



Report to the Secretary of State for Environment, Food and Rural Affairs

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an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

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LAND DRAINAGE ACT 1991

THE RIVER ARUN INTERNAL DRAINAGE DISTRICT (ABOLITION) ORDER 2017

Inquiry Opened on 20 February 2018
River Arun Internal Drainage District, West Sussex

File Ref: APP/DEFRA/LD/ARUN

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ABBREVIATIONS AND GLOSSARY

The 1991 Act	-	The Land Drainage Act 1991.
The Habitats Directive	-	Directive 92/43/EEC.
The Habitat Regulations	-	The Conservation of Habitats and Species Regulations 2017.
HRA	-	Habitat Regulations Assessment.
The IDB	-	The River Arun Internal Drainage Board.
The IDD	-	The River Arun Internal Drainage District.
The NERC Act	-	The Natural Environment and Rural Communities Act 2006.
The Wilds Birds Directive	-	Directive 2009/147/EC.
The WCA	-	The Wildlife and Countryside Act 1981 (as amended).

ADA	-	Association of Drainage Authorities.
AVVG	-	Arun Valley Vision Group.
CLA	-	Country Landowners Association
CLBA	-	Country Land and Business Association
Defra	-	Department for Environment, Food and Rural Affairs.
EA	-	Environment Agency.
EGSG	-	East of Gravesend Steering Group.
ESSG	-	East Sussex Steering Group.
IDB	-	Internal Drainage Board.
IDD	-	Internal Drainage District.
LLFA	-	Lead Local Flood Authority.
LTRAS	-	Lower Tidal River Arun Strategy.
MHWM	-	Mean High Water Mark.

NE	-	Natural England.
NFU	-	National Farmers Union.
PS	-	Pumping Station.
RFCC	-	Regional Flood and Coastal Committee.
RFDC	-	Regional Flood Defence Committee.
RSPB	-	Royal Society for the Protection of Birds.
SAC	-	Special Area of Conservation.
SCI	-	Site of Community Importance.
SDNPA	-	South Downs National Park Authority.
SPA	-	Special Protection Area.
SSSI	-	Site of Special Scientific Interest.
SWS	-	Southern Water Services Ltd.
SWT	-	Sussex Wildlife Trust.
WLMP	-	Water Level Management Plan.
WSSG	-	West Sussex Steering Group.

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River Arun Internal Drainage District, West Sussex

- The Order would be made under powers conferred by section 3(5) and (7) of the Land Drainage Act 1991 confirming a Scheme submitted by the Environment Agency under section 3(1) of the Act.
- The purpose of the Order is to abolish the River Arun Internal Drainage District
- The proposed scheme was appropriately advertised and 15 letters of objection were received.
- The inquiry was held to consider the matters raised in these objections, as summarised in the Statement of Matters issued by Defra in October 2017.
- The inquiry sat for 6 days on 20-23 and 27-28 February 2018.

Summary of Recommendation: That the Order be not made.

Preamble

1. This report includes brief descriptions of the proposed abolition scheme, the Internal Drainage District land and surroundings, and the Statement of Matters, the gist of representations made, and my conclusions and recommendations. Document references are shown in brackets, and in my conclusions the numbers in square brackets indicate the relevant paragraphs of the report. Details of the people who took part in the public inquiry and comprehensive lists of documents are attached at the end of the report.

Procedural Matters and Statutory Formalities

2. Section 3 of the Land Drainage Act 1991 (the 1991 Act) makes provision for "*Schemes for the reorganisation of internal drainage districts etc.*", and sub-section (1) says that "*The appropriate supervisory body may at any time prepare and submit to the relevant Minister for confirmation a scheme making provision for any of the matters specified in sub-section (2)*". Sub-section (2) includes "*(d) the abolition or reconstitution of any internal drainage district and of the drainage board for that district*".
3. Sub-section (4) then specifies the required notifications and publicity of the proposed scheme, including the opportunity for representations to be made to the Minister. Finally, sub-section (5) says "*The relevant Minister may by order made by statutory instrument confirm any scheme submitted to him under the section either with or without modifications*".
4. In this case the Environment Agency (EA) is the "appropriate supervisory body" and has submitted a scheme to the Minister for the abolition of the River Arun Internal Drainage District (the IDD) (see Document 1). A draft scheme had been previously advertised by the EA. However, the submitted scheme was further advertised by Defra in March 2017, and 15 letters of objection were received (see Documents 2.1-2.15).
5. On the basis of these objections the Minister decided that a public inquiry should be held into the EA's proposals for the Order and into the objections made in connection with the proposals. A notice to that effect was issued on 11 October 2017 (Document 3). Section 69(1) and Schedule 3, paragraph 3 of the 1991 Act make provision for the holding of a public inquiry but do not specify the rules for such an inquiry. Consequently, Defra specified that the rules should be based on

- the Compulsory Purchase (Inquiries Procedure) Rules 2007, suitably modified as necessary, and the public inquiry has been carried out in accordance with these procedures.
6. A Statement of Matters was subsequently issued on which the Minister particularly wished to be informed (Document 4). These may be summarised as follows:
- (1) The implications for the EA of continuing to manage the IDD.
 - (2) The likely impacts of abolishing the IDD on local flood risk.
 - (3) The implications of the proposed abolition of the IDD for local interested parties, including local landowners, Local Councils, the Sussex Wildlife Trust (SWT), the Royal Society for the Protection of Birds (RSPB), Southern Water Services (SWS), the National Farmers Union (NFU), the Country Land and Business Association (CLBA), and the Arun Valley Vision Group (AVVG).
 - (4) The likely environmental impacts of abolishing the IDD on the 3 Sites of Special Scientific Interest (SSSIs), the Special Protection Area (SPA), the Site of Community Importance (SCI), the Special Area of Conservation (SAC) and the Ramsar site.
 - (5) The sufficiency of measures proposed by the EA for mitigating any adverse impacts of the abolition of the IDD.
 - (6) The consequences of the proposed abolition on future management of the watercourses and the pumping stations within the IDD, taking into consideration the position on legal ownership and the condition of the pumping stations and likely impacts on local landowners and other people affected.
7. With respect to Matter (5) above, the measures referred to were listed as:
- (a) Measures to avoid, reduce or remedy any major or significant adverse environmental impacts, such as the enmainment of IDD watercourses in the Amberley Wild Brooks SSSI (i.e. their transfer to the direct responsibility of the EA) and the proposed scheme to protect the Waltham Brooks SSSI.
 - (b) Whether, and if so, to what extent any adverse environmental impacts would remain after the proposed mitigation.
 - (c) The timing of the proposed abolition in relation to the enmainment of the Amberley Wild Brooks SSSI watercourses.
 - (d) The implications for meeting requirements under the Conservation of Habitats and Species Regulations 2010 (as amended).
 - (e) The implications of Natural England's assents under section 28H of the Wildlife and Countryside Act 1981 (as amended).
8. A Pre-Inquiry meeting was held on 13 December 2017, and the public inquiry itself was held over a period of 6 days (20-23 and 27-28 February 2018) at The Manor House, Littlehampton (the offices of the Town Council). An accompanied

site visit was also held on 28 February 2018 encompassing all relevant aspects and features of the IDD area. The locations visited are marked on the site visit maps at Document INQ37.

