be returned to the subsoil owner. The requirements of section 125(3) of the 1980 Act are therefore met. These are the only statutory tests which have to be met and Mr Hubbard, on behalf of WTL, was wrong to claim that there has to be some 'highways reason', whatever that may mean, for the stopping up.

It is accepted that the SRO as made also contains no provision stopping up the southern footway of Ensor Street beside the area of carriageway which is to be stopped up. An amendment is proposed to cure that defect by extending the area of the proposed stopping up to encompass the southern footway of Ensor Street along the same length as the carriageway which is proposed to be stopped up. That would remove any difficulty about the Lookers' operation using a public footway for parking purposes. The northern footway would be retained and widened for pedestrian access;

- b) Stone Street would be stopped up for a distance of 2 metres from the A565 and improved by the creation of a turning head. Section 14(6) of the 1980 Act is satisfied because of the ability to use Clegg Street or Upper William Street and Love Lane to access the remaining length of highway;
- c) As made, the SRO proposed the closure of Sherwood Street in a way similar to that proposed for Stone Street. That proposal would satisfy the requirements of section 14(6) of the 1980 Act because of the presence of remaining highways which would allow for access to the remainder of the length of highway on Sherwood Street. However, in the light of Mr PJ Morris' objection, and the increased activity on Sherwood Street, LCC proposes an amendment to the SRO to exclude that stopping up. Land has been purchased on the north side of Sherwood Street which would allow for the creation of off-street parking. This would allow Sherwood Street to be opened

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<sup>8</sup> AA/INQ/023.

up to two way traffic and would create the space to provide lay-by parking on Sherwood Street for customer parking for the businesses nearby. Consequently, Sherwood Street can have a left in and left out access from the A565. The arrangement would also benefit north bound traffic wishing to enter Maddrell Street, as it could right turn off the A565 at Upper William Street junction, proceed along Love Lane and travel west along Sherwood Street, onto the A565 and left in to Maddrell Street. A draft amended LCC SRO and Order plan has been prepared<sup>9</sup>. Separately, under Traffic Regulation Orders, Maddrell Street and Glegg Street are to be made one way streets in order to rationalise traffic flows and remove potential difficulties caused by the limited width and on-street parking on those two streets.

- 4.4.2 The remaining provision of the SRO is to close a private means of access on Walter Street to allow for the creation of a pedestrian crossing. The test in section 125(3) of the 1980 Act would be satisfied because a new access would be provided a few metres to the west along Walter Street.
- 4.4.3 There is an access on the northern side of plot 4 in the LCC CPO2 at Esk Street. There is no need to stop up the private means of access in that location, as it is proposed to be used with the scheme in place, as the plan produced by Mr McLarnon shows<sup>10</sup>.
- 4.4.4 Similarly, there is no need to stop up the private means of access on the southern side of plot 16 in the LCC CPO1. That is because the access would remain after the A565 has been widened. Again, Mr McLarnon has produced a plan which shows that arrangement<sup>11</sup>.
- 4.4.5 No SRO is proposed in the Sefton area, despite the Sefton CPO as made showing the creation of a turning head at Princes Street. That is different from the approach in Liverpool, where the provision of turning heads do feature in the SRO. That is because Princes Street is sufficiently wide to allow for the creation of the turning head within the current highway and within plot 2 of the Sefton CPO and no works/improvements are required within the highway. The Liverpool streets, by contrast, do require works within the existing carriageway, such that there is a reason for showing them as highways to be improved in the SRO. There is thus a cogent reason for the differing approach in the two Council's areas.

#### 4.5 ***Scheme justification***

- 4.5.1 The Orders scheme is justified for a number of reasons. Whilst not a substitute for the scrutiny which the Inquiries process has to give to the

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<sup>9</sup> AA/INQ/002.

<sup>10</sup> AA/INQ/015-referred to on that plan as plot 2.

<sup>11</sup> AA/INQ/024.

- scheme, it is relevant to note that the Orders scheme has already had its merits tested as part of the assessment of the Outline Business Case<sup>12</sup> and Full Business Case<sup>13</sup> upon the basis of which valuable public funding has been secured<sup>14</sup>.
- 4.5.2 The A565 is the key route between Liverpool and Sefton and is heavily used, with about 22,500 vehicles using it during a typical weekday according to the latest Department for Transport collected figures. Through its connections to the trunk road network, it forms part of the route for longer journeys using the M57, M62 and M6. The past dualling of much of the A565 means that the two remaining single carriageway sections with which the Orders scheme is concerned operate as a bottleneck to traffic. This creates congestion, delay to traffic and risk to highway users. There is no material before the Inquiries which disputes the Councils' position that peak time delay and congestion is common along the A565 and at its key junctions.
- 4.5.3 The congestion issues were identified in the *A565 North Liverpool Key Corridors-Major Scheme Business Case*<sup>15</sup>, as set out by Mr Oates<sup>16</sup>. The congestion affects not only car drivers, but also public transport services and commercial traffic wishing to access the port and other commercial uses. As Mr Oates' evidence sets out, future traffic growth will make the position worse. Consented developments, such as Liverpool Waters and the SuperPort project, will add further stress. By 2024, peak hour traffic is forecast to grow by 30% when compared to 2008 levels<sup>17</sup>. The Orders scheme would alleviate these issues. The assessment in the Full Business Case shows the journey time and congestion benefits which would arise.
- 4.5.4 It is not apt to consider the output of the *A565 Great Howard Street Improvements-Options Appraisal report*<sup>18</sup> which showed journey times increasing. As Mr Oates explained, the scheme being assessed then was modelled differently and was materially different from that comprised in the scheme before the Inquiries, having more signal controlled junctions (4 compared to the 2 now proposed), more opportunities for right turning movements, a different proposal for King Edward Street and a lower speed limit.
- 4.5.5 The unrestricted right turns which can be made at the moment onto and off the A565 present a road safety problem, with right turn movements featuring in the accident record<sup>19</sup>. The scheme would assist in reducing

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<sup>12</sup> CD15.

<sup>13</sup> CD14

<sup>14</sup> CD29.

<sup>15</sup> CD14.

<sup>16</sup> AA/AO/POE para 23.

<sup>17</sup> AA/AO/POE para 25.

<sup>18</sup> CD24.

<sup>19</sup> The first eleven pages of the 24 pages of data in CD27 include 8 such accidents: entries 6, 8, 10, 23, 33, 35, 41 and 42.

the risk posed by right turns by limiting the opportunity for such manoeuvres through the installation of a central reservation. The benefits of such accident savings are not included within the Benefit to Cost Ratio (BCR) calculation which is dealt with later.

- 4.5.6 The public realm along parts of the relevant corridor of the A565 is unattractive. The footways include sections in poor states of repair, there are gaps in street lighting coverage and the current pedestrian and cycling linkages across the busy A565 are poor and act as a disincentive to pedestrian and cyclist movement. As Mr Oates explains at paragraphs 29 and 33 of his proof, rates of walking and cycling are low. The scheme would assist in improving the environment such that it becomes a more attractive area through which to pass and in which to invest. The facilities for non-motorised users in the proposed scheme, such as the enhanced crossing close to the Walter Street junction, would provide significant improvement. By encouraging non-car use, there is the prospect of reduced reliance upon the car, and the freeing up of some capacity on the highway.
- 4.5.7 Congestion on the A565 increases the impact on air quality. Emissions increase when traffic moves at variable speeds with frequent stopping, idling and acceleration. By increasing capacity and reducing delay any increases in emissions caused by increasing traffic can be reduced. Further, if people are enticed to cycle by the new provision on Regent Road, there is the potential for some modal shift away from the car<sup>20</sup>.
- 4.5.8 The wards neighbouring the A565 have high unemployment. 50% of the residents of North Liverpool fall into the top 1% of the most deprived, measured nationally. The poor physical realm deters investment. By improving the public realm and the accessibility of Liverpool Waters and the Port of Liverpool, there is the scope to aid inward investment and improve opportunities for residents to use non-car modes of transport to access the enhanced employment opportunities that such projects will bring.
- 4.5.9 The scheme performs very well when subjected to cost benefit analysis. Analysis has found a BCR of 4.36<sup>21</sup>. With a ratio of 2 representing strong value for money, a BCR in excess of 4 shows very strong value for money indeed. This calculation does not include the monetary benefit of the cycle provision at Regent Road, which would have a monetised benefit of £1.3m. Furthermore, the predicted accident savings created by the restriction on right turn manoeuvres would lead to an estimated saving of 29 accidents over 5 years<sup>22</sup>. There has been no challenge to the robustness of the BCR calculation.

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<sup>20</sup> AA/AO/POE paras 37-40.

<sup>21</sup> CD14 para 8.12.

<sup>22</sup> CD14 para 8.13.

- 4.5.10 Dr Owen's evidence sets out the economic benefits that the scheme would bring<sup>23</sup>. It shows that the scheme would bring significant economic benefits by allowing the acceleration of the pace of development at Liverpool Waters compared to the delay of development which would occur without the scheme. The value of that benefit would amount to some £106 million over the nine years 2016 to 2024 inclusive.
- 4.5.11 The construction spend would bring an economic benefit of some £23.5 million, generating some 134 net job-years of employment, equivalent to the creation of 13.4 jobs<sup>24</sup>.

#### 4.6 **Policy position**

- 4.6.1 As set out in the *A565 North Liverpool Key Corridors-Major Scheme Business Case*<sup>25</sup>, the NLKC improvements scheme, of which the Orders scheme forms part, accords with the relevant saved policies of the *Liverpool Unitary Development Plan, 2002*<sup>26</sup>. It is also supported by the relevant draft policies of the *Liverpool Local Plan, 2016*<sup>27</sup>, acknowledging these have yet to be examined and do not deserve full weight. The proposals also accords with the relevant policies of the adopted Sefton Local Plan, 2017<sup>28</sup>. It is a theme of all of these policy documents to support improvements to the length of the A565 within the scheme and to support the development and enhancement of the Port of Liverpool. Furthermore, it accords with all relevant national planning and transport policy, regional objectives set out in the *Liverpool City Region Growth Prospectus*<sup>29</sup>. Through investment in the transport infrastructure, the NLKC improvements scheme would support the City Region to deliver on its ambitions to develop a globally competitive freight and logistics hub and drive economic growth. Again, no one has disputed that that is the case.
- 4.6.2 LCC's *A Cycling Strategy for Liverpool 2014-26 (CSL)* promotes the development of a safer cycling environment through the provision of a cycle network with clearly defined routes and good quality facilities. It identifies the need for safe crossings across busy junctions. Furthermore, it recognises that many people will not start cycling unless vehicles can be physically separated from traffic on busier roads with speeds higher than 20 mph and where this is not possible on busy roads, parallel routes should be considered<sup>30</sup>. In keeping with the strategy, the NLKC improvements scheme includes the provision of an off-carriageway cycle corridor along Regent Road, which would itself be designated as an

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<sup>23</sup> AA/GO/POE.

<sup>24</sup> AA/GO/POE para 22.

<sup>25</sup> CD14 sections 7.9-7.10.

<sup>26</sup> AA/INQ/12.

<sup>27</sup> AA/INQ/14.

<sup>28</sup> AA/INQ/13.

<sup>29</sup> CD21.

<sup>30</sup> AA/JD/APPX JD1 pages 16-17.

access only route, thereby reducing traffic levels. The Orders scheme would play its part through the creation of additional signal controlled junctions providing formal safe pedestrian and cycle crossing facilities at key locations and these will in turn be linked to the Regent Road corridor by the enhanced east-west links along side streets, creating enhanced non-motorised user permeability and safety. In the context of the wider NLKC improvements scheme, the Orders scheme accords with the aims of the CSL and other local policy, insofar as it promotes the provision of improved facilities for cyclists<sup>31</sup>.

#### 4.7 ***Lack of impediments to the Scheme***

- 4.7.1 The scheme would be executed pursuant to permitted development rights and an express grant of planning permission is not needed. There is no planning impediment to delivery of the scheme. The scheme would require Traffic Regulation Orders (TROs) to be made<sup>32</sup>. However, none of the TROs are expected to trigger the requirement for a public Inquiry and whilst any objections to them would be considered by the Authorities with an open mind, LCC can see no reason to think that there is a serious risk of the TROs failing to be made.
- 4.7.2 With the exception of the TROs and the Orders subject of these Inquiries, no other consents, permissions or orders are required.

#### 4.8 ***Funding***

- 4.8.1 The scheme has been the subject of a funding bid through an Outline Business Case and Full Business Case<sup>33</sup>. Funding of £13.3 million was awarded by the Liverpool City Region Local Transport Body in April 2016 and the two Councils have committed match funding. Taken together, the scheme costs, including land acquisition, are fully funded.
- 4.8.2 Whilst the funding offered by the Combined Authority is subject to conditions, none of these are so onerous as to put the scheme in jeopardy: see the funding agreement at CD29 and Annex B of the funding letter appended to it. The funding is time limited to work completed by 31 March 2019, but the timings for the sources of the funding in Annex A of that letter show, as Mr Davies said, that the funding from the Combined Authority is to be called on first, with the Councils' share of the funding increasing towards the end of the project. The Councils have given clear commitments to fund any shortfall. The work programme allows for a decision on the Orders at the end of the year and builds in a two month period to wait for the expiry of the legal challenge period. Even though that programme makes some assumptions about further agreements being made in respect of some objections, there are sufficient elements of

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<sup>31</sup> CD14 section 7.9.