9. Three objectors presented evidence at the public inquiry: the NFU, representing a number of affected farmers; Mr Breasley of Thyme Consultants Ltd, representing several affected farmers/landowners (Messrs Strudwick, Tedbury and Ayling, and the West Sussex Biodiversity Project); and the Sussex Wildlife Trust. Other objectors relied on their written submissions at Documents 2 and 6. In addition, Natural England submitted written representations (Document 7).

Proposed Order and Scheme (Document 5)

10. The River Arun IDD is one of 8 IDD's in this part of the Country for which the EA (and its predecessors) has historically acted as the Internal Drainage Board (IDB) (see Map 1 in Document 5). However, IDD's are generally managed by IDB's which are public bodies of locally elected and appointed members and, following an independent review of IDB's in 2006 commissioned by Defra, the EA has reviewed the arrangements for these 8 IDD's. After lengthy consultation exercises it was resolved to seek their abolition, albeit with 3 of them being replaced by 2 new IDD's. The abolition of 7 of the IDD's and the creation of the 2 new ones (see Orders for the latter at Documents INQ21 and INQ22) did not meet with objections and have been completed. The proposed abolition scheme for the River Arun IDD (Document 1) would be similar to those already completed and would be included as a Schedule within the proposed Order (see Appendix 2 of Document 5).
11. Paragraph 1 of the Scheme makes provision for a 6 months period before the Order comes into effect, giving time for necessary transitional arrangements to be put in place. Paragraphs 4, 5 and 7 make provision for detailed financial matters to be fairly settled, and paragraph 6 makes provision for IDB "property" to be transferred to the EA. In this context the term "property" is narrowly defined in paragraph 2 as meaning the various records held by the IDB. It does not include the physical assets of the IDD.
12. With the exception of those within the Amberley Wild Brooks SSSI, the physical assets, i.e. the watercourses/ditches, the control structures and the 3 pumping stations, would become the responsibility of the riparian landowners. It is proposed that the IDD watercourses and control structures within the Amberley Wild Brooks SSSI area be "enmained", i.e. be adopted as main river for which the EA would become directly responsible.
13. It is proposed that the physical assets for which the riparian owners would become responsible would be transferred in fair condition. Furthermore, if the riparian owners for the 3 pumping stations indicated they did not wish to take on the responsibility for operating them in the future, they would be decommissioned and the removable parts would be taken away before the IDD was abolished.
14. It is anticipated that the Greatham Pumping Station (PS) would certainly be decommissioned and, to compensate for any effect this would have on the drainage of the Waltham Brooks SSSI, the EA proposes to carry out a small drainage improvement scheme, variously referred to as a ground re-profiling scheme and as the Coldwaltham Scheme (see Documents INQ15 and INQ23).

Order Land and Surroundings (Documents 5, 10 and 11)

15. The River Arun IDD covers an area of some 3,304 hectares throughout the lower and middle reaches of the River Arun catchment. It is predominantly rural with some small urban areas, including Arundel, Pulborough and Amberley (see Map 2 in Document 5). Most of the IDD lies within the administrative areas of Horsham District Council and Arun District Council, with a small area in the north west within Chichester District Council.
16. The land is predominantly low-lying agricultural land of Grade 3 Agricultural Land Classification (see maps at Document INQ6). The primary purpose of the IDD is to facilitate the drainage of this low-lying agricultural land so that it can be used for a longer period each year than would otherwise be possible. The IDB is responsible for 64 km of watercourse/ditch, some 40 water control structures and 3 small submersible pumping stations, Greatham PS, Hardham PS and Houghton PS, though the latter is now no longer in use.
17. There is a risk of fluvial flooding throughout the IDD floodplain, and the area between Pulborough and Littlehampton is protected from flooding by embankments alongside the main rivers, and the IDD watercourses drain through these into the River Arun and its tributaries the Black Ditch and the Western Rother. The River Arun is also tidal over most of the IDD area, and IDD outlets into it are protected with flap valves to prevent water backing up into the IDD watercourses at times of flood and high tide. The River Arun flows into the sea at Littlehampton.
18. The IDD area contains 6 SSSIs of which 3 are of particular relevance: Amberley Wild Brooks, Waltham Brooks and Pulborough Brooks (see Map 3 in Document 5). The 3 SSSIs also encompass a Special Area of Conservation (SAC), a Special Protection Area (SPA) and a Ramsar site.

Case for the Environment Agency

The material points are:

Matter 1: Implications for the EA of continuing to manage the IDD (Documents 5, 8 and 9)

19. There is no dispute that the current arrangement with the EA acting as the Internal Drainage Board (IDB) for the River Arun IDD is a cumbersome and inappropriate situation. There are some 112 IDBs in England covering almost 10% of the total area. Almost all are administered by IDBs that are public bodies of locally elected and appointed members.
20. Until 2010 the EA delegated its role as the IDB for the 8 IDBs in the area to the more locally representative Southern Regional Flood Defence Committee (RFDC). However, the Flood and Water Management Act 2010 replaced the RFDC with the Southern Regional Flood and Coastal Committee (RFCC), which is predominantly a consultative body and which does not have the powers to make decisions on management of the IDD. Thus, although it has set up a small committee of officers tasked with overseeing the day to day running of the River Arun IDD, the main EA Board is now the body responsible for the formal IDB role. As a nationally constituted body, the EA Board cannot provide local input into the management of the IDD, which is seen as an essential principle in the 1991 Act.

21. This situation has been exacerbated by the Local Audit and Accountability Act 2014 and the Accounts and Audit Regulations 2015, which set out requirements for the reporting and publication of the accounts of smaller authorities, such as the IDD. At present, although IDD costs are separately recorded within the EA financial systems, the IDD does not meet the new requirements for the presentation of accounts and supporting information on a readily accessible website for local accountability.
22. The need to meet local transparency provisions places a difficult burden on the EA, particularly in requiring the main EA Board to carry out the local duties of the IDD alongside its otherwise strategic national role for the EA as a whole. There are also operational disadvantages in the EA continuing to act as the IDB.
23. Staff and labour for the IDD are shared with the wider role of the EA in the area, and the use of contractors to carry out work on the IDD watercourses is organised in accordance with the EA's national procurement rules. If the IDB was a smaller, locally based body it would probably be able to get the work done more cheaply. In addition, it is not appropriate for the wider EA to subsidise the IDD and so its support and administrative costs are apportioned to the IDD. As the River Arun IDD is now the only local IDD still managed by the EA, the economies of scale enjoyed to date in running 8 IDBs have been lost. Consequently, administrative costs will rise from some 30% to in excess of 35%, the benchmark for independent IDBs.
24. In wider financial terms, the implications for the EA are negligible, as the IDD costs (typically about £82,000 per annum) are only a very small part of its substantial national budget, and abolition of the IDD would be virtually cost-neutral.

Matter 2: Likely impacts of abolishing the IDD on local flood risk
(Documents 5, 8, 10 and 11)

25. There are 2 aspects of flood risk to be considered: local flooding associated with the IDD operation itself; and fluvial flooding from the River Arun when the flood banks are overtopped. Looking first at the former, the EA has assessed the worst case scenario if the IDD watercourses, control structures and pumping stations were not maintained in the future. It should be remembered, of course, that the IDD was designed and constructed for land drainage and environmental purposes and not to protect properties from flooding.
26. If the riparian landowners in agricultural areas were to choose not to maintain their IDD network, there is a risk that their land would become wetter and some may become waterlogged. Maps 9 and 10 in Document 5 illustrate the areas of agricultural land that benefit from the IDD. If the IDD was abolished it would be up to the landowners to what extent they continued to manage and maintain the existing IDD network. However, many already operate non-IDD drainage ditches and controls on their land and recognise the benefits the network brings to their businesses.
27. Of the 3 pumping stations in the IDD, one (Houghton PS) broke down some time ago and is now no longer in use. It has not been repaired as its benefits are not considered to be worthwhile. If Hardham PS was switched off it is estimated that approximately 40 hectares of agricultural land owned by the riparian owner and one other landowner would be at risk of becoming wetter (see Map 11 in

- Document 5). The same assessment for Greatham PS is that some 105 hectares of agricultural land would be affected belonging to the riparian owner and 2 other landowners (see Map 12 of Document 5). It would be up to those landowners to decide whether to operate the pumping stations or adapt their land management to the increased water levels.
28. With regard to non-agricultural land, if IDD ditches close to Arundel and Littlehampton were not maintained in the future, there would be an increase in risk to 23 properties on the edge of those settlements (see Maps 6 and 7 in Document 5). Similarly, the risk of road flooding would increase at 2 locations in Horsham District (see Map 8 in Document 5). However, the local authorities would have the same powers under the 1991 Act as the IDB to intervene and take action if necessary, and Arun District Council has already indicated that it would intend to use the money saved in not having to pay towards the funding of the IDD to finance the employment of an officer to undertake these duties. The riparian owners would also remain subject to the constraints of the byelaws and consenting regimes, and wider supervision and enforcement of ordinary watercourses would be carried out by the Lead Local Flood Authority (LLFA), West Sussex County Council.
29. Taking all of these factors into account, it is likely that the drainage network would continue to be maintained to some extent, and it is not considered that there would be any significant increase in risks of local flooding if the IDD was abolished.
30. Turning now to fluvial flooding from the River Arun (and its tributaries), several objectors say that the abolition of the IDD would affect this and that the IDD should not be abolished, at least, until the Arun Valley Vision Group has completed its studies early in 2019. The EA considers this to be unnecessary as the abolition would not materially affect the risks of fluvial flooding.
31. When the River Arun is in flood and overtops its flood embankments, flooding is generally confined to the floodplain. When this occurs the IDD drainage facilities become overwhelmed and are unable to drain effectively until the main river levels go down. As they are designed to facilitate the drainage of the low-lying land rather than to provide flood protection, their effect on flooding from the main river is quite limited. They are not designed to provide flood risk benefits to property. They do, however, enable the land to drain more quickly once the river levels have dropped and flood waters have subsided.
32. If the IDD network was not maintained the risk of main river flooding would not change, although the flood water would not drain away as quickly and the duration of flooding of the agricultural land would be slightly extended.
33. Objectors have referred to the EA's flood risk management strategy for this area, the Lower Tidal River Arun Strategy (LTRAS), which covers an area very close to that of the IDD. The Strategy was adopted in March 2014 and covers the main rivers only. It recommends that spending on the maintenance of uneconomic flood risk management assets in many rural parts of the Arun Valley be stopped, including the flood defences and structures between Houghton Bridge and Arundel where the cost benefit ratio is poor. However, local concerns raised early in 2016 have led to further consultation with interested bodies to take account of the wider interest or opportunities in the area, and the future strategy remains under discussion.

34. As a result of this the Arun Valley Vision Group (AVVG) was set up in January 2017 with the support of the EA and the Southern RFCC and, while the AVVG is undertaking its study, the EA has agreed that it will continue with its routine maintenance of main river assets over the stretch in question. The AVVG is an independent body and its individual members represent diverse views. Its aim is to come up with a sustainable solution to the management of flood risk from the main River Arun in future decades, including a mechanism for funding it, and it is due to produce a report by January 2019.
35. The EA does not accept the criticisms that some objectors have expressed about its management of the main River Arun. It has not pulled out of its management responsibilities, and it is not true to say that LTRAS is just about the withdrawal of maintenance. The strategy will be reviewed at regular intervals. The AVVG report is also keenly awaited. However, although the AVVG's terms of reference include consideration of main river flooding, they make no mention of land drainage or of the IDD, and it is considered that abolition of the IDD lies outside its remit.
36. Abolition of the IDD would not affect the risks of fluvial flooding from the River Arun or the future management of the main river. Nothing would be gained by delaying a decision on the abolition of the IDD until after the AVVG has completed its study.

Matter 3: Implications of abolition on local interested parties

(Documents 5, 8 and 10; and Document INQ36 re human rights)

37. The IDD is funded by a combination of special annual levies on local councils and drainage rates paid by local landowners. For the River Arun IDD this is split 81% from local councils (80% from Arun DC and 1% from the other 2 district councils) and 19% from drainage rate payers. Based on a typical annual budget of about £82,000 these represent contributions of £66,400 and £15,600 per annum respectively. If the IDD was abolished these charges would no longer be made.
38. About 150 landowners pay drainage rates, and the majority of these have no drainage watercourses on or adjacent to their land. Thus they would save money and have no additional responsibilities for the current IDD watercourses. However, about 35 currently have IDD maintained watercourses on their land, and they would incur responsibilities for their maintenance (as riparian landowners) whilst saving on payment of the drainage rates. The amount of maintenance and operation carried out would be a matter for them to decide based on their statutory duties as riparian owners and on their particular business needs. It is pertinent that all of the land concerned is Grade 3 agricultural land.
39. The costs of the maintenance work that riparian landowners may incur should be seen in perspective. The farms concerned are ongoing enterprises and the farmers would make appropriate business decisions either alone or in conjunction with other landowners who may benefit. The 2 charities affected as riparian owners, the Sussex Wildlife Trust (SWT) and RSPB, may incur additional maintenance costs for their land. So far as the RSPB is concerned, the EA currently spends about £6,000 pa maintaining ditches on that land. It carries out very little maintenance on the SWT land. It also proposes to carry out a drainage improvement scheme at the Waltham Brooks SSSI (the SWT land) to compensate for loss of the Greatham PS.