<sup>32</sup> AA/JD/POE para 16.

<sup>33</sup> CD14 and 15.



work which can be carried out in order to safeguard the funding stream. In particular, the Councils' clear decisions to make up shortfalls in the Combined Authority funding is not time limited and allows for overruns post March 2019 to be accommodated. There is ample evidence that the works can be properly funded and executed within the life of the Orders, if confirmed.

#### 4.9 ***Land acquisition to date***

4.9.1 Good progress has been made in acquiring land and interests by agreement. As regards land acquisition, the Councils either now own or have agreed terms to acquire: 26 of the 29 LCC CPO1 plots; 3 of the 10 LCC CPO2 plots; and 1 of the 5 SMBC CPO plots<sup>34</sup>.

#### 4.10 ***Withdrawn objections***

4.10.1 A total of 14 objections were made to the Orders. The following objections have been withdrawn:

- a) Morrison's Gas Related Products Limited, who had objected to the treatment of plot 9 in the LCC CPO2;
- b) W J Leech & Sons Limited. The objection has been withdrawn on the basis that the Authority will provide alternative access to the Leech site from the A565, without the provision of the turning head originally proposed. The Authorities therefore promote that option and invite the deletion of SMBC CPO plots 2 and 11 as no longer required.
- c) Barry's Skip Hire Limited, who had objected to the inclusion of plots 1, 2, 10 and 11 in the SMBC CPO;
- d) Clear Channel UK Limited, who had objected in relation to plot 21 of the LCC CPO1;
- e) United Utilities, who had objected to the Orders;
- f) Liverpool Water Witch Marine & Engineering Company Limited, who had objected to the inclusion of plot 20 in the LCC CPO1; and,
- g) Scottish Power Energy Networks objected to the LCC SRO. That objection was withdrawn on 31 March 2017.

#### 4.11 ***Unresolved objections***

4.11.1 The Authorities' position on the remaining objections is largely set out in the AA/Table, save for events which have occurred very recently in relation to WTL.

4.11.2 A number of objectors complain that there has been insufficient

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<sup>34</sup> AA/DK/APPX DK-1.

engagement with them. Those claims are refuted. Mr King sets out the extensive efforts which have been made to engage with affected persons on a case-by-case basis, as referred to in AA/Table and as set out in detail in his evidence<sup>35</sup>. There has been appropriate engagement and proper attempts to acquire the necessary land and interests by agreement. The detail in relation to WTL is dealt with below in the Councils' rebuttal.

#### 4.12 ***Proposed modifications to the Orders***

4.12.1 There are three sets of proposed amendments to be made to the Orders:

- a) The DfT's National Transport Casework Team (NTCT) raised a number of drafting points in relation to the Orders which they said would have to be included if the Orders were to be confirmed. The Authorities take no issue with those amendments, which are minor;
- b) Amendment to the SRO. These involve the removal of the stopping up of Sherwood Street, for the reasons set out earlier, and the amendment of the area proposed to be stopped up under the SRO at Ensor Street, again for the reasons which have been set out earlier.
- c) Amendment to the LCC CPO1, removing the plots (13, 14, 18, 19, 33 and 34) now included in the LCC CPO1(2) and amendment of the LCC CPO1(2) by deleting the plots which relate to the turning head in Sherwood Street (plots 3 and 4), which are no longer required as a result of the modification to the SRO. Amendment to the SMBC CPO involving deletion of plots 2 and 11, as no longer required.

4.12.2 The amendments to the Orders which affect W J Leech and Sons Limited (SMBC CPO) as well as those affecting GMAC UK Plc and General Motors UK Limited (LCC SRO) do not require them to be consulted. That is because the course of action which is now proposed by the Councils is what each objector asks for in their objection letter. The new proposals respond to points already made and do not devise new solutions which Leech and GMAC/GM UK have not addressed.

4.12.3 The Authorities case is to promote the following variants of the Orders:

- a) LCC CPO1a) and b)<sup>36</sup>: a) making the drafting corrections identified by NTCT; and, b) removing the plots subsequently dealt with in the LCC CPO1(2);
- b) LCC CPO1(2)a) and b)<sup>37</sup>: a) making the drafting corrections identified by NTCT; and, b) removing the plots relating to Sherwood Street;

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<sup>35</sup> AA/DK/POE.

<sup>36</sup> AA/INQ/003, with amended maps AA/INQ/011.

<sup>37</sup> AA/INQ/003.2, with amended map AA/INQ/026.

- c) LCC CPO2a)<sup>38</sup>: a) making the drafting corrections identified by NTCT;
- d) SMBC CPOa) and b)<sup>39</sup>: a) making the drafting corrections identified by NTCT; and, b) omitting plots 2 and 11; and,
- e) LCC SROa) and b)<sup>40</sup>: a) with the stopping up of Sherwood Street deleted from the text and sheet 1 replaced to remove Sherwood Street; and, b) sheets 3 and 4 both amended so as to show a reduced length of Ensor Street stopped up, the new private means of access moved west to adjoin the end of the reduced length of stopping up and the southern extension of the area to be stopped up to encompass the southern footway. Sheet 2 would remain as made.

#### 4.13 **Conclusions**

- 4.13.1 The Orders have been made under the appropriate statutory powers in the *Highways Act 1980 (as amended)*. No one contends to the contrary.
- 4.13.2 For the reasons set out above, the statutory tests for the stopping up provisions in the SRO are met.
- 4.13.3 The justification for the CPO is strong such that there is a compelling case in the public interest for the acquisitions required to provide the scheme both at the general level and as regards the need for each plot affected by the Orders. The land proposed to be required is the minimum necessary to achieve the scheme's aims.
- 4.13.4 Whilst, with reference to the *Human Rights Act 1998 (as amended)*, the CPOs would interfere with the Human Rights in Article 8 (as regards dwellings) and Article 1 of the First Protocol (as regards both dwellings and non-domestic premises), these are qualified rights which admit of justified interference. Given the scheme justification and the extent of the land to be acquired and the limited effect of the acquisitions upon the persons interested in those plots, it is the Acquiring Authorities' submission that there is a compelling case in the public interest for the CPOs and that the interference with Convention Rights in this case is justified and proportionate.
- 4.13.5 The Authorities submit that the evidence conclusively shows that the scheme would bring considerable public benefits and that there is a compelling case in the public interest for the CPOs to be confirmed and that the SRO can properly be confirmed in the light of the statutory tests which apply to it.
- 4.13.6 The Authorities therefore ask the Inspector to recommend and the Secretary of State to decide that the Orders should be confirmed subject

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<sup>38</sup> AA/INQ/003.1, with maps as made.

<sup>39</sup> AA/INQ/003.4, with amended map AA/INQ/025.

<sup>40</sup> AA/INQ/002, 001, 001.1, 001.2 and 002.

to the modifications which have been sought.

## 5 THE CASE FOR THE OBJECTORS

*None of the objectors appeared at the Inquiries to give evidence. The gist of the material points made by the objectors in their written submissions were:*

### 5.1 **The case for Wild Thang Limited** (WTL)<sup>41</sup>

5.1.1 WTL is the owner of Nos. 331-337 Derby Road and its objections relate to the LCC CPO1, CPO2 and SRO.

5.1.2 WTL is a small successful incorporated promotions and marketing business, with around 34 employees. Its freehold premises include: a two-storey brick built office fronting Derby Road; an adjoining 3 bay industrial/factory building, 2 bays of which are used for WTL's garment embroidery, printing and associated manufacturing activities, and the 3<sup>rd</sup> bay is occupied by DMI Fabrications limited (DMI); and, an open parking/access/delivery and collection/storage area to the north of the buildings, which is accessed from Derby Road. The total site area is approximately 2,465 m<sup>2</sup>.<sup>42</sup>

5.1.3 The LCC CPO2 includes the acquisition of plot 10. At its southern end it is currently occupied by the two-storey offices of WTL, which would be demolished to make way for the widened highway, together with part of WTL's car park at the northern end of plot 10. In addition, new rights would be acquired over plot 19, which is land used for parking/storage. LCC CPO2 would result in the need for WTL to undertake works/re-configure its site, if it is to remain insitu.

*No serious attempt to acquire or to progress an advance agreement*

5.1.4 It is common ground between WTL and LCC that, in light of the proposed Orders, Nos. 331-337 would have to be reconfigured/developed in order to allow WTL to continue to operate from there. This would not be limited to a loss of offices. Whilst the current vehicular access point to the site is off Derby Road, the road improvement scheme plans propose that this should be closed and access taken from Bedford Place.

5.1.5 In 2015 WTL appointed K2 Architects (K2), a LCC approved consultant, to advise it on possible options for the re-provision of offices and access within the reduced premises which would result from the Orders. Between November 2015 and February 2017, K2 presented a number of

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<sup>41</sup> OB3, WT/CCH/SUM/POE/APPX/REB, WT/MD/POE/APPX, WT/CRD/SUM/POE/APPX and WT/REB/MISC.

<sup>42</sup> WT/MD/APPX Exhibit MD1 page 456/7 existing floor plans.

options. The option that is favoured by WTL and K2 is Option 5 which involves making use of the space currently occupied by DMI. This would mitigate the loss of office space, in the context of WTL being left in no worse and no better position than at present and being able to continue to operate throughout the construction period for the new office space. It was supported by a construction phasing plan together with health and safety analysis and a structural strategy, which indicated that the mezzanine level within the 2 bay industrial/factory building would also need to be removed to ensure safe working conditions for business continuity throughout the construction period.

- 5.1.6 Whilst it is understood LCC takes the view that the Option 5 proposals would amount to betterment, the mezzanine level need not be removed and it would be possible for both WTL and DMI to continue operating from the site, no coherent critique of WTL's Option 5 was provided prior to the submission of proofs of evidence. At the Inquiries, LCC seeks to rely on evidence from an architect, Mr Mistry, which was only disclosed when its proofs of evidence were submitted. His evidence has been produced on the basis of a single site visit, which he did not personally attend, and without any contact between Mr Mistry and WTL. Consequently, he has failed to understand the operational and customer requirements of the business as well as the structural and health and safety constraints, which any solution must allow for. This renders his evidence, including his view that both DMI and WTL could continue to operate within the premises, flawed and of little, if any, utility.
- 5.1.7 Undertaking and financing the required works would be challenging for WTL, not least as a CPO renders a property unsuitable security for lending. To progress Option 5 in a timely manner would require a contract to be in place with LCC to allow WTL to recover 100% advances of stage payments. Whilst a sample agreement was provided by WTL to LCC in mid-2016, LCC has not responded to it. It remained the case in July 2017 that no offer had been made by LCC for the land to be taken or compensation to WTL. At least a framework agreement, regarding adaptations to be made to the premises and progress funding, is essential. Agreed Heads of Terms could significantly assist in bringing forward a solution. Without such an agreement, it would not be possible to deliver a suitable solution that meets the reasonable needs of both WTL and the road widening scheme. LCC's approach to these matters prior to the Inquiries is wholly unsatisfactory and does not accord with national guidance.
- 5.1.8 Compensation is not a matter for the Inquiries and any dispute would be resolved by the Upper Tribunal (Lands Chamber). However, LCC has not used proper endeavours to seek a deliverable solution. The above record indicates LCC's unwillingness to make realistic proposals to achieve an agreement without resorting to compulsion. Its approach does not satisfy the Secretary of State's requirements for the use of compulsory purchase powers and it fails to adequately protect WTL's business and the 34 associated jobs.

*Material detriment to the whole*

- 5.1.9 As at the date of making the Orders, in spite of the best endeavours of WTL and its advisers, it was still unclear whether it would be physically and economically possible to remove the office block from the Derby Road frontage of the premises as proposed and relocate WTL's growing operational business within the reduced premises resulting from the CPO and maintain continuity of trade. In spite of being aware of this, the Acquiring Authority has not included for the possibility of acquiring the whole of WTL's title and both occupied and let areas.

*DMI Fabrications Limited (DMI)*

- 5.1.10 LCC has been well aware from an early stage, from the preliminary sketch design studies undertaken, that it is highly likely that DMI, WTL's tenant of one bay on the east side of the industrial/factory building, would have to be moved compulsorily out of their premises to enable a viable relocation scheme for WTL at Nos. 331-337 Derby Road. The LCC CPO2 is flawed as drafted, as it does not seek to provide powers to acquire all interests reasonably required to implement the scheme. That is the leasehold interest in the DMI occupied space, which would be almost certainly necessary to implement a partial acquisition only. While DMI originally contracted out of the protection of the *Landlord and Tenant Act 1954* (Act of 1954), the fact that it has been holding over on a continuation tenancy since that lease expired means that it is now a protected tenant<sup>43</sup>. Under the circumstances, it would be necessary for WTL to enter into negotiations with DMI to surrender its lease and there may be difficulties securing vacant possession.

*Closure and the acquisition of Ensor Street*

- 5.1.11 There is no compelling need in the public interest to close Ensor Street and acquire WTL's interest in half the road. Indeed the evolving relocation and removal studies on behalf of WTL suggest that access to its premises would continue to be required from Ensor Street. This would be primarily for goods deliveries, as the post-scheme compromised access and car parking from Bedford Place would be so reduced in capacity and flexibility that Ensor Street would need to be used for longer vehicle deliveries and refuse disposal<sup>44</sup>. Some of the land on Ensor Street may also be needed for replacement staff car parking to mitigate some of the spaces lost by relocation of the office premises onto part of the existing car parking area within WTL's site<sup>45</sup>. This closure proposal is clearly only driven by the Acquiring Authority wishing to use the land made available from the road closure to mitigate the impact of the road widening scheme as regards lost car sales display space from the adjacent car showroom premises.

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<sup>43</sup> WT/CCH/REB para 52.

<sup>44</sup> WT/MD/APPX MD1 pages 454 and 455.

<sup>45</sup> WT/CCH/REB para 27 & Appendix WT1.

Such would clearly be a private rather than a public interest issue for which the use of the LCC SRO is not appropriate and would overreach the use of these statutory powers. The LCC has not been justified on valid highway grounds.

*No cycle lane provision in the highway improvement scheme*

- 5.1.12 The Statement of Reasons<sup>46</sup> indicates that the Orders scheme would be a sustainable project, yet it appears to fail to make proper long term provision within it for cyclists on one of the most important routes to Liverpool City Centre from the northern suburbs. It is a matter of fact that, at present, cyclists using this route have no specific provision and are exposed to unreasonable risks by the normal traffic flows. For this reason the currently designed scheme does not comply with *A Cycling Strategy for Liverpool 2014-2016*, nor appear to have taken account of the *Draft Liverpool Local Plan* published in September 2016 for public consultation, which closed on 31 October 2016. Therefore, the scheme does not appear to WTL to be sustainable in the medium to longer term and should be rejected and required to be re-designed.

*Inadequate funding in place*

- 5.1.13 The Statement of Reasons, paragraphs 8.1-8.2, claims that funding is in place. However, during discussions with LCC concerning options for the relocation of the WTL office space, LCC's representatives have indicated that there is limited funding available and certain solutions would be unaffordable. Furthermore, paragraph 9.14 of the Statement of Reasons indicates that if the timetable is not met, funding may cease to be available, implying that there is insufficient funding to meet all contingencies. LCC, in the setting of the relocation of WTL's office accommodation on part of its retained land, would be obliged to pay whatever fair and reasonable compensation for disturbance is due or determined under the CPO Compensation Code, and if the budget available is insufficient to meet such relatively open ended costs then the scheme for which the CPO is promulgated is not properly funded and should not be approved.

*Conclusions*

- 5.1.14 Under the circumstances identified above, the Orders should not be confirmed.

5.2 ***The case for DMI Fabrications Limited*** (DMI)<sup>47</sup>

- 5.2.1 DMI are tenants of unit 2 Derby Works, Nos. 331-337 Derby Road.

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<sup>46</sup> CD9.

<sup>47</sup> OB4.

The objections relate to the LCC CPO2 and SRO.

*No attempt to negotiate an agreement allowing continued occupation*

5.2.2 The acquisition of LCC CPO2 plot 10 currently occupied by car parking spaces and the two-storey offices from the freeholder, WTL, and new rights over plot 19 would result in the need for WTL to undertake works/re-configure its site to remain insitu. At present, it is anticipated that it would be likely to result in the need for WTL to take possession of unit 2, in place of the accommodation to be compulsory purchased, thereby forcing DMI to relocate. No attempts have been made by LCC to discuss possible solutions jointly with DMI and WTL, as to how the Acquiring Authority could undertake works/reconfigure the site in order to retain both parties in the event of the LCC CPO2 being confirmed. Early negotiations are needed in order that reconfiguration works can be carried out to protect against undue delays resulting from the acquisition of part of a building, which could affect the funding of the scheme, as recognised in paragraph 9.14 of the Statement of Reasons<sup>48</sup>. The approach by the Acquiring Authority in respect of plots 10 and 19 is in stark contrast to its efforts to reconfigure other sites affected by the LCC CPO2.

5.2.3 Paragraph 4.7 of the Statement of Reasons refers to negotiations taking place with the landowners and occupiers of those properties affected by the Orders scheme. Paragraph 9.4 identifies that all lessees have been invited to enter into discussions with the relevant Acquiring Authority with a view to agreeing appropriate terms and, where appropriate, discuss options for relocation. Paragraph 9.5 identifies that the Acquiring Authorities have sought to acquire all of the third party interests in the Order lands through negotiation. None of these statements are accurate with respect of DMI.

*Rights to be acquired (Plot 19)*

5.2.4 It has yet to be demonstrated that the new rights to be acquired over plot 19 are necessary or that they cannot be replaced by rights over alternative land in the immediate vicinity. The reduction in the amount of land to be temporarily occupied during the period of the works would increase the prospect of a successful site reconfiguration to facilitate continued occupation of Nos. 331-337 Derby Road by both DMI and WTL.

*Closure of Ensor Street*

5.2.5 The Acquiring Authority has not demonstrated any compelling need in the public interest to close Ensor Street, which is used by both DMI and WTL. Given the impact of the proposed scheme on the site area and resulting

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<sup>48</sup> CD9.



site configuration issues, the section of Ensor Street to be stopped up could be included within the curtilage of Nos. 331-337 to assist in enabling re-configuration of the site to enable DMI and WTL to remain insitu. The inclusion of that area of highway within the curtilage of Nos. 331-337, as opposed to that of another adjoining occupier, would ensure retention of an existing business.

*No cycle lane provision in the highway improvement scheme*

- 5.2.6 The Statement of Reasons for the scheme indicates that it would be a sustainable project, yet it appears to fail to make proper long term provision for cyclists on one of the most important routes to Liverpool City Centre from the northern suburbs. For this reason, the currently designed scheme does not appear to DMI to be sustainable in the medium to longer term and should be rejected and be required to be re-designed.

5.3 ***The case for Sal Fuel Retailers Limited and Raiscorp Limited***  
(SFRL)<sup>49</sup>

- 5.3.1 Sal Fuel Retailers Limited is the owner of Nos. 74-80 Derby Road and Raiscorp Limited is the leaseholder and occupier of the Shell petrol station and shop with associated parking at Nos. 74-80 Derby Road. The objections relate to the LCC CPO2 and SRO.

*Insufficient attempts to negotiate an agreement in advance of the CPO*

- 5.3.2 Whilst discussions have been ongoing in respect of the impact of the scheme on SFRLs' property and associated steps which could be taken by LCC to limit disruption to the business, the first formal offer was not received until 24 August 2016. SFRL consider therefore, that LCC has not allowed sufficient time for negotiations to take place prior to making the Orders to enable the proposed scheme to be modified in such a way that it will achieve its objectives, but also minimise the impact on the affected businesses.

*Mitigation measures*

- 5.3.3 The proposed acquisition of plot 7, acquisition of new rights over plot 17 and the creation of a central reservation along Derby Road would have a significant impact on the value of Sal Fuel Retailers Limited's interest and the trading performance of Raiscorp Limited. The Acquiring Authority has not included sufficient land in the Orders to assist with the mitigation of these effects.
- 5.3.4 The physical effects resulting from the proposed road widening would

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<sup>49</sup> OB5/6.

include the loss of HGV petrol pumps due to the reduction in circulation space on site, loss of the northwestern section of the shop to accommodate the relocated exit from the site, loss of car parking for the shop and loss of advertising hoardings. In addition, the proximity of the western-most pumps to Derby Road following road widening may breach minimum interface distances such that they may no longer be used. The majority of issues cannot be overcome through site reconfiguration due to the compact nature of the site.

- 5.3.5 LCC is unwilling to stop up the section of Eleanor Street to the rear of Nos. 74-80 Derby Road, which is rarely used by vehicles. The inclusion of this land in the LCC SRO would have enabled the Acquiring Authority to mitigate SFRLs' loss through the extension of the site of Nos. 74-80 Derby Road to the east. The elevation of the industrial building fronting onto the east side of Eleanor Street incorporates no vehicular access, only fire escapes. However, no justification has been provided in respect of its refusal. In contrast, the Order proposes the stopping up of Ensor Street, which SFRL understand is to enable LCC to extend the length of Lookers' site at No. 82 Derby Road, thereby mitigating against the loss of a thin strip of its car display frontage. There is no justification for a difference in approach with SFRL, where the impact of the scheme is likely to be greater. Therefore, SFRL seek a modification to the LCC SRO to include the stopping up of Eleanor Street.
- 5.3.6 Similarly, the Acquiring Authority has refused to include a right turn into Nos. 74-80 Derby Road, which will be needed to mitigate loss of trade once the central barrier has been erected. This is despite the fact that a traffic survey commissioned by the Acquiring Authority over a single week towards the start of 2016 showed that 20% of trade to the garage was generated by right hand turns into the petrol station.

*Rights to be acquired (Plot 17)*

- 5.3.7 It has not been demonstrated that the new rights to be acquired over plot 17 are necessary or that they cannot be replaced by rights over alternative land in the immediate vicinity, such as an increase in the size of plot 13, which isn't in daily use. Plot 17 forms part of the car parking provision regularly used in connection with the shop on site and is overhung by the petrol pump canopy. There are also serious concerns that the use of the western-most pumps would not meet the regulations for safe use when plot 17 is temporarily occupied by the Acquiring Authority following the acquisition of new rights. SFRL notes that new rights are not being sought along the full length of the scheme.

*No cycle lane provision in the highway improvement scheme*

- 5.3.8 The Statement of Reasons for the scheme states that it would be a sustainable project, yet it appears to fail to make proper long term provision within it for cyclists on one of the most important routes to

Liverpool City Centre from the northern suburbs. For this reason, the currently designed scheme does not appear to SFRL to be sustainable in the medium to longer term and should be rejected and be required to be re-designed.

5.4 ***The case for GMAC UK Plc and General Motors UK Limited (GMAC/GM)***<sup>50</sup>

5.4.1 GMAC is the freeholder and GM is the long leaseholder of No. 82 Derby Road, which is the site of a motor dealership franchise currently operated by the tenant Lookers Plc (Lookers' site). The objections relate to the LCC CPO2 and SRO.

*LCC SRO*

5.4.2 LCC is seeking to stop up a length of Ensor Street and the private means of access to the property. Ensor Street would have a pavement constructed across its frontage with the A565 to stop all vehicular traffic from entering it. GMAC/GM consider that insufficient justification has been provided for closure of Ensor Street and stopping up of the private means of access to the property through the use of Statutory powers. GMAC/GM consider that inadequate consideration has been given to the impact of the loss of the private means of access and use of Ensor Street resulting from the Order, which would disrupt servicing and trade at its property.

*LCC CPO2*

5.4.3 The following property is included in the Order:

- a) Plot 8-acquisition of 715 m<sup>2</sup> of land and premises known as No. 82 Derby Road;
- b) Plot 9-acquisition of 589 m<sup>2</sup> of land and adopted highway, known as Ensor Street, situated to the north of No. 82 Derby Road, in respect of subsoil beneath the adopted highway; and,
- c) Plot 18-acquisition of new rights over 238 m<sup>2</sup> of land and premises know as No. 82 Derby Road, for the purpose of carrying out works connected to the improvement of the existing highway.

5.4.4 GMAC/GM consider that insufficient justification has been provided for the acquisition of the objectors' interests. Furthermore, inadequate consideration has been given to the impact of the loss of exclusive use of the land resulting from the Order, which would disrupt servicing and trade at its property.

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<sup>50</sup> OB11/12.