40. The 3 local councils would make useful cost savings by not having to pay the IDD levies, particularly Arun DC, and it is reported to be their intention to use the money to fund their permissive powers for flood risk management work on the ordinary watercourses. In particular, Arun DC intends to fund additional inspections to ensure riparian owners maintain their watercourses and structures adequately in priority locations close to settlements. It should also be made clear that West Sussex County Council would also have responsibilities for enforcement and consenting on ordinary watercourses in the former IDD area under its role as the LLFA.
41. It is not considered that these duties on riparian owners are onerous. They already maintain many non-IDD ditches on their land within the IDD, and in most parts of the Country (over 90%) there are no IDDs, and drainage ditch maintenance is a normal part of farmers' everyday duties.
42. Turning to the AVVG, it is possible that a recommendation may be brought forward for a replacement IDD though, in view of the reluctance of the local councils to fund a replacement body at the current time, it is considered unlikely that would occur. However, if it did, the current abolition would not prevent a new IDD being set up in the future. Even if the present IDD was not abolished now, it would have to be abolished before a new IDD could be set up in the future.
43. Mention has been made of discharges of water into the IDD network from the Southern Water Services (SWS) reservoir and water treatment works at Hardham (see Documents INQ13 and INQ26). SWS has abstracted water from boreholes within the IDD area for many years which it treats at its Hardham works before distribution for public water supply. That works has a facility to discharge waste water into the IDD network under a discharge consent issued in 1966 (see Document INQ16). There are no records of how much that facility has been used. However, it has come to the attention of objectors due to a particular incident in 2012, which caused concern about land drainage. Apart from that it has not been an issue so far as the IDD is concerned.
44. More recently, SWS has constructed a facility for abstraction of water from the River Arun which includes a new storage reservoir alongside the river (see leaflet about the scheme at Document INQ13). That scheme includes provisions for occasional discharges of surplus water into the nearest IDD watercourse. Whilst objectors have expressed concerns about these various discharge facilities, their main criticism seems to be that SWS makes no financial contribution towards the costs of managing the IDD. SWS have been consulted about the proposal to abolish the IDD and have said that, if they could no longer use the former IDD watercourses, they would be able to make other arrangements.
45. Finally, near the close of the Inquiry the SWT introduced arguments about human rights. Whilst the matters referred to have been addressed within the body of the EA's evidence, it is appropriate to specifically respond to the human rights allegations. SWT rely on 2 points: Article 6 of the European Convention on Human Rights (the right to a fair hearing) and Article 1 of the First Protocol (the protection of property).
46. Dealing first with the latter, the right is not an absolute right but one that requires a fair balance to be struck between the general interests of the community and the protection of an individual's fundamental rights so that an

- excessive or disproportionate burden is not imposed on them. SWT argue that some form of compensation package should be provided as the land value would be diminished due to the burden of extra costs and liabilities associated with taking on responsibilities for operation and maintenance of the IDD drainage network. They also argue that the proposed abolition aims to save costs to the EA rather than provide public benefit and that it would cause additional costs to fall on the SWT.
47. The EA does not accept this characterisation of the facts. In the first place the Scheme is being promoted in accordance with the law and in the general interest of the community. It would have no financial benefit to the EA. The reasons for promoting the Scheme have been explained and the powers of the EA, the County and District Councils, and the private landowners would remain. The Scheme proposed is necessary to control the use of property in the interests of the general community.
48. Secondly, the IDD assets are not being "gifted" as alleged. They are part of the drainage infrastructure and form part of the land. Whilst they serve a useful drainage function, it would be for the landowner to decide what they wished to do with them, subject to their common law responsibilities and the requirements of any relevant byelaws (the same obligations as now). With regard to compensation, anything due at the time of installation would have been paid at that time, though account should also have been taken of the benefits to the land that these drainage provisions introduced. All IDD assets would be in fair, operable condition at the time of transfer so that owners would be able to take over control at that time. The EA's policy in this regard has been explained in the context of its "Protocol for the maintenance of flood and coastal risk management assets" (Document INQ4).
49. Thirdly, there is no evidence of unfairness to SWT. Their land is not being expropriated and they have not argued that abolition of the IDD would place a disproportionate or excessive burden on them. A fair balance has been struck in the way in which local flood risk would be managed in the future as well as in the way control of the IDD assets would be transferred.
50. Turning finally to Article 6, SWT criticises the process that has been involved and the late provision of a detailed list of IDD assets, which has not given them the opportunity to fully understand the nature and implications of the Scheme. That is not a proper description of what has happened. The requirement is to provide a fair hearing, and the public inquiry is the end of a long process that has met that requirement. There has been ample opportunity for everyone to understand the Scheme since the EA made its initial application in August 2015, and each landowner is familiar with his own land and the watercourses in it.
51. The law on the ownership of fixtures and chattels is well known. The final public inquiry process has made provision for each person to bring forward the evidence they want the Minister to consider, and all objectors have been provided with a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Matter 4: Likely environmental impacts on SSSIs and European sites

(Documents 5 and 12)

52. Six SSSIs fall within the River Arun IDD: Amberley Wild Brooks; Arun Banks; Arundel Park; Pulborough Brooks; Upper Arun; and Waltham Brooks (see Map 3 in Document 5). There are also 3 internationally designated sites: Arun Valley SAC; Arun Valley SPA; and Arun Valley Ramsar site. The Arun Banks and Upper Arun SSSIs were scoped out at an early stage and were not considered any further. The Arundel Park SSSI is notified for breeding bird and invertebrate assemblages, woodland and calcareous grassland. However, the impact on this would be negligible, and Natural England accepted the conclusion that there would be no likely damage.
53. The SPA and Ramsar site encompass all 3 of the Amberley Wild Brooks, Waltham Brooks and Pulborough Brooks SSSIs. The SAC covers the Amberley Wild Brooks and Pulborough Brooks SSSIs. Whilst there are a number of features of nature conservation interest in the IDD, particular attention has been paid to these 3 designated sites.
54. The Amberley Wild Brooks SSSI is designated for ditch flora, including several rare plant species, and invertebrates including the EU snail species *Anisus vorticulus*. Birds are also important, especially for overwintering and breeding species, particularly *Tringa tetanus* (Redshank). It is currently assessed as at "Unfavourable Recovering" status and has a Water Level Management Plan (WLMP), agreed between the EA and Natural England (NE) in 2006, which aims to balance the needs of the landowners with the environmental needs. In order to ensure that the present management regime continues it is proposed to enmain the current IDD ditches within the SSSI, i.e. the EA intends to adopt those watercourses as "main river" so that responsibility for their future management and maintenance would remain with the EA (see Document INQ2).
55. If there was any delay in the enmainment process (a quite separate statutory process), a short period of lack of maintenance would not be of any concern so far as nature conservation interests are concerned. Indeed, 2 years without maintenance might even improve species richness in these watercourses, as would some longer term reduction in the present maintenance regime if less funding was available in the future. However, the EA has a statutory duty under the Wildlife and Countryside Act 1981 to further the conservation and enhancement of SSSIs, and it would be the EA's intention to continue to manage the SSSI watercourses to meet the requirements of the WLMP. Although the EA's first priority in its management of main rivers is to protect life and property from flooding, its duties in respect of designated environmental sites are a close second.
56. The Waltham Brooks SSSI is a grazing marsh of national importance for wintering birds, including *Cygnus columbianus bewickii* (Bewick's Swan), and its ditches contain a rich assemblage of aquatic plant species, though its status is classed as "Unfavourable Recovering". The land is owned by the Sussex Wildlife Trust (SWT) which has secured funding to restore a length of the ditches so that they become wetter and more supportive of the needs of the Bewick's Swan. The IDB actually carries out very little work in this area.