*Conclusion*

- 5.4.5 GMAC/GM request that the Secretary of State refuses to confirm the Orders until its concerns have been fully and satisfactorily resolved.
- 5.5 ***The case for Peter Jonathan Morris*** (PJM)<sup>51</sup>
- 5.5.1 PJM is the owner of No. 166 Great Howard Street, which contains a trade counter unit currently let to One Stop Hire (OSH). The objections relate to the LCC CPO1 and SRO.
- 5.5.2 OSH currently has its customer entrance on the Sherwood Street elevation of the property and customers generally use Sherwood Street to access the car park situated at the front of the property.
- 5.5.3 The property would be adversely affected by the stopping up of Sherwood Street at its junction with Great Howard Street and the proposed compulsory purchase of part of the land occupied by its car park. The car park is fundamental to the trade counter business that operates from the premises and the reduction in the property's car parking area, resulting from the LCC CPO1, would prevent customers from parking on the site. Without a car park and without being able to access Sherwood Street from Great Howard Street, their customers would be likely to use alternative suppliers. The appeal of the property to alternative businesses would also be greatly reduced. This would have a significant negative impact on the rental and capital values of the property.
- 5.5.4 Stopping up Sherwood Street would mean that cars which have previously parked there would use Maddrell Street, as an alternative, where parking is already difficult. This would potentially create issues with goods loading at the property. This situation would be further exacerbated by the reduction in the property's car parking area. The proposal to make Maddrell Street one-way would have a further impact on access and circulation local to the premises.
- 5.5.5 Fly tipping already takes place on Sherwood Street and stopping it up would be likely to increase such activities, due to a lack of through traffic. Fly tipping is generally less of an issue on thoroughfares.
- 5.5.6 A number of the properties along Sherwood Street, neighbouring No. 166, have loading doors. If access is blocked at the Great Howard Street end, as proposed, there would potentially be height issues with goods vehicles having to access properties through the railway arch at the eastern end of the street.

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<sup>51</sup> OB10.

- 5.5.7 It would be more appropriate to stop up Sherwood Street at its eastern end, at its junction with Love Lane, rather than at its western end.

## **6 REBUTTAL BY LIVERPOOL CITY COUNCIL AND SEFTON METROPOLITAN BOROUGH COUNCIL** (the Councils)

### 6.1 ***Wild Thang Limited*** (WTL)

- 6.1.1 WTL objected to the inclusion of plots 9, 10 and 19 in the LCC CPO2 and to the SRO.

- 6.1.2 There is no doubt that the land occupied by the office element of the WTL operation stands in the way of the scheme. That is not in dispute. Nor does WTL query the need for the road in general or for the scheme to encompass the land occupied by the offices. WTL's concern has always been to ensure that loss of that land does not prevent them from operating. The two schemes of redevelopment which have been discussed: K2 Architect's option 5 and the Council scheme set out by Mr Mistry both seek to deal with that issue. Heads of Terms have now been agreed which allow for the company to construct its favoured scheme for mitigating the loss of its office building, rather than the Council's, leaving the question of whether WTL should be compensated for that scheme to be addressed by the Upper Tribunal (Lands Chamber).

- 6.1.3 The Department for Communities and Local Government's *Guidance on Compulsory Purchase Process and The Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion* (CPG) does set out that 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. The Council considers that must not be taken too literally in this case or treated as though it was a rigorous statutory test. That is because, although Mr Hubbard's main proof<sup>52</sup> at paragraph 30.1 does complain about the absence of an offer for the Order Land that they own, that point is an empty one. Paragraph 30.1 makes it clear that WTL's concern was not just about the absence of an offer for the land occupied by the offices but about the absence of a solution as to how the redevelopment of the wider site was to be achieved. It is abundantly clear from Mr King's oral evidence and from Mr Hubbard's evidence and the tenor of Mr Dwerryhouse's evidence that the desire to see a comprehensive solution which extended beyond the mere question of the value of the office land was not just important to WTL but was the company's paramount concern. The value of the office land was never the real issue. So, whilst it might be right to say that there had been no compliance with the strict words of that aspect of the guidance, that should not undermine the case for confirmation in this instance, because it was WTL who had focused upon the solution they

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<sup>52</sup> WT/CCH/POE.

wanted for the wider site, not the Council, and even if the Council had made an offer for the office land which represented a view of market value with which WTL agreed, it is clear that WTL would still not have been content or have withdrawn its objection in the absence of progress being made on a comprehensive advance agreement dealing with how the office redevelopment was to be achieved.

- 6.1.4 The objection has led to the production of a lot of evidence about the appropriate means of relocating the offices. But even recognising that the WTL objection has not been withdrawn, it is submitted that it is not necessary for the Inspector or Secretary of State to grapple in detail with the justification for K2's scheme as compared to the justification for Mr Mistry's. That is because it is agreed that there is a means of re-providing the office block, which can be secured by advance agreement and the issue really boils down to how much the Council should pay, whether they should pay the full costs of the K2 scheme with the attendant need to evict DMI Fabrications, or whether DMI can stay. That is a compensation matter and has been left as such by the Heads of Terms which have been agreed.
- 6.1.5 Mr Mistry's suggested scheme for re-configuration of WTL's site has been the subject of a number of criticisms in the lengthy WTL rebuttal of his evidence, but the critique boils down to the points set out in paragraph 43 of the rebuttal evidence. On those issues, the main points are:
- a) Mr Mistry is content that both during the works and after their completion, access can be secured for delivery vehicles to both DMI and WTL. The required vehicle manoeuvring space would be available at all stages, as shown on the vehicle tracking and phasing plans<sup>53</sup>;
  - b) The works to create the new office block could be sufficiently screened to provide protection for WTL's machinery from in-blown dust and dirt;
  - c) The structural engineer's report<sup>54</sup> prepared for Amey shows that the removal of the offices is likely to be feasible without affecting the structural integrity of the newly exposed wall. That wall would act as the division between the works area and the manufacturing operations so that no additional internal stand-off from the wall would be required to protect staff. The Sutcliffe Health and Safety report prepared for WTL does not differentiate between measures required for the office demolition and those required for the insertion of 13 new windows; and,
  - d) Mr Mistry's scheme does not allow for the removal of the mezzanine

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<sup>53</sup> AA/INQ/020 and 021.

<sup>54</sup> AA/INQ/022.

or for the use by WTL of the DMI unit because neither of those courses of action are required.

- 6.1.6 The content of the Heads of Terms agreed with WTL do not cut across the terms of the Orders, in particular the lack of provision in the SRO for changes to accesses. Although the schemes produced so far would require the closure of the Derby Road access, as Mr Cannock pointed out to the Inquiries the process of formulating the agreed scheme has not finished. It follows that the precise impacts on access at Derby Road and Bedford Place cannot be finalised now. Whilst the SRO contains no provision for changing accesses, that should not matter if an agreed solution is found, because if WTL agree to amend their access arrangements then that can be achieved without resort to provisions in an SRO.
- 6.1.7 Material detriment is a compensation matter. If WTL have a change of mind and decide that they cannot stay on site, then it is for them to serve a notice requiring the Acquiring Authority to purchase the whole of their site. If contested, the merit of such a notice is for the Upper Tribunal (Lands Chamber) to consider and, if the notice is upheld, that obviously has implications for the compensation claim that they could make. But, as a compensation matter, it is not a point which goes to the merit of the case for confirming the LCC CPO2.
- 6.2 ***DMI Fabrications Limited*** (DMI)
- 6.2.1 DMI objected to plots 10 and 19 being included in the LCC CPO2 and to the LCC SRO. WTL also contend that the land leased to DMI should have been included within the CPO. There is no basis for so arguing. The DMI land is not required in order to accommodate the scheme works or for any right in connection with those works. They were served with the LCC CPO2 because they appear in its table 2 as a qualifying person. Even if WTL do show that they need the accommodation of the DMI plot, that would be no reason for including the land within the CPO. It is for WTL to bring the tenancy to an end, as they can under the provisions of the *Landlord and Tenant Act 1954* and the loss of rental they suffer in that regard, may be compensatable if WTL shows that occupation of the DMI unit is required. The position is logically no different from the hypothetical situation where WTL owned a unit occupied by DMI some distance away and chose to locate part of their operations to that other unit if the scheme went ahead. It could not sensibly be suggested that the separate unit would have to be included in the CPO or that DMI would be eligible for compensation in such a case. As Mr King set out, even if (i) the DMI unit is required and (ii) DMI cannot relocate and (iii) DMI has to cease trading, there is no reason to think that DMI would be able to be compensated by the Acquiring Authority.
- 6.2.2 Whatever the formal position, the Acquiring Authority has sought to assist DMI to relocate and will continue to do so, by drawing their attention to properties which meet the criteria which DMI have said that replacement

- properties need to meet.
- 6.2.3 The rights sought over the LCC CPO2 which DMI query are required for necessary working space to achieve the accommodation and frontage works.
- 6.3 ***Sal Fuel Retailers Limited & Raiscorp Limited*** (SFRL)
- 6.3.1 SFRL both objected to the inclusion of plots 7 and 17 of the LCC CPO2 and to the LCC SRO. As Mr McLarnon has explained, there is agreement that the filling station could continue to operate during the works and when they are completed. The issue is how to minimise disturbance to the business. That is a compensation matter and is not an issue relevant to the merits of the confirmation of the Orders. The extent of disturbance to the filling station would not justify the closure of Eleanor Street. The loss of trade through the prohibition on right turns into the filling station is a matter for compensation. The rights sought over plot 17 of the LCC CPO2 are necessary for contractor's working space.
- 6.4 ***Peter Jonathan Morris*** (PJM)
- 6.4.1 PJM objected in relation to the effect of the LCC CPO1 and the LCC SRO on his business at No.166 Great Howard Street. The objection remains but it is submitted that his concerns would be addressed by the amended proposal to not close Sherwood Street and to provide off street parking on land recently acquired from the Homes and Communities Agency (HCA), addressed above.
- 6.5 ***GMAC UK Plc and GM UK Limited*** (GMAC/GM)
- 6.5.1 GMAC/GM objected on identical grounds to the inclusion of plots 8, 9 and 18 in the LCC CPO2 and to the LCC SRO. The objection remains but, like the filling station, the issue is the extent of disturbance caused to the Lookers' operation. The Acquiring Authority has shown, through Mr McLarnon's evidence<sup>55</sup>, that means exist to reconfigure the site so that minimal loss of parking would occur. The closure of Ensor Street is justified in order to provide sufficient replacement parking to limit the effect on their operations.
- 6.6 ***Conclusions***
- 6.6.1 The Councils ask the Inspector to recommend and the Secretary of State to decide that the Orders should be confirmed subject to the modifications which have been sought.

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<sup>55</sup> AA/GM/POE paras 5.37-43.



## 7 INSPECTOR'S CONCLUSIONS

*None of the objectors appeared at the Inquiries and so, unlike that of the Councils, their written evidence could not be tested by questioning. This limits the weight that might otherwise be afforded to it. Bearing in mind the submissions that I have reported, I have reached the following conclusions, references being given in square brackets [] to earlier paragraphs where appropriate.*

### 7.1 The Compulsory Purchase Orders (CPOs)

7.1.1 The Department for Communities and Local Government's *Guidance on Compulsory Purchase Process and The Criche Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion* (CPG) indicates that a compulsory purchase order should only be made where there is a compelling case in the public interest. Furthermore, 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<sup>56</sup>.

#### 7.1.2 **Public interest-Need for the Orders scheme**

7.1.2.1 The Orders scheme forms part of the NLKC improvement scheme, the aim of which is to encourage development in the north Liverpool area and it has been estimated that it would have a benefit to cost ratio in excess of 4, representing very strong value for money [4.5.9]. More specifically, the Orders scheme involves the widening of 2 remaining single carriageway sections of the A565 to dual carriageway. Based on the evidence presented by the Councils concerning the needs for the Orders scheme, which is not disputed, I consider that it would be likely to provide significant public benefits [4.1.1]. They would include reduced congestion and journey times and improved highway safety on the A565, which is a key route between Liverpool and Sefton and also forms part of the strategic highway network linking Liverpool to the motorway network. These improvements would be likely to support growth in the northern Liverpool economy [4.5].

7.1.2.2 Other than in relation to cycle lane provision, there is no dispute that the Orders scheme would be consistent with the aims of local and national planning and transport policy [4.6.1].

7.1.2.3 As regards cycling, the Orders scheme would include enhanced provision for non-motorised users to cross the A565 in an east/west direction. However, the intention is not to widen the highway so as to include cycle lanes along the sections of the A565 subject of the Orders [4.6.2].

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<sup>56</sup> *Guidance on Compulsory purchase process and The Criche Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion* para 12.

Instead, as part of the wider NLKC improvements scheme, an off-carriageway cycle corridor would be provided along Regent Road, which runs parallel to, and a short distance to the west of, the sections of the A565 subject of the Orders<sup>[4.2.4]</sup>. The two highways are linked by a number of side streets. In this context, I consider that the Orders scheme is consistent with LCC's *A Cycling Strategy for Liverpool 2014-26*, which promotes the provision of a good quality cycling network, including: safe crossings at busy junctions; and, cycling routes that are separate from traffic on busy roads with speeds higher than 20 mph, on a parallel route where it is not possible to do so along a busy road <sup>[4.6.2, 5.1.12, 5.2.6, 5.3.8]</sup>.

7.1.2.4 I conclude that the Orders scheme, which would be consistent with the aims of local and national planning and transport policy, would provide significant public benefits.

### 7.1.3 **Public interest-Land use**

7.1.3.1 The CPG indicates that, if the Acquiring Authority does not have a clear idea how it intends to use the land which it is proposing to acquire, it will be difficult to show conclusively that the compulsory acquisition of the land is justified in the public interest<sup>57</sup>.