57. The Greatham PS has the potential to affect the drainage of the northern part of this SSSI and, if that pumping station was decommissioned (as appears to be likely), increased waterlogging could occur. In order to prevent this, the EA proposes to construct a much more natural drainage scheme in that part of the SSSI (see Documents INQ15 and INQ23), comprising a new culvert and a series of shallow ditches (described as "scrapings" by one EA witness). Subject to this scheme, abolition of the IDD would have very little effect on this SSSI in view of the IDB's historic lack of maintenance activity. There may be a minor adverse effect in the longer term if no funding was found for management. However, in the short term the more natural drainage arrangements would be an environmental gain.
58. The Pulborough Brooks SSSI citation is for invertebrate and vascular plant assemblages including the snail *Anisus vorticulus*. The IDB currently maintains the ditches on a regular basis, and some reduction in maintenance (e.g. in the event of reduced funding) would actually benefit the ecological regime. In fact the IDD ditches only represent about 10% of the ditches in this SSSI, and future management and maintenance of the IDD ditches would be carried out by the landowner, the RSPB, along with the other ditches.
59. The SPA is designated in accordance with Article 4 of the EC Birds Directive (Directive 2009/147/EC). It encompasses all 3 of these SSSIs and, as explained above for each SSSI, abolition of the IDD would not affect its designation for rare, vulnerable and regularly occurring migratory species of birds, especially Bewick's Swan. As the IDD watercourses in the Amberley Wild Brooks SSSI would be enained there would be no change in maintenance powers and likely future funding. The maintenance of the Pulborough Brooks SSSI would be continued by the RSPB under the Higher Level Stewardship Scheme (a funding grant system), and at Waltham Brooks SSSI (with Bewick's Swan listing) the situation for wetland birds should actually improve.
60. The SAC is a protected site designated under the EC Habitats Directive (Directive 92/43/EEC) as containing habitat type or species most in need of conservation at the European level. The designated snail species *Anisus vorticulus* has been recorded in historic and recent surveys in the Pulborough Brooks and Amberley Wild Brooks SSSIs and in one location outside the SSSIs at North Stoke. As there are no plans to change the management and maintenance regimes in the Amberley Wild Brooks SSSI, no concerns arise for the snail. At North Stoke the latest survey only found the snail in a non-IDD watercourse, on which abolition of the IDD would have no effect.
61. The precautionary approach has to be taken in evaluating the effects for the Pulborough SSSI. It is anticipated that the RSPB would be able to fund maintenance under their High Level Stewardship Scheme but RSPB say that would provide far less funding than current IDD expenditure. However, as described above, reduced maintenance of the IDD ditches in this SSSI would be beneficial to the snail as the current 3 year rotation programme is far from ideal. The RSPB argues that a full appropriate assessment should be required as future long-term funding for maintenance cannot be guaranteed. However, as less ditch maintenance would be beneficial for nature conservation, that argument does not override the current assessment that abolition of the IDD would have no significant effect.

62. Finally, the Ramsar designation is for wetlands of international importance, and the citation is for wetland invertebrate and plant assemblages and international assemblages and populations of waterfowl. The designation covers all 3 SSSIs, and the assessment of effects is as described above.
63. Natural England (NE) is a statutory consultee in respect of plans or projects that are subject to the requirements of the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations), and the EA has consulted NE on the likely effects of the abolition on the SAC, SPA and Ramsar site. It has also notified NE pursuant to the Wildlife and Countryside Act 1981 (as amended) (WCA 1981) in respect of likely damage to any flora or fauna and to protected sites and species under the Habitat Regulations.
64. The EA submitted its first assessments to NE in July 2015 (see Document 5 Appendix 10 for Habitat Regulations Assessment (HRA) and Appendix 11 for Notice under Section 28H of the WCA 1981). NE was satisfied that the proposal was unlikely to have a significant effect on the interest features of the SPA and of the SAC (at that time an SCI, pending final designation) and Ramsar site so far as the Amberley Wild Brooks and Waltham Brooks sub-components were concerned (see Appendix 12 of Document 5 dated 13 October 2015). The same Appendix contains a letter confirming NE's assent under Section 28H in respect of the Arundel Park SSSI. However, it considered there was insufficient information to enable similar conclusions to be drawn in respect of the Pulborough Brooks component of the European sites and the SAC features that occur outside the European site boundary but are part of the designated sites' populations.
65. The EA worked with NE to provide that information and resubmitted its assessment in April 2017 (Document 5 Appendix 13 for the HRA and Appendix 14 for the Section 28H Notice). Subject to some minor amendments (see HRA form as edited in Appendix 18 of Document 5), NE was satisfied that the proposal was unlikely to have a significant effect on the interest features of the SPA or of the SAC and Ramsar site within the Pulborough Brooks sub-components of the European and international sites, subject to a condition that the IDD infrastructure is handed over to the landowner in a state fit for future use (see Appendix 18 of Document 5). The final position so far as NE is concerned is set out in Table 8.1 of NE's written submission (Document 7).
66. Notwithstanding abolition of the IDD, the EA would still have a duty under Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC Act) to have regard, so far as is consistent with the proper exercise of its functions, to the purpose of conserving biodiversity. It also has a duty to have regard to the Habitats Directive and the Wild Birds Directive so far as they may be affected by its functions. It would seek to comply with these duties during routine maintenance on the main rivers and any project work within or adjacent to the Arun Valley European sites. It also has key performance targets in respect of SSSIs and habitat creation, and European sites are the highest priority for these targets.
67. Finally, comments need to be made about future funding for nature conservation. Natural England have advised (see Appendix 13 of Document 5) that "there are no new additional safeguards required as a result of the EU referendum but there are uncertainties regarding agri-environmental schemes beyond 2020 which will

need to be dealt with in a pragmatic way which still ensures ongoing management". It is reported that funding is intended to increase after "Brexit".

68. In conclusion, it may be said that, following extensive consultations, NE has given assent to the abolition of the IDD after careful consideration of any potential significant effects on the designated SSSIs, SAC, SPA and Ramsar site. NE has submitted a separate statement confirming its conclusion that, provided the mitigation measures proposed were in place at the time of abolition, there would be no adverse impact.
69. There would be no benefit in delaying the decision on abolition of the IDD as there would be no significant change to the management of the designated sites provided the mitigation measures were put in place. There would be no adverse environmental effects on the integrity of the Arun Valley designated sites.

Matter 5: Sufficiency of mitigation measures (Document 5 and INQ35)

70. The proposed mitigation measures have already been described above. They comprise:
- enmainment of the IDD ditches in the Amberley Wild Brooks SSSI area, so that they would continue to be managed and maintained by the EA in the same way that they are now, including management in accordance with the WLMP;
 - construction of a drainage scheme to mitigate the loss of the Greatham PS, which currently affects a small part of the Waltham Brooks SSSI (see Documents INQ15 and INQ23); and
 - takeover by the RSPB (the landowner) of management and maintenance of the IDD watercourses in the Pulborough Brooks SSSI area.
71. The measures were also discussed in the round table discussion on possible conditions held at the Inquiry, as reported below.