#### *LCC CPO1*<sup>58</sup>

7.1.3.2 Having made LCC CPO1 the Council determined that it should not be used to acquire plots 13, 14, 18 and 19 and it made a separate Order for that purpose, LCC CPO1(2). It has also confirmed that the new rights to be acquired at plots 33 and 34, which are associated with plots 18 and 19, no longer need to be secured by this Order <sup>[4.12.1(c)]</sup>. Given that LCC CPO1 as made includes land which the Council no longer wishes to acquire using that Order, I consider that the Order should not be confirmed as made.

7.1.3.3 The Council promotes confirmation instead of LCC CPO1 subject to CPO1a) and b) modifications. The CPOa) modifications, identified by the NTCT, amount to minor drafting amendments <sup>[4.12.1(a)]</sup>. With reference to the Orders scheme drawings, I am content that the land and rights included in the Order following the CPO1b) modifications, removing plots 13, 14, 18, 19, 33 and 34, would be necessary for the implementation of the Orders scheme, with particular reference to highway widening, associated accommodation works and working space. This has not been disputed by others and it includes plots 16 and 32, which currently forms part of the parking area along the frontage of No. 166 Great Howard Street owned by PJM <sup>[5.5]</sup>.

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<sup>57</sup> Para 13.

<sup>58</sup> CD6.

*LCC CPO2*<sup>59</sup>

- 7.1.3.4 A number of objectors have suggested that the acquisition of certain plots is not justified and in one case that if it is to be acquired it should be put to a different use to that proposed by the Council. I deal first with the concerns raised by GMAC/GM.
- 7.1.3.5 Plot 8 comprises a strip of land immediately to the east of Derby Road which forms part of the vehicle display area of the car sales enterprise at No. 82. Plot 18 is a narrower strip of land that adjoins the eastern side of plot 8<sup>60</sup>. The LCC CPO2 seeks to acquire the land at plot 8 in order to accommodate the proposed widened highway and to acquire right of entry to plot 18 for the purposes of carrying out those improvement works. Having had regard to the Orders scheme drawings<sup>61</sup>, I consider that those acquisitions would be necessary for the implementation of the Orders scheme, with particular reference to highway widening, associated accommodation works and working space [5.4.3-4].
- 7.1.3.6 Ensor Street runs in a westerly direction from its junction with Derby Road to its junction with Forth Street and, as part of the Orders scheme, LCC intends to stop up the western section of that street, thereby preventing vehicular through traffic, while maintaining a route for pedestrians<sup>62</sup>. The LCC CPO2 seeks to acquire plot 9, which is land comprising the western end of Ensor Street. LCC has indicated that the land within that plot would be put to a number of uses<sup>63</sup>:
- a) The western part of plot 9 would be required to accommodate the dualling of the adjacent section of Derby Road;
  - b) Ensor Street has narrow footways along both sides, which, when I visited, were mostly taken up by cars parked part on the footway restricting the passage of pedestrians, thereby leaving sufficient carriageway width for a vehicle to pass along the highway. I have no reason to believe that these circumstances were unusual. The Council has indicated that a strip of land along the northern side of plot 9 would be used to provide an improved, widened, footway; and,
  - c) The remainder of the plot comprises part of the width of the existing carriageway and a narrow footway along its southern side. It would be LCC's intention to transfer that area of plot 9 to GMAC for use as an extension to the car sales forecourt in order to mitigate the impact, resulting from the loss of land along the frontage of No. 82 referred to above, on the capacity

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<sup>59</sup> CD7

<sup>60</sup> CD7.

<sup>61</sup> AA/INQ/005.

<sup>62</sup> CD12 sheet 4 of 4.

<sup>63</sup> AA/GM/APPX GM10.

of that site to display vehicles<sup>64</sup> [5.4.2].

- 7.1.3.7 I consider that each of the three identified proposed uses of land within plot 9 amount to a public benefit. In the latter case this arises from limiting the impact of the Orders scheme on the area where vehicles can be displayed to customers of a local service provider.
- 7.1.3.8 I turn now to the concerns raised by WTL and DMI. There is no dispute that plot 10 is required in order to widen Derby Road, leading to the loss of WTL's office space and part of its parking/storage area, and I consider that plot 19 would make reasonable provision for working space<sup>65</sup> [5.2.4]. It is also not in dispute that, for WTL to continue to operate at Nos. 331-337, it would be necessary to provide replacement office space elsewhere, which would necessitate some re-configuration of the remainder of its site. Furthermore, there is no dispute that it would be possible to design a scheme to achieve that end [5.1.3, 6.1.2].
- 7.1.3.9 WTL's original objections to the Orders included that it was unclear whether it would be physically and economically possible for it to remain in operation at Nos. 331-337 following the Orders scheme. However, as part of the negotiating process, LCC funded the appointment of K2 Architects by WTL to identify potential options. Prior to the Inquiries WTL and LCC had each identified what they considered to be an appropriate scheme of re-development. In the case of WTL; it was the *K2 Architect's option 5*, which would involve re-using the space occupied by DMI, necessitating the eviction of that tenant by WTL [5.1.5, 5.2.2]. In the case of LCC; it was the *Amey option*, detailed in Mr Mistry's evidence, which indicates that DMI could still be accommodated on site [6.1.2]. Following the opening of the Inquiries, WTL and LCC agreed Heads of Terms, which would allow WTL to construct its preferred option. It appears to me that the precise details of the re-development scheme are a matter to be determined as part of the compensation negotiations between the parties, as would the question raised concerning the possibility of 'material detriment', and not for me or the Secretary of State. Disputes associated with compensation would be a matter for the Upper Tribunal (Lands Chamber) [5.1.9, 6.1.4, 6.1.7].
- 7.1.3.10 With reference to the Orders scheme plans, the premises occupied by DMI do not fall within the footprint of the scheme or the working areas identified by the LCC CPO2<sup>66</sup>. Those premises are not required for implementation of the Orders scheme [6.2.1]. Whilst it is possible that the option chosen by WTL for re-configuration of its site may necessitate the eviction of DMI from Nos. 331-337, that is a matter between those parties. In any event, there is no compelling evidence before me to show that this would lead to the extinguishment of that company [5.1.10]. However, even if it did, I consider that the associated harm, such as lost employment and contribution to the economy, likely to be associated with

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<sup>64</sup> AA/GM/POE para 4.28 & AA/DK/POE para 13.14.

<sup>65</sup> AA/INQ/005.

<sup>66</sup> WT/CCH/APPX E page 253 and AA/INQ/005.

the cessation of trading of such a small business would be far outweighed by the public benefits likely to be associated with the Orders scheme, to which I have already referred.

- 7.1.3.11 WTL and DMI have suggested that the section of Ensor Street to be transferred to GMAC should be included instead within the curtilage of Nos. 331-337, either for use as staff parking space, to mitigate the loss caused by the relocation of WTL's office space, or to enable the site to be re-configured in some other way to enable both DMI and WTL to remain in situ [5.1.11, 5.2.5]. However, in my view, it is likely that staff parking displaced by the LCC CPO2 could be catered for on neighbouring side streets. Although I saw on-street parking conditions along Ensor Street were congested, that was not the case on a number of other local side streets. As regards possible use of plot 9 to re-configure Nos. 331-337 in a manner that provides for the needs of both WTL and DMI, no details illustrating such a scheme have been provided to me, other than that showing the use of the street as parking space. Under the circumstances, I give these suggestions little weight. In my judgement, it is unlikely that any public benefits associated with the alternatives suggested would be as great as those associated with the Orders scheme promoted by the Councils.
- 7.1.3.12 In their original objections SFRL raised concerns with respect to the impact of the Orders scheme on facilities within their site<sup>67</sup> [5.3.3-4]. Their concerns included that the proximity of the western-most fuel pumps to Derby Road may breach minimum interface distances during/following the road widening scheme, such that they may no longer be used [5.3.4, 5.3.7]. However, I have not been provided with any evidence to confirm that would be the case and so I give that matter little weight.
- 7.1.3.13 SFRL has suggested that the impact of the Orders scheme on the filling station could be mitigated by stopping up the section of Eleanor Street which runs alongside its eastern boundary and adding that space to the filling station site. However, during the course of negotiations, both LCC and SFRL have now produced feasibility plans which indicate that the site could be re-configured to ensure that key facilities, such as HGV access for fuelling, customer car parking and shop facilities, could continue to be provided following the Orders scheme, without the closure of Eleanor Street<sup>68</sup> [6.3.1]. It appears to me that the stopping up of Eleanor Street is not necessary for the business to continue to provide the key facilities of the filling station [5.3.4]. In my judgement, inclusion of that section of Eleanor Street within the LCC CPO2 would not be justified. Furthermore, the elevation of the premises that abuts the eastern side of this section of Eleanor Street contains a number of personnel access doors, the use of which may be adversely affected by stopping up that highway [5.3.5]. LCC has indicated that there would be no convenient alternative means of access and I have not been provided with any

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<sup>67</sup> OB5/6.

<sup>68</sup> AA/GM/POE paras 5.18-22.

compelling evidence to the contrary<sup>69</sup>. This adds further weight to my finding.

7.1.3.14 SFRL has suggested that increasing the size of plot 13, which isn't in daily use, would negate the need to acquire rights over plot 17, which forms part of the petrol station forecourt [5.3.7]. However, LCC has explained that the rights over plot 17 are necessary to provide the working space needed when widening the adjacent section of Derby Road within plot 7<sup>70</sup>. In my judgement, it is unlikely that this function could be performed by land in the vicinity of plot 13, which is situated well away from plot 7, further to the south along Derby Road<sup>71</sup>. Having had regard to the Orders scheme drawings, I am content that the acquisition of land at plot 7 and rights over plot 17 would be necessary for the implementation of the Orders scheme, with particular reference to highway widening, associated accommodation works and working space<sup>72</sup>.

7.1.3.15 The Orders scheme would include the provision of a central barrier preventing north bound traffic from turning right, right turn movements featuring in the accident record [4.5.5]. This would prevent right turns from the A565 into the petrol station. In light of the results of the traffic survey undertaken by the Council in 2016, which indicated that around 20% of customers turn right into the garage, it is likely that the Orders scheme would have an adverse impact on trade at the premises [5.3.6]. However, there is no compelling evidence before me to show that it would be likely to lead to the closure of the premises, which provides a service to the public. Whilst the associated impact on trade may justify the payment of compensation as might disturbance associated with re-configuration of the site, they are matters outside the scope of these Inquiries [6.3.1].

7.1.3.16 I conclude overall, that the land and rights included in the Order would be necessary for the implementation of the Orders scheme, with particular reference to highway widening, associated accommodation works and working space. Furthermore, the CPO2a) modifications, identified by the NTCT, amount to minor drafting amendments<sup>73</sup>.

*LCC CPO1(2)*<sup>74</sup>

7.1.3.17 Having reflected on the objections raised by PJM, the Council confirmed at the Inquiries that it no longer intends to stop up Sherwood Street and as a result there would be no need to provide the new turning area shown on the Orders scheme drawings [4.4.1(c), 5.5, 6.4.1]. It follows that acquisition of land at plots 3 and 4 is no longer necessary for implementation of the Orders scheme. I consider therefore, that compulsory acquisition of at

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<sup>69</sup> AA/GM/POE para 5.24.

<sup>70</sup> AA/Table page 11.

<sup>71</sup> CD7.

<sup>72</sup> AA/INQ/005.

<sup>73</sup> AA/INQ/003.1.

<sup>74</sup> CD11.

least some of the land subject of that Order is not justified in the public interest. This weighs against confirming the LCC CPO1(2) in the form made.

7.1.3.18 However, having had regard to the Orders scheme drawings, I am content that the land which would be included in the Order following LCC CPO1(2)b) modifications, removing plots 3 and 4, would be necessary for the implementation of the Orders scheme, with particular reference to the provision of a turning area on Stone Street, made necessary by the proposed stopping up of that highway at its western end. This has not been disputed by others. The CPO1(2)a) modifications, identified by the NTCT, amount to minor drafting amendments<sup>75</sup>.

#### *SMBC CPO*<sup>76</sup>

7.1.3.19 As a result of negotiations with W J Leech & Sons<sup>77</sup>, SMBC has concluded that it would no longer be necessary to create a new turning area on Princes Street and so the acquisition of land at plot 2 and new rights at plot 11 are no longer necessary [4.4.5, 4.10.1b)]. I consider therefore, that compulsory acquisition of at least some of the land subject of the SMBC CPO as made is not justified in the public interest. This weighs against confirming the Order in the form made.

7.1.3.20 However, having had regard to the Orders scheme drawings, I am content that the land and rights which would be included in the Order following CPOb) modifications, removing plots 2 and 11, would be necessary for the implementation of the Orders scheme, with particular reference to road widening, associated accommodation works and working space. This is not now disputed by others. The CPOa) modifications, identified by the NTCT, amount to minor drafting amendments<sup>78</sup>.

#### 7.1.4 **Public interest-Resources**

7.1.4.1 Whilst I understand that a number of objectors harbour concerns over whether sufficient funds would be available, I have not been provided with any compelling evidence to support those concerns [5.1.13]. On the contrary, the cost estimates set out in the Outline and Full Business Cases produced to support the North Liverpool Key Corridors Scheme, of which the Orders scheme forms part, included significant sums for land acquisition and associated risk<sup>79</sup>. *The A565 North Liverpool Key Corridors-Major Scheme Business Case, February 2016* estimated the total cost as being around £21.6 million<sup>80</sup>. Funding of £13.3 million was awarded by

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<sup>75</sup> AA/INQ/003.2 and AA/INQ/026.

<sup>76</sup> CD8.

<sup>77</sup> WD3.

<sup>78</sup> AA/INQ/003.4 and AA/INQ/025.

<sup>79</sup> CD14 and 15.

<sup>80</sup> CD14 page 291.

the Liverpool City Region Local Transport Body (LCR LTB) in April 2016 and the two Councils have resolved to fund the remainder<sup>81</sup> [4.8].

7.1.4.2 I consider therefore, that the resources necessary to acquire the land and rights to implement the Orders scheme are likely to be available within a reasonable timescale.

#### 7.1.5 **Public interest-Impediments**

7.1.5.1 The Acquiring Authorities have confirmed that the scheme falls within the scope of permitted development rights and so there is no planning impediment [4.7].

7.1.5.2 The part of the WTL landholding occupied by DMI falls well outside of the area required to accommodate the widening of Derby Road, accommodation works and working space, and it is not included within the scope of the LCC CPO2<sup>82</sup>. Should that space be required by WTL for the purposes of re-configuring its site, LCC has indicated that WTL could bring DMI's tenancy to an end under the provisions of the *Landlord and Tenant Act 1954* [5.1.10, 5.2.2, 6.2.1]. I have not been provided with any compelling evidence to show otherwise. I am satisfied therefore, that it would not be necessary for LCC to seek to acquire the DMI occupied space in order to implement the Orders scheme.

7.1.5.3 I consider that, subject to confirmation of the Orders with which these Inquiries are concerned, there are unlikely to be impediments to the implementation of the Orders scheme.

#### 7.1.6 **Public interest-Conclusions**

7.1.6.1 I conclude that the Orders scheme would provide significant public benefits. Furthermore, the Acquiring Authorities have shown that they have a clear idea how they intend to use the land and rights they seek to acquire, and in my view they are necessary for the implementation of the Orders scheme, subject to the amendments I have identified. In addition, I am satisfied that the resources necessary to acquire the land and rights to implement the Orders are likely to be available within a reasonable timescale and it is unlikely that there would be any other impediments to the implementation of the Orders scheme. I conclude overall, that there is a compelling case in the public interest for confirmation of the CPOs. Furthermore, given the time limited nature of the LCR LTB funding offer, confirmation of the Orders is required now to ensure that the benefits of the Orders scheme can be brought forward in a timely and cost effective manner [4.8.2].

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<sup>81</sup> AA/JD/POE para 13.

<sup>82</sup> WT/CCH/APPX E page 253 and AA/INQ/005.



### 7.1.7 **Acquisition by agreement**

7.1.7.1 The CPG indicates that 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 an Order by agreement.

7.1.7.2 The Councils now either own or have agreed terms to acquire the identified interests in the majority of the plots included in the CPOs<sup>83</sup>.

7.1.7.3 In response to the concerns raised by a number of objectors that there has been inadequate engagement with them on the part of the Acquiring Authorities, the Councils' evidence to the Inquiries sets out the efforts that have been made [4.11.2]. The only party to provide a rebuttal to that evidence was WTL. In its case, the principal pre-requisite for an agreement appears to me, not to have been an offer for the land occupied by its offices, but to be the identification of a scheme for re-configuration of the remainder of the site, appropriately funded by LCC, which would allow WTL to continue to operate from its site [6.1.3]. It appears unlikely that without agreement on this matter, an offer for the required land and rights, had it been made in isolation, would have been accepted by WTL. With a view to identifying a suitable solution, LCC has funded the appointment of K2 Architects to advise WTL on possible options for the re-configuration of its site<sup>84</sup>. Prior to the start of the Inquiries progress had stalled, due to disagreements over the extent of the necessary works [5.1.6-8]. However, on the first day of the Inquiries, Heads of Terms were agreed between LCC and WTL [6.1.2].

7.1.7.4 As regards the other parties with outstanding objections:

- SFRL- Discussions between these parties and LCC began in 2015. Since then LCC has submitted details of suggested revised forecourt arrangements, produced by Amey, to SFRL to show how the site might be reconfigured to satisfactorily mitigate the impact of the LCC CPO2 along the Derby Road frontage of their site. It has also agreed to fund the appointment of ADS Design by SFRL to advise them directly on possible options for the re-configuration of its site<sup>85</sup>. Against this background, I understand that there is now no dispute that it would be possible, subject to re-configuration, for the filling station to continue to operate during the Orders scheme works and when they are completed [6.3.1]. LCC has made an offer for the land included in the LCC CPO2, which has yet to be accepted<sup>86</sup> [5.3.2];
- GMAC/GM- Discussions between these parties and LCC began in 2015. At the request of GMAC/GM, LCC appointed Amey to produce

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<sup>83</sup> AA/DK/APPX DK-1.

<sup>84</sup> AA/DK/POE para 7.6.

<sup>85</sup> AA/DK/POE section 9.

<sup>86</sup> AA/DK/POE para 9.9.

details to show how the forecourt of the site, the majority of which is used for the display of vehicles for sale, could be re-configured to mitigate the impact of the LCC CPO2<sup>87</sup>. It is proposed that this would include the extension of the forecourt area across part of Ensor Street, which would enable the majority of the car sales and parking spaces lost along the frontage of the site to be offset<sup>88</sup>.

The proposed design, which has undergone a number of iterations following discussions between the parties, has yet to be finalised. Acquisition of the land and rights required by the LCC CPO2 has yet to be concluded;

- PJM- Discussions between this party and LCC began in February 2016 and PJM requested details of land to be made available for parking to mitigate that lost as a result of the LCC CPO1 [5.5.3]. LCC has identified land for that purpose on the northern side of Sherwood Street, opposite No. 166 and is in the process of acquiring it from the HCA [6.4.1]. Discussions are continuing between LCC and PJM to agree a parking layout<sup>89</sup>. Acquisition of the land and rights required from PJM by the LCC CPO1 has yet to be concluded;
- DMI-The premises occupied by DMI at Nos. 331-337 are not required for the implementation of the Orders scheme. Nonetheless, they are identified in table 2 of the LCC CPO2 as a qualifying person and DMI's letter of objection, dated 9 November 2016<sup>90</sup>, acknowledges receipt of the LCC letter, dated 6 October 2016, serving notice and providing details of the Orders affecting Nos. 331-337 Derby Road [5.2.3, 6.2.1]. LCC met with DMI's surveyor, shortly after his appointment in January 2017, to discuss the Orders scheme. DMI were aware that the LCC CPO2 does not seek to acquire the premises it occupies. Whilst it may be that WTL would require those premises in order to facilitate its preferred scheme for re-configuration of the site, I agree with LCC that that is a matter between WTL and DMI [5.2.2, 6.2.1]. At DMI's request, LCC has assisted DMI in its efforts to identify suitable alternative premises, although to date premises with which DMI is content have not been found<sup>91</sup>.

7.1.7.5 Whilst encouraging Acquiring Authorities to take reasonable steps to acquire all of the land and rights included in an Order by agreement, the CPG acknowledges that negotiations may nevertheless break down and that it may often be sensible, depending on when the land is required, to initiate compulsory purchase. Based on the evidence presented, I consider that, although the Acquiring Authorities have not yet secured all the land and rights required by agreement, they have taken reasonable steps to do so in keeping within the spirit of the CPG.

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<sup>87</sup> AA/DK/POE section 13.

<sup>88</sup> AA/GM/POE paras 5.38-45.

<sup>89</sup> AA/DK/POE section 12.

<sup>90</sup> OB4.

<sup>91</sup> AA/DK/POE section 8.

### 7.1.8 **Human Rights**

7.1.8.1 The CPG indicates that when considering whether the purposes for which a compulsory purchase order is made justify interfering with the Human Rights of those with an interest in the land affected, regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the *Human Rights Act 1998 (as amended)* (HRA)<sup>92</sup>. That is;

*'every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'*

I am also conscious that, in the case of a dwelling, Article 8 of the HRA, provides that;

*'everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of', amongst other things, 'public safety or the economic well being of the country, for the protection of health and for the protection of the rights and freedoms of others.'*

I have also had regard to the public sector equality duty, set out in the *Equality Act 2010 (as amended)*.

7.1.8.2 The CPOs do not seek to acquire any residential properties. SMBC CPO plot 6 comprises land immediately in front of a small number of residential properties, which is used to access them<sup>93</sup>. That land, which is owned by SMBC, is not currently highway land, but would be publicly accessible highway land after the Orders scheme was executed<sup>94</sup>. Whilst, as a consequence of the SMBC CPO, residents would have their rights of access to their properties interfered with, SMBC has confirmed that access would be maintained at all times. No residential owners or occupiers have objected to the Orders scheme<sup>95</sup>. The effect of the CPOs would also be to deprive a number of non-residential parties identified in their schedules of titles and/or rights to land. However, in my judgement, the benefits that would result from the Orders scheme demonstrate the compelling case in the public interest for the CPOs to be confirmed. I have indicated that, subject to the amendments referred to above, no land or rights would be unnecessarily acquired. In my judgement, the land titles and rights

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<sup>92</sup> Para 12.

<sup>93</sup> CD8.

<sup>94</sup> AA/INQ/005.

<sup>95</sup> AA/JD/POE para 22.

sought by the CPOs, subject to identified amendments, would be a proportionate response to the needs of the Orders scheme.

7.1.8.3 Whilst it is possible that the option chosen by WTL for re-configuration of its site may necessitate the eviction of DMI from Nos. 331-337, there is no compelling evidence before me to show that this would lead to the extinguishment of that company. However, even if it did, I consider that the private losses of those with an interest in that relatively small enterprise would be far outweighed by the public benefits likely to be associated with the Orders scheme.

7.1.8.4 I consider that there is clear evidence that the public benefits associated with the CPOs, subject to the identified amendments, would outweigh the private loss of those people with an interest in the land subject of the CPOs and that the interference with their Human Rights would not be disproportionate and would be justified [4.13.4]. Furthermore, there would be no conflict with the *Equality Act 2010 (as amended)*.

#### 7.1.9 **Conclusions**

7.1.9.1 I conclude on balance, that the purposes for which the CPOs have been made sufficiently justify interfering with the Human Rights of those with an interest in the land affected. Furthermore, I conclude that the tests set out in the CPG are met and the CPOs, subject to the identified amendments, should be confirmed. In my judgement, the proposed modifications, which are either drafting corrections or reduce the areas subject of the CPOs would be unlikely to prejudice the interests of anyone and it would not be necessary for the Secretary of State to consult further before making those modifications.

#### 7.2 **The Liverpool City Council (A565 Classified Road Highway Improvements)(No 2)(Side Roads) Order 2016 (LCC SRO)**

7.2.1 With reference to the *Highways Act 1980 (as amended)*, if I am to recommend that this LCC SRO be confirmed, I need to be satisfied in the following respects:

- In relation to the stopping up of highways, that another reasonably convenient route is available or will be provided before the highway is stopped up<sup>96</sup>; and,
- In relation to the stopping up of private access to premises, that: no means of access to the premises is reasonably required; or, that another reasonably convenient means of access to the premises is available or will be provided in pursuance of an order made by virtue

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<sup>96</sup> Section 14(6) of the Highways Act 1980.

of section 125(1)(b) or otherwise<sup>97</sup>.

- 7.2.2 The LCC SRO, as made, makes provision for the stopping up of sections of Stone Street, Sherwood Street and Ensor Street as well as the stopping up of 2 private means of access and associated provision of 2 new private means of access.

*Stone Street*

- 7.2.3 Stone Street, which currently provides access to a number of adjoining premises and a through route between Great Howard Street and Love Lane, would be stopped up from its junction with the A565 for a distance of 2 metres. Reasonably convenient alternative routes are available, involving the use of other nearby streets linking Great Howard Street to Love Lane and from there the section of Stone Street which would not be stopped up [4.4.1(b)]. In addition, a turning area, facilitated by the acquisition of LCC CPO1(2) plots 1 and 2, would be provided at the western end of Stone Street to allow west bound vehicles to turn and leave the street along Love Lane<sup>98</sup>.
- 7.2.4 I am satisfied, in relation to the proposed stopping up of Stone Street, that another reasonably convenient route is available or will be provided before the highway is stopped up.