Matter 6: Consequences for future management of IDD watercourses, etc. (Documents 5, 8, 10 and 11)

72. If the IDD is abolished any future management and maintenance of the IDD watercourses, control structures and pumping stations would fall to the riparian land owners (with the exception of those in the Amberley Wild Brooks SSSI area, which would be enmained and for which the EA would continue to be responsible.). It would be up to them to decide how best to meet their riparian owner responsibilities and their business and personal needs.
73. In addition, the District and Borough Councils would have permissive powers to carry out flood risk management work on all ordinary watercourses, the West Sussex County Council would be responsible for enforcement and consenting on ordinary watercourses in its role as LLFA, and the EA would continue to be responsible for main river matters. If all parties exercised their powers to meet their statutory duties and responsibilities there would be no adverse impacts as a result of abolition of the IDD.
74. It is interesting to note that only a small number of landowners appear to have any concerns. Only 13 out of 150 landowners within the IDD area responded to the EA's 2012 survey about the future of the IDD, only about 10 attended a

- public meeting in Arundel in 2014, and only one farmer attended a drop-in session held in Arundel in September 2015.
75. Many farmers already manage non-IDD ditches on their land, and taking on the management of the IDD watercourses would not generally present any new challenges. The EA has a national Protocol which it applies in instances where a decision has been made to no longer maintain flood defence structures and where control of the land is reverting to the landowner (see Document INQ4). As a matter of good public administration, the EA has applied the Protocol to the current proposals. Thus adequate notice and guidance would be given to landowners taking over responsibility for an asset, and a commuted sum may be paid in lieu of the period of notice.
 76. The most common concern expressed by landowners has been that any watercourses and structures they take on must be in good condition. In response to these concerns the EA has spent additional funds on repair and maintenance in 2015/16 to ensure that all structures (with the exception of Houghton PS, which has been mothballed) are currently at their target condition. It intends to maintain this position up to the time of handover.
 77. The EA's definition of "target condition" is based on its Operational Instruction 026_08, Setting target conditions for flood defence assets in flood risk management systems (see Appendix RF1 in Document 11). That document says that it "adopts findings from scientific research, international experiences, analysis of past failures and evidence from the summer 2007 floods" and that "These findings show that there is little improvement in the performance of our assets in moving them from condition grade 3 'fair' (CG3) to condition grade 2 'good' (CG2). The research concludes that in most circumstances CG3 (Fair) provides serviceability and therefore CG3 should normally be the target condition level".
 78. Some landowners have suggested that the IDD assets should be upgraded to "good" rather than "fair" condition before they are handed over, as assets may have defects but still be defined as in "fair" condition. However, it would cost a lot of money to raise the standard of all of the IDD assets to "good" condition, money that would have to come from increased IDD charges, and bearing in mind the research conclusions above, there is no justification for such an upgrade. Assets in "fair" condition are entirely serviceable and provide an optimal balance of operational performance and value for money.
 79. Whilst the ditches and control structures are fairly simple to operate and maintain, it is accepted that the IDD pumping stations present a different challenge to landowners considering taking them over. The IDD contains 3 pumping stations, and the future situation for them is likely to be as follows:
 - Houghton PS was mothballed about 2 years ago when it broke down and a business decision was made that it was not worth further investment. Its demise has not caused any problems or complaints, and it is proposed to decommission it.
 - Greatham PS currently provides drainage benefits to about 105 ha of agricultural land and to a small part of the Waltham Brooks SSSI area. It would be up to the landowner to make a business decision whether the land drainage benefits warrant the costs of running the pumping station. If he

wishes the pumping station would be transferred to him in target condition. However, the EA currently understands that the landowner would not wish to take on the costs and liabilities of operating the pumping station and, if that was the case, it would decommission it. Thus some 105 ha of agricultural land would be wetter than at present at certain times of the year.

- Hardham PS (not to be confused with Southern Water Services' water supply pumping station) currently provides a drainage benefit to about 40 ha of agricultural land, and it would be up to the landowner to make a business decision whether to continue to operate it or not. As for Greatham PS, it appears unlikely he would wish to do so but that option remains open. If the pumping station was not operated some 40 ha of agricultural land would be wetter than at present at certain times of the year.
80. Queries have been raised about legal ownership of the various ditches, structures and pumping stations. Because of the powers of entry available to the EA and byelaws preventing interference with watercourse control works, land drainage structures have generally been built without any need to purchase the land. The landowner would probably have been paid compensation at the time. The EA's occupation and control of the structures over the years has also been based on statutory powers. Consequently, when a structure is abandoned any structure that is part of the land defaults back to the landowner, who is free to deal with it as he pleases. This is comparable to the ending of a tenancy. (Document INQ1.1)
81. Particular queries have been raised about pumping stations where part of the installation may not be considered to be part of the land, e.g. the pumps themselves. This is a familiar issue in land law and has been subject to numerous Court judgements. The position is that a building or structure that cannot be removed without its destruction is considered to be part of the land, whilst pumps and similar equipment that can be readily removed are chattels. These are the property of the EA and, if the landowner does not wish to operate the pumping station, the EA would remove them. They would, of course, be left and their ownership be transferred to the landowner if he did wish to operate the pumping station. (Document INQ1.1)
82. A further query has been raised about the ownership of structures in tidal areas as ownership of the river bed appears to lie with the Duke of Norfolk. Such structures would be likely to be part of the land. However, as these would be in the main river they would not be affected by abolition of the IDD and so do not cause any significant issue in this case. (Document INQ35)

Other Matters Raised by Objectors (Documents 5 and 8)

District Council Decisions to Support Abolition of IDD (Documents 8 and INQ35)

83. Several other matters have been raised by objectors and need to be addressed. The first is the assertion that the Steering Group and the District Councils made ill-informed decisions about abolition of the IDD. That assertion is entirely misplaced. When the EA decided it wanted to divest itself of its responsibilities in managing the 8 IDDs in the area, it began discussions with key stakeholders in June 2012.

84. Over the first 2 years the EA's aim was to identify and understand the different views on possible changes to the 8 IDD's; it had no preconceived views at that time. Following discussions through the West Sussex Flood Partnership (see Appendix DR1 of Document 8), the EA wrote to 152 drainage rate payers, 29 parish councils and other known interested parties to seek their views (see Appendix DR2 of Document 8). 3 options were consulted upon:
- Option 1: Communities or other suitable organisations to set up new independent IDBs to take over some or all of the interests of the existing IDD's;
 - Option 2: No new IDD/IDBs to be created; management of the IDD watercourses and structures to revert to the riparian owners with the district and borough councils having permissive powers to undertake maintenance;
 - Option 3: Communities and other interested parties to work in partnership to establish alternative arrangements outside the statutory IDD regime.
85. Early in 2013 the West Sussex Steering Group was formed to consider the options for the 3 IDD's in West Sussex. It was chaired by the Arun and Rother Rivers Trust and included representatives of the County Council, all the local councils, the South Downs National Park Authority (SDNPA), the NFU, the CLA, the Association of Drainage Authorities, NE and the EA. Regular meetings were also held with the SWT and RSPB. A public meeting was held in Arundel in March 2013 attended by 24 farmers, and their views were fed back to the Steering Group. In addition, the EA provided information on the costs, benefits and risks of the various options, and in November 2013 the Steering Group passed a majority decision to recommend Option 2 (although the NFU, the Country Landowners Association (CLA) and SDNPA voted for a new IDB to be put in place).
86. The Steering Group chairman subsequently wrote to all drainage ratepayers and parish councils (see Appendix 5 of Document 5) inviting comments on this recommendation but no responses were received. During 2014 Arun, Chichester and Horsham District Councils further considered the business case prepared by the EA (see Appendix 6 of Document 5) and resolved (by formal resolution of the Councils) not to object to the abolition of the River Arun IDD, provided no new IDD was created and alternative arrangements were established for management of the Amberley Wild Brooks and Pulborough Brooks SSSIs. More recently (October 2016) the Arun District Council wrote to the Minister confirming its support for abolition of the IDD and describing the benefits to the Council of this course of action. It also says that the situation has not changed since the West Sussex Steering Group considered the various options and decided to support the abolition.
87. Similar procedures were followed with the East Sussex Steering Group but in that case it was decided to reconstitute 2 IDD's as well as abolishing the existing ones. The West Sussex Steering Group decided to simply abolish the 3 IDD's in its area and so concluded at a much earlier stage. The papers put to the steering group show that it considered a wide range of issues, including special drainage need, the benefits to biodiversity as well as people and property, and whether the benefits would be achieved if the work was done by different parties. It called upon the expertise of the Association of Drainage Authorities, including its Chief Executive (see minutes in NFU Appendix at Document 13).

88. Since that time the EA has continued to work with the various stakeholders to identify mitigation measures, alternative management arrangements, appropriate protocols and the most appropriate form for the scheme of abolition. Some parties have been keen to explore alternative arrangements for management of the drainage systems in the Arun Valley. However, without the support of Arun District Council, these alternative arrangements would appear not to be viable (see Appendix DR8 of Document 8). Nevertheless, the proposed abolition of the IDD would not prevent a new body being formed at some time in the future if sufficient support could be gained from the agricultural landowners and the district councils.
89. The brief account above of the deliberations that have taken place over the past 5-6 years provides ample evidence that the parties were not ill-informed and that, notwithstanding disagreement by some parties, the proposal to abolish the IDD reflects the views of the majority of the key stakeholders. The 3 District Councils concerned were all notified of the public inquiry but chose not to participate because they do not object.

Abolition of IDB but not IDD (Document 8)

90. The second additional matter raised by objectors is that, rather than abolish the IDD, the IDB should be abolished and replaced by a new management body. That is particularly attractive to some parties as they have been critical of how the EA has managed the IDD in recent years. However, formal abolition of the IDD is necessary as the Orders under which the IDD was originally transferred to the predecessors of the EA have not survived. Thus, even if it had been decided to set up a new IDB (as occurred for some of the East Sussex IDBs), it would still have to involve abolition of the current IDD.
91. As described above, the replacement with a new IDD/IDB was one of the options considered by the West Sussex Steering Group but was not the preferred choice. The Association of Drainage Authorities (ADA) and the EA have published guidance on "Establishing New Internal Drainage Boards" (Document INQ3), which advises that a new IDB should only be set up if it is technically, economically and socially feasible. The latter requires support from the majority of local landowners and from any Local Authorities within the proposed IDD area. As explained above, the 3 District Councils in this case do not support the reestablishment of a new IDD.

Southern Water Services (Documents 5, 10 and INQ35)

92. Finally, a number of comments have been made about the SWS discharges into IDD watercourses near its water treatment works and reservoir at Hardham. To some extent these have been about the fact that SWS pays very little in fees whilst using the IDBs watercourses and pumping stations. However, it has mainly arisen as a concern following a one-off incident in 2012 when a substantial quantity of water was released from the water treatment works into the old canal and thence into the IDD watercourses. Apart from that incident, there have not been any land drainage issues.
93. To date Greatham PS and the IDD ditch network has coped satisfactorily with these occasional discharges (which benefit from any necessary discharge consents). However, if Greatham PS was taken out of use, the impact of any discharges might be more problematic. SWS has been consulted about the

proposal to abolish the IDD and have said that, if they could no longer use the former IDD watercourses (as they would become privately owned watercourses), they would be able to make other arrangements.

Overall Conclusions

94. In conclusion, the Scheme for the proposed abolition of the River Arun IDD represents the results of a long review process and considerable consultation and analysis. As with the schemes for abolition of the other 7 IDDs in the area, it is appropriate to make this Order in the light of all the circumstances.

Case for the National Farmers Union (Document 13)

95. The NFU represents some 18 farming units with land in the IDD, representing 60% of the farmland within it.

The material points are:

Matter 1: Implications for EA of continuing to manage the IDD

96. The main purpose of an IDB is to manage land with special drainage needs, which is defined by the Association of Drainage Authorities (ADA) as *"low lying land which requires the daily close attention of specialist, local water level management bodies ... to actively manage and reduce the risk of flooding in a sustainable way, and to ensure that land use, inhabitation and ecology can continue into the future"* (Appendix 1 of Document 13). The River Arun IDD is an area of special drainage need where complex management requirements must be balanced on a daily basis.
97. IDBs are public bodies with specific funding raised from all stakeholders who benefit from the IDD. The joint ADA and EA guidance on establishing new internal drainage boards (see Document INQ3) recommends that *"Boards should have adequate representation and reflect where possible the sources of funding and also wider government objectives"*. It also refers to elected members representing the occupiers of land that pay drainage rates to the IDB.
98. Whilst the EA has failed to meet the normal requirement for an IDB to include local representation and representation of the main financial contributors and has often failed to consult local interested parties, the formation of a new Board that complies with these requirements would allow more effective and equitable management in the future. Rather than abolish the IDD, the EA should be replaced by a more suitable IDB.
99. Several examples of lack of local accountability have been highlighted, including concerns expressed by the District Councils in the area (see letter at Appendix 3 of Document 13). However, the significance of these is wider than just dissatisfaction with the EA's management of the IDD. It shows that the District Councils could have a much greater input into the management of a replacement IDB and calls into question whether the consultees were able to fully evaluate the potential benefits of a new IDB that would be more appropriately managed.
100. Mention also needs to be made of the Lower Tidal River Arun Strategy (LTRAS) in which the EA has indicated its future approach to management of the main river Arun. It relies on the application of Treasury spending rules to justify the wholesale withdrawal of main river maintenance activity over most of its length.

Maintenance is to be stopped as soon as practicable over some parts, though in section SU3, from Pulborough to Houghton, the recommendation is to continue maintenance for 10 years whilst investigations are carried out into how requirements to conserve the European designated sites can be best managed. There is also a substantial degree of alignment between the objectives of the LTRAS and the proposal for IDD abolition, and the abolition should not go ahead until the current review of LTRAS has been completed.

Matter 2: Likely impacts of abolishing IDD on flood risk

101. Over the years the river Arun has been substantially altered both for navigation purposes and for flood relief. The River Arun Middle Reaches Flood Relief Scheme, constructed in the 1960s, substantially increased the channel capacity and restructured some 15 miles of the river, thus creating an ongoing management requirement. Historic modification dates back to the 18th century when the Rother Navigation Scheme was constructed and the river channel was widened and straightened. This history of extreme channel modification, with its associated change in geomorphological regime, is one of the principle reasons why the IDD was first required.
102. Severe flooding occurred in the Arun Valley in the winter of 2013/14, when a number of properties had to be evacuated and the effects continued to be felt for several months (see details in Appendix 7 of Document 13). That was not an isolated event and records show that flooding affecting more than 20 properties also occurred in 1968, 1983 and 2012. These recent experiences have accentuated local concerns regarding the EA's approach to maintenance withdrawal.
103. In the future climate change is expected to lead to rising sea levels and increased winter rainfall, which will increase the likelihood of such extreme events occurring. Thus active management at a catchment scale will continue to be necessary to ensure that adequate planning and oversight is undertaken by a competent delivery authority. These future risks will be further exacerbated by increased development within the catchment area. Although the effects of future development will be partially alleviated by flood attenuation measures, some downstream implications are inevitable, and active management of run-off will be needed before it affects downstream towns and villages. This further demonstrates the need for a competent management organisation.
104. The impact of the flooding of agricultural land is felt in a number of ways: the direct impact on the value of the farm; the value of any environmental schemes; the income from diversified businesses; and the productive value of the land. There are 1184 ha of arable land and 1867 ha of livestock land in the IDD, and the EA says the viability of 180 ha and 350 ha respectively would be affected by abolition of the IDD. That is a significant proportion of the productive farmland within the IDD where land asset value and productive capacity would be significantly reduced.
105. Individual flood events carry a significant cost for affected farms and can be as high as £1,700 per hectare in the worst affected areas. Such events affect cash flow in the business and can have significant implications for its long-term viability. It is well recognised that land drainage is very important in land use and the productivity of farmland. Water table levels and soil wetness are key factors in crop growth conditions and in field access, and the crop output can be