*Sherwood Street*

- 7.2.5 The LCC SRO, as made, makes provision for the stopping up of Sherwood Street from its junction with the A565 for a distance of 3 metres. Objections have been raised by PJM [5.5.1-7]. In light of those objections and certain changes of circumstance regarding the use of Sherwood Street, LCC has requested that the Secretary of State amend the Order so as not to include the stopping up of Sherwood Street [4.4.1(c)]. I have no reason not to support the removal of the provision for stopping up of Sherwood Street from the LCC SRO. Furthermore, in my judgement, reducing the scope of the LCC SRO, by leaving this section of the highway open, would be unlikely to prejudice the interests of anyone and I will refer to it as the 'SROa' modification.

*Ensor Street*

- 7.2.6 The LCC SRO, as made, makes provision for the stopping up of Ensor Street from its junction with the A565 eastwards for a distance of 65 metres. The remaining length of Ensor Street would be accessible via Haddock Street and Forth Street and traffic presently using Ensor Street to access Forth Street could do so via Haddock Street or Esk Street [4.4.1(a)].

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<sup>97</sup> Section 125(3) of the Highways Act 1980.

<sup>98</sup> CD10 and AA/INQ/005.

7.2.7 WTL have suggested that Ensor Street should not be stopped up as it is likely to need to use it for deliveries and refuse collection [5.1.11]. However, there is no access point leading directly from Ensor Street to WTL's premises or any compelling evidence to show that it is used for those purposes at present [5.2.5]. Furthermore, in my judgement, due to the limited width of the carriageway, delivery or refuse collection vehicles pulling up alongside WTL's premises would be likely to interrupt the free flow of traffic along the street, to the potential detriment of the safety and convenience of other road users travelling along it. For example, drivers turning in to Ensor Street from Derby Road may have to reverse back out onto the main road in order to proceed. Under the circumstances, I give little weight to WTL's suggestion.

7.2.8 At the Inquiries, LCC proposed 2 amendments to the LCC SRO, which are:

- a) The LCC SRO includes the stopping up of a private means of access to the GMAC/GM site, occupied by Lookers, which is positioned in its northern boundary around 32 metres from Derby Road. The LCC SRO indicates that a new private means of access would be provided at the eastern end of the stopped up section of Ensor Street, 65 metres from the A565<sup>99</sup>. The expectation had been that this new access point would provide access to the area of carriageway compulsorily purchased under the terms of LCC CPO2, which would be transferred by the Council to form an extension to the Lookers' site [5.4.2]. However, at the Inquiries it became clear that the length of highway subject of the LCC SRO was materially longer than plot 9 of the LCC CPO2<sup>100</sup> [4.4.1(a)]. It follows that, under the terms of the LCC CPO2, the Council would not acquire, and so could not transfer to the owners of the Lookers' site, the stopped up section of carriageway adjacent to the location of the proposed new means of access. Therefore, that proposed new private means of access may lead to land owned by others and it would not provide a reasonably convenient means of access to the Lookers' premises. As a result, the LCC SRO would not meet the requirements of the 1980 Act. This is a compelling reason for not confirming the LCC SRO as made.

In order to address that defect, LCC proposed an amendment to the LCC SRO, which would: reduce the length of Ensor Street to be stopped up to 58 metres, consistent with the length of the LCC CPO2 plot 9; and, relocate the proposed new means of access to the eastern end of the shortened section of stopped up carriageway<sup>101</sup>. Under these circumstances, I am content that, in relation to the stopping up of the private access to the Lookers' premises, that another reasonably convenient means of

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<sup>99</sup> CD12.

<sup>100</sup> AA/INQ/023.

<sup>101</sup> AA/INQ/002.

access to those premises would be provided.

- b) As made, the LCC SRO includes the stopping up of the western part of the Ensor Street carriageway, but not the section of footway between that carriageway and the northern boundary of the Lookers' site<sup>102</sup>. LCC confirmed that the stopped up area of Ensor Street shown on the Order plan mistakenly omitted the adjacent section of the southern footway. Left as made, the Order would result in a short section of that public footway projecting into the Lookers' site, once that site is extended to include the stopped up carriageway. LCC proposed an amendment to include the section of the southern footway adjacent to the stopped up area of carriageway. This is consistent with the extent of the LCC CPO2 plot 9, which already includes the southern footway.

- 7.2.9 In my judgement, these proposed amendments, which I will refer to as the 'SROb)' modifications, would amount to minor modifications. The shortening of the stopped up carriageway and inclusion of a section of footway, which would not otherwise lead anywhere, would be unlikely to prejudice the interests of anyone.

*Other private means of access to premises*

- 7.2.10 The only other private means of access to be stopped up under the terms of the LCC SRO is located on Walter Street, around 5 metres from its junction with the A565. This is to facilitate the provision of a new pedestrian crossing<sup>103</sup>. The LCC SRO includes provision for a new reasonably convenient means of access to those premises, located a short distance to the west, thereby meeting the requirement of the 1980 Act.
- 7.2.11 The current Orders scheme plans do not show the existing entrance to Nos. 331-337 off Derby Road, which might suggest that it may be closed<sup>104</sup> [5.1.4]. However, LCC has indicated that the impact of the Orders scheme on the existing access to the WTL site off Derby Road has yet to be determined, being dependent on whichever re-development scheme is eventually pursued at Nos. 331-337. If changes become necessary, LCC anticipates that they would be implemented by agreement, without the need to resort to provisions in an SRO [6.1.6]. This position has not been disputed. As made, the LCC SRO does not make any provision for the stopping up of that existing access<sup>105</sup>.

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<sup>102</sup> CD12.

<sup>103</sup> AA/INQ/005.

<sup>104</sup> AA/INQ/005.

<sup>105</sup> CD12.

### *Conclusions*

- 7.2.12 I conclude that the LCC SRO should not be confirmed as made. However, subject to the SROa) and b) modifications, the LCC SRO would meet the requirements of the Highways Act 1980 and should be confirmed. In my judgement, it would not be necessary for the Secretary of State to consult further before making the SROa) and b) modifications, which are minor in nature and unlikely to prejudice the interests of anyone.

## **8 INSPECTOR'S RECOMMENDATIONS**

- 8.1 I recommend that **The Liverpool City Council (A565 Highway Improvements Phase I)-Compulsory Purchase Order 2016**, subject to the LCC CPO1a) and b) modifications, be confirmed.
- 8.2 I recommend that **The Liverpool City Council (A565 Highway Improvements Phase II)-Compulsory Purchase Order 2016**, subject to CPO2a) modifications, be confirmed.
- 8.3 I recommend that **The Sefton Metropolitan Borough Council (A565 Highway Improvements)-Compulsory Purchase Order 2016**, subject to CPOa) and b) modifications, be confirmed.
- 8.4 I recommend that **The Liverpool City Council (A565 Classified Road Highway Improvements)(No 2)(Side Roads) Order 2016**, subject to SROa) and b) modifications, be confirmed.
- 8.5 I recommend that **The Liverpool City Council (A565 Highway Improvements Phase I)(No 2)-Compulsory Purchase Order 2016**, subject to CPO1(2)a) and b) modifications, be confirmed.

*I Jenkins*  
INSPECTOR



## 9 APPENDICES

### APPENDIX 1

#### FOR LIVERPOOL CITY COUNCIL & SEFTON METROPOLITAN BOROUGH COUNCIL:

Mr M Carter  
Of Counsel

Instructed by DLA Piper Uk LLP.

He called

Mr A Oates

Associate, i-Transport LLP.

MSc CMILT

Dr G Owen

Principal Associate Economist, Mott MacDonald Limited.

BA MA PhD

Mr G McLarnon

Principal Engineer, Amey.

BSc(Hons) MICE FIEI

Mr J Davies

Assistant Highways Manager, Liverpool City Council.

I Eng FIHT

Mr D King

Associate Director, Lambert Smith Hampton.

BSc MRICS

Mr M Mistry

Managing Architect, Amey.

BA BArch PGD Arch RIBA

Mr A Dunsmore

Strategic Transport Planner, Sefton Metropolitan Borough Council.

B Eng

#### FOR WILD THANG LIMITED:

Mr G Cannock  
Of Counsel

Instructed by Rees-Roberts Solicitors.

No witnesses called

#### FOR LIVERPOOL WATER WITCH MARINE & ENGINEERING COMPANY LIMITED:

Ms J Gunnion  
Solicitor

Rees-Roberts Solicitors.

No witnesses called

**APPENDIX 2 – PRE-INQUIRIES DOCUMENTATION**

| <b>CORE DOCUMENTS</b> |  |           |
|-----------------------|--|-----------|
| <b>CD1</b>            | Liverpool City Council Cabinet report and minutes dated 7 August 2015  | 1-16      |
| <b>CD2</b>            | Liverpool City Council Cabinet report and minutes dated 5 February 2016  | 17-27     |
| <b>CD3</b>            | Sefton Council Cabinet report dated 3 September 2015   | 28-41     |
| <b>CD4</b>            | Sefton Council Cabinet minutes dated 14 January 2016   | 42-53     |
| <b>CD5</b>            | Delegated Authority - Assistant Director for Physical Assets, 15 November 2016   | 54-58     |
| <b>CD6</b>            | Liverpool City Council (A565 Highway Improvements Phase I) Compulsory Purchase Order 2016, location plan and maps              | 59-80     |
| <b>CD7</b>            | Liverpool City Council (A565 Highway Improvements Phase II) Compulsory Purchase Order 2016 and map                             | 81-100    |
| <b>CD8</b>            | Sefton Metropolitan Borough Council (A565 Highway Improvements) Compulsory Purchase Order 2016 and map                         | 101-112   |
| <b>CD9</b>            | Statement of Reasons for the First and Second Liverpool CPOs and the Sefton CPO  | 113-133   |
|                       | <b>Pages 134-154 omitted</b>   |           |
| <b>CD10</b>           | Liverpool City Council (A565 Highway Improvements Phase I) (No 2) Compulsory Purchase Order 2016 and map                       | 155-161   |
| <b>CD11</b>           | Statement of Reasons for Liverpool City Council (A565 Highway Improvements Phase I) (No 2) Compulsory Purchase Order 2016      | 162-172   |
| <b>CD12</b>           | Liverpool City Council (A565 Classified Road Highway Improvements) (No 2) (Side Roads) Order 2016 and plans                    | 173-182   |
| <b>CD13</b>           | Statement of Reasons for the Liverpool City Council (A565 Classified Road Highway Improvements) (No 2) (Side Roads) Order 2016 | 183-192   |
| <b>CD14</b>           | North Liverpool Key Corridor Major Scheme Business Case (February 2016)  | 193-569   |
| <b>CD15</b>           | North Liverpool Key Corridor Major Scheme Outline Business Case (November 2015)  | 570-837   |
| <b>CD16</b>           | North Liverpool Key Corridor plans   | 838-841   |
| <b>CD17</b>           | Extract from the National Planning Policy Framework (paragraph 9)  | 842       |
| <b>CD18</b>           | The National Transport Strategy "Transport an Engine for Growth" (August 2013)   | 843-862   |
| <b>CD19</b>           | Liverpool City Council Local Development Framework Core Strategy Draft (September 2016)  | 863-876   |
| <b>CD20</b>           | A Local Plan for Sefton – Proposed Modifications (June 2016)   | 877-1075  |
| <b>CD21</b>           | The Liverpool City Region Growth Prospectus (June 2014)  | 1076-1154 |
| <b>CD22</b>           | Atlantic Avenue Growth Corridor Development Framework (2014)   | 1155-1185 |
| <b>CD23</b>           | Liverpool Waters Outline Planning Permission (Ref. 100/2424) 19 June 2013  | 1186-1246 |
| <b>CD24</b>           | Great Howard Street Improvements Option Appraisal Report produced on behalf of LCC in 2009                                     | 1247-1295 |
| <b>CD25</b>           | Liverpool City Council Air Quality Annual Status Report 2016   | 1296-1361 |
| <b>CD26</b>           | Sefton - Declarations of Air Quality Management Areas  | 1362-1371 |
| <b>CD27</b>           | A565 Highways Accident Data  | 1372-1462 |

| <b>CORE DOCUMENTS</b> |  |           |
|-----------------------|--|-----------|
| <b>CD28</b>           | Liverpool City Region Combined Authority letter relating to Growth Deal Scheme | 1463-1469 |
| <b>CD29</b>           | Funding Agreement between Liverpool City Council and Mersey travel             | 1470-1541 |
| <b>CD30</b>           | Project Jennifer - Outline Planning Permission                                 | 1542-1558 |
| <b>CD31</b>           | Project Jennifer - Reserved Matters Approval                                   | 1559-1561 |
| <b>CD32</b>           | Project Jennifer - Section 73 - Amendment of Plans                             | 1562-1566 |
| <b>CD33</b>           | The Acquiring Authorities' and Order Making Authority's Statement of Case      |           |