increased several fold by good drainage conditions. This is reflected in the value of agricultural land, which typically varies by 40-60% in South East England depending on its condition.

106. Thus the farmers and landowners affected by the proposed abolition are facing the prospect of severe impacts on their businesses. No mitigation commensurate with these impacts is proposed, and the EA has simply assumed that the farmers and landowners would absorb the increases in cost and reductions in income. It takes a simplistic view of the substantial socio-economic risks and says it is the riparian owner's own responsibility. In contrast, the IDD provides coordinated management of the district as whole and uses the funding to provide real benefits. In this context, loss of the IDD would take away the opportunity for positive management of drainage to the benefit of the farming and wider community.

Matter 3: Implications of abolition on local interested parties

107. This part of the evidence brings together several different matters: the benefits and beneficiaries of the IDD; the support for creating a new IDB; the inadequacy of the assessment carried out by the West Sussex Steering Group; and the shortcomings in soundness of the local authority decisions. The costs and benefits information is set out in the EA's own Statement of Case (Document 5): benefits of some £2.5M pa; annual costs of £85,000; and a benefit to cost ratio of thirty to one. This provides a strong justification for retaining the IDD but creating a new Board.

108. The main beneficiaries are local residents, local authorities, farmers and landowners, and the wider society. The IDD has delivered great public good for a wide number of beneficiaries distributed much wider than just farmers and landowners. If the IDD is abolished these benefits would be lost, and there are no alternatives available with both the powers and the funding capability to replicate the functions of the IDD. This is why members of the NFU have shown a clear preference for the formation of a new IDB, Option 1 as considered by the West Sussex Steering Group in 2013. However, despite the EA acknowledging in its Options Paper that this represents "a strong preference for the formation of a new IDB" (Appendix 6 of Document 5), these views were not given weight during the decision making process.

109. The minutes of the 3 meetings of the West Sussex Steering Group (WSSG) in July, October and November 2013 raise a number of issues. They show a low level of knowledge and interest in IDBs amongst Council members, that there was no capacity in the Councils to take on the IDB duties, and that NE's only concern was with the River Arun IDD as it was the only IDD containing designated sites. It is not clear whether any detailed information was available to the Council representatives or to what extent the officers had consulted their members before they reached their joint conclusion prior to the October meeting that they preferred Option 2 (abolition of the IDD). Furthermore, the Steering Group decision was made for all 3 IDBs in West Sussex as a whole with the views of Councils not affected by this particular IDD being taken into account. The decision was opposed by the NFU, CLA and SDNPA. This leads to questions regarding the overall balance of representation within the decision making process.

110. The way the decision was taken by the West Sussex Steering Group was in stark contrast to the way the East Sussex Steering Group (ESSG) and the East of Gravesend Steering Group (EGSG) considered similar matters for the IDD in those areas (see Appendices 9 and 10 of Document 13). It is clear that in those steering groups the evidence documents were taken into full consideration, the Council officers understood how an IDB operates, that there was feedback between officers and elected members, and that there was open-minded consultation with the wider Council structures. Those steering groups ensured full engagement in the process and took much longer to reach their decisions.
111. Despite the shortcomings in its decision making process, the recommendation of the WSSG had an overriding impact on the subsequent decisions of the component Councils and undermined any opportunity to consider alternative options any further. The subsequent decision by the Cabinet of Arun District Council was made on 10 March 2014. It was not specific to the River Arun IDD, it included a decision on how the money saved would be used in future, and it was based on a report saying the Council currently obtains less benefit than the value of the levies it puts in, ignoring the wider benefits recorded in the EA's Options Paper (see Appendix 6 of Document 5).
112. It is instructive that the decision was made on the same day as a letter was sent to the Secretary of State by the County Council and signed by the combined leaders of all the local authorities (see Appendix 3 of Document 13). That letter sets out a position that is contradictory to Arun DC's decision and refers to "the lack of proper consultation". It raises questions about the consensus and degree of certainty under which the processes were discharged. Several other quotations from it illustrate the concerns:
- "Any proposal going forward should ensure that there are adequate risk assessed maintenance arrangements and funding in place to overcome years of inadequate maintenance. It is therefore the request of all relevant West Sussex Authorities that you undertake an immediate review of the Environment Agency's proposed timescale under which it might happen ..."*
- "... in view of the recent flooding and problems that local authorities have been dealing with over the last two years that the whole situation be reviewed and at least delayed to ensure that the drainage network had up to date records and was in good order and proper transition arrangements put in place before any dissolution. It has further come to light that currently the levy sums cannot be raised if an IDB does not exist as it would adversely impact on Council tax bills and risk councils being capped. This further highlights the lack of proper planning and assessment of risks that has gone into this issue."*
113. The decision of Horsham DC is also open to question. Horsham DC's main concern seems to have been the possibility of extra costs falling on the Council (see papers at Appendix 12 of Document 13). Its decision made it clear that the Council did not wish to manage the sensitive environmental sites or take on any responsibility for infrastructure, and it did not support the abolition of the IDD unless alternative management arrangements were put in place. Its subsequent delegated decision recorded that these issues had been resolved with the EA, that the EA would continue to be responsible for the Amberley Wild Brooks SSSI (through enmainment), that RSPB as the riparian owner would be responsible for

the Pulborough Brooks SSSI, and that there would be no requests placed on the Council other than enforcement.

114. However, these arrangements have not fully resolved the Council's original concerns. The proposed enmainment of the IDD watercourses within the Amberley Wild Brooks SSSI has yet to be secured and, even then, would not guarantee maintenance works would be undertaken. Furthermore, the Council would still become the competent authority for all non-enmainned ditches in all 3 of the SSSIs. Thus little confidence can be placed in the soundness of any of the local authority decisions.

Matter 4: Likely environmental impacts

115. The effects of abolition of the IDD on the designated European sites are open to question due to concerns about reliance on funding from the Countryside Stewardship Scheme, about ability to comply with the Amberley Wild Brooks WLMP, and about implications for the Waltham Brooks SSSI and Greatham PS. The assessments made under the Habitat Regulations in relation to the Arun Valley SAC, SPA and Ramsar site rely on these provisions. If there is sufficient scientific doubt about the likely effects of the proposals, the legislation says a precautionary approach should be taken in order to fully protect the qualifying