| <b>OBJECTIONS</b> |                     |  |
|-------------------|---------------------|--|
| <b>AAs' refs.</b> | <b>NTCT's refs.</b> |  |
| <b>OB1</b>        | OBJ6                | <del>W J Leech &amp; Sons Limited, dated 9 November 2016 (WITHDRAWN at the Inquiries (WD3)).</del>                               |
| <b>OB2</b>        | OBJ2                | <del>Barry's Skip Hire Limited, dated 7 November 2016. (WITHDRAWN Pre-Inquiries (WD1))</del>                                     |
| <b>OB3</b>        | OBJ1                | Wild Thang Limited, dated 4 November 2016 and 20 December 2016.  |
| <b>OB4</b>        | OBJ3                | DMI Fabrications Limited, dated 9 November 2016.   |
| <b>OB5</b>        | OBJ4                | Sal Fuel Retailers Limited, dated 9 November 2016.   |
| <b>OB6</b>        |                     | Raiscorp Limited, dated 9 November 2016.   |
| <b>OB7</b>        | OBJ5                | <del>Morrisons Gas Related Products Limited, dated 9 November 2016 (Withdrawn at the Inquiries (WD4)).</del>                     |
| <b>OB8</b>        | OBJ7                | <del>Clear Channel UK Limited (WITHDRAWN Pre-Inquiries)</del>  |
| <b>OB9</b>        | OBJ9                | <del>United Utilities Water Limited (WITHDRAWN Pre-Inquiries)</del>  |
| <b>OB10</b>       | OBJ12               | Mr Peter Jonathan Morris (One Stop Hire), dated 20 December 2016 and 18 July 2017.   |
| <b>OB11</b>       | OBJ10               | GMAC UK Plc, dated 1 December 2016.  |
| <b>OB12</b>       | OBJ11               | General Motors UK Ltd, dated 1 December 2016.  |
| <b>OB13</b>       | OBJ8                | <del>Liverpool Water Witch Marine &amp; Engineering Company Ltd, dated 4 November 2016 (WITHDRAWN at the Inquiries (WD2)).</del> |
| <b>OB14</b>       | OBJ13               | <del>Scottish Power Design Section Liverpool District (WITHDRAWN Pre-Inquiries)</del>  |

| <b>MISCELLANEOUS</b> |   |
|----------------------|---|
| <b>M1</b>            | Public Inquiries Notice                         |
| <b>M2</b>            | Agenda for Pre-Inquiries Meeting on 24 May 2017 |
| <b>M3</b>            | Notes of Pre-Inquiries meeting                  |

| <b>PROOFS OF EVIDENCE</b>    |  |
|------------------------------|--|
| <b>ACQUIRING AUTHORITIES</b> |  |
| <b>AA/DK/SUM</b>             | Summary of Evidence of David King                    |
| <b>AA/DK/POE</b>             | Proof of Evidence of David King                      |
| <b>AA/DK/APPX</b>            | Appendices to the Proof of Evidence of David King    |
| <b>AA/MM/POE</b>             | Proof of Evidence of Manish Mistry                   |
| <b>AA/MM/APPX</b>            | Appendices to the Proof of Evidence of Manish Mistry |
| <b>AA/AO/SUM</b>             | Summary of Evidence of Andrew Oates                  |

|                           |   |
|---------------------------|---|
| <b>AA/AO/POE</b>          | Proof of Evidence of Andrew Oates   |
| <b>AA/AO/APPX</b>         | Appendices to the Proof of Evidence of Andrew Oates   |
| <b>AA/GO/POE</b>          | Proof of Evidence of Glyn Owen  |
| <b>AA/GO/APPX</b>         | Appendices to the Proof of Evidence of Glyn Owen  |
| <b>AA/GM/SUM</b>          | Summary of Evidence of Gerard McLarnon  |
| <b>AA/GM/POE</b>          | Proof of Evidence of Gerard McLarnon  |
| <b>AA/GM/APPX</b>         | Appendices to the Proof of Evidence of Gerard McLarnon  |
| <b>AA/JD/SUM</b>          | Summary of Evidence of John Davies  |
| <b>AA/JD/POE</b>          | Proof of Evidence of John Davies  |
| <b>AA/JD/APPX</b>         | Appendices to the Proof of Evidence of John Davies  |
| <b>AA/AD/POE</b>          | Proof of Evidence of Andrew Dunsmore  |
| <b>AA/Table</b>           | Table cross-referencing proofs to objections.   |
| <b>WILD THANG LIMITED</b> |   |
| <b>WT/CRD/SUM</b>         | Summary of Evidence of Christopher Dwerryhouse  |
| <b>WT/CRD/POE</b>         | Proof of Evidence of Christopher Dwerryhouse  |
| <b>WT/CRD/APPX</b>        | Appendices to the Proof of Evidence of Christopher Dwerryhouse  |
| <b>WT/CCH/SUM</b>         | Summary of Evidence of Charles Hubbard  |
| <b>WT/CCH/POE</b>         | Proof of Evidence of Charles Hubbard  |
| <b>WT/CCH/APPX</b>        | Appendices to the Proof of Evidence of Charles Hubbard  |
| <b>WT/CCH/REB</b>         | Rebuttal Proof of Evidence to the evidence of David King  |
| <b>WT/MD/POE</b>          | Proof of Evidence of Mark Davies  |
| <b>WT/MD/APPX</b>         | Appendices to the Proof of Evidence of Mark Davies  |
| <b>WT/REB/MISC</b>        | Rebuttal Proof of Evidence on behalf of Charles Hubbard, Mark Davies & Christopher Dwerryhouse to the evidence of Manish Mistry |

### APPENDIX 3 – INQUIRY DOCUMENTS

| <b>INQUIRIES DOCUMENTS</b>   |   |
|------------------------------|---|
| <b>ACQUIRING AUTHORITIES</b> |   |
| <b>AA/INQ/001</b>            | Updated plan of SRO Drg No CO00205216/SRO/DR/101  |
| <b>AA/INQ/001.1</b>          | Updated plan of SRO CO00205216/SRO/DR/103   |
| <b>AA/INQ/001.2</b>          | Updated plan of SRO CO00205216/SRO/DR/104   |
| <b>AA/INQ/002</b>            | Modified and clean version of (A565 Classified Road Highways Improvements) (No 2) (Side Roads) Order 2016                     |
| <b>AA/INQ/003</b>            | Modified and clean version of Liverpool City Council (A565 Highway Improvements Phase I)                                      |
| <b>AA/INQ/003.1</b>          | Modified and clean version of Liverpool City Council (A565 Highway Improvements Phase II)                                     |
| <b>AA/INQ/003.2</b>          | Modified and clean version of Liverpool City Council (A565 Highway Improvements Phase 1)(No2)                                 |
| <b>AA/INQ/003.3</b>          | Sefton Metropolitan Borough Council (A565 Highway Improvements) including Plots 2 & 11  |
| <b>AA/INQ/003.4</b>          | Sefton Metropolitan Borough Council (A565 Highway Improvements) excluding Plots 2 & 11  |
| <b>AA/INQ/004</b>            | AO4 - WebTag guidance unit 3.14.1 referred to in paragraph 70 of AA/AO/POE  |
| <b>AA/INQ/004.1</b>          | GO2 - Extract of Building Our Future: Liverpool City Region Growth Strategy 2016 referred to in paragraph 17 of AA/GO/POE     |
| <b>AA/INQ/004.2</b>          | GO3 - Extract of Additionality Guide Fourth Edition (Homes and Communities Agency) referred to in paragraph 20.7 of AA/GO/POE |
| <b>AA/INQ/005</b>            | 3 PLANS – General scheme  |
| <b>AA/INQ/006</b>            | Heads of Terms for settlement agreement   |
| <b>AA/INQ/007</b>            | Appearances on behalf of the Order Making Authority   |
| <b>AA/INQ/008</b>            | Opening statement of the Order Making Authority   |
| <b>AA/INQ/009</b>            | Email from BT dated 29 November 2016 to Roger Mann LCC  |
| <b>AA/INQ/010</b>            | Letter from Virgin Media dated 25 November 2016 to Liverpool City Council   |
| <b>AA/INQ/011</b>            | Map referred to in the LCC (A565 Highway Improvements Phase I) (2 sheets)   |
| <b>AA/INQ/012</b>            | Extract from A Plan for Liverpool – UDP – adopted November 2002   |
| <b>AA/INQ/013</b>            | Extract from A Local Plan for Sefton – Adopted April 2017   |
| <b>AA/INQ/014</b>            | Extract from The Liverpool Local Plan September 2016  |
| <b>AA/INQ/015</b>            | Plan – Phase 2 – Plot 2 (Fazakerley Rewinds Limited)  |
| <b>AA/INQ/016</b>            | Funding profile as of award letter 6 April 2016 with data   |

|                      |   |
|----------------------|---|
| <b>AA/INQ/016.1</b>  | Extra information for the Funding profile as of award letter 6 April 2016 with data                               |
| <b>AA/INQ/017</b>    | List of Persons to be served  |
| <b>AA/INQ/018</b>    | Cambridge Policy Consultants  |
| <b>AA/INQ/019</b>    | The Merseyside Partnership Economic Review 2012   |
| <b>AA/INQ/020</b>    | WTL Tracking Plans  |
| <b>AA/INQ/021</b>    | WTL Phasing Plans   |
| <b>AA/INQ/022</b>    | Structural Report   |
| <b>AA/INQ/023</b>    | Ensor Street CPO/SRO overlay plan   |
| <b>AA/INQ/024</b>    | One Stop Plot 16 Access (Sherwood Street)   |
| <b>AA/INQ/025</b>    | Updated Plan for SMBC CPO – Modified excluding Plots 2 & 11   |
| <b>AA/INQ/026</b>    | Modified Plan – LCC CPO1(2)   |
| <b>AA/INQ/027</b>    | Closing submissions on behalf of the Acquiring Authorities  |
|                      |   |
| <b>OTHER PARTIES</b> |   |
| <b>WD1</b>           | Letter of withdrawal on behalf of Barry’s Skip Hire, dated 7 July 2017  |
| <b>WD2</b>           | Letter of withdrawal on behalf of Liverpool Water Witch Marine & Engineering Company Limited, dated 1 August 2017 |
| <b>WD3</b>           | Letter of withdrawal on behalf WJ Leech & Sons, dated 2 August 2017.  |
| <b>WD4</b>           | Letter of withdrawal on behalf of Morrisons Gas Related Products Limited, dated 2 August 2017.                    |

#### APPENDIX 4 – ABBREVIATIONS

|                                |   |
|--------------------------------|---|
| AAs                            | Acquiring Authorities.  |
| Act of 1954                    | <i>Landlord and Tenant Act 1954.</i>  |
| BCR                            | Benefit to cost ratio.  |
| Councils                       | Liverpool City Council and Sefton Metropolitan Borough Council.   |
| CPG                            | Department for Communities and Local Government's <i>Guidance on Compulsory Purchase Process and The Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion.</i> |
| CPOs                           | LCC CPO1, CPO2, CPO1(2) and SMBC CPO.   |
| CPOa) and b) modifications     | AA/INQ/003.4 and 025.   |
| CPO1a) and b) modifications    | AA/INQ/003 and 011.   |
| CPO1(2)a) and b) modifications | AA/INQ/003.2 and 026.   |
| CPO2a) modifications           | AA/INQ/003.1.   |
| CSL                            | <i>LCC's A Cycling Strategy for Liverpool 2014-26.</i>  |
| DfT                            | Department for Transport.   |
| DMI                            | DMI Fabrications Limited.   |
| GMAC/GM                        | GMAC UK Plc and General Motors UK Limited.  |
| 1980 Act                       | Highways Act 1980 (as amended).   |
| HCA                            | Homes and Communities Agency.   |
| HRA                            | Human Rights Act 1998 (as amended).   |
| K2                             | K2 Architects.  |
| LCC                            | Liverpool City Council.   |
| LCC CPO1                       | The Liverpool City Council (A565 Highway Improvements Phase I)-Compulsory Purchase Order 2016.  |
| LCC CPO1(2)                    | The Liverpool City Council (A565 Highway Improvements Phase I)(No 2)-Compulsory Purchase Order 2016.  |
| LCC CPO2                       | The Liverpool City Council (A565 Highway Improvements Phase II)-Compulsory Purchase Order 2016.   |
| LCC SRO                        | The Liverpool City Council (A565 Classified Road Highway Improvements)(No 2)(Side Roads) Order 2016.  |
| LCR LTB                        | Liverpool City Region Local Transport Body.   |
| NLKC                           | North Liverpool Key Corridor.   |
| Orders scheme                  | Scheme to which the Orders relate.  |
| OSH                            | One Stop Hire.  |
| PJM                            | Peter Jonathan Morris.  |
| SFRL                           | Sal Fuel Retailers Limited and Raiscorp Limited.  |
| SMBC                           | Sefton Metropolitan Borough Council.  |
| SMBC CPO                       | The Sefton Metropolitan Borough Council (A565 Highway Improvements)-Compulsory Purchase Order 2016.   |
| SRO a) and b) modifications    | AA/INQ/001, 001.1, 001.2 and 002.   |
| Secretary of State             | Secretary of State for Transport.   |
| TROs                           | Traffic Regulation Orders.  |
| WTL                            | Wild Thang Limited.   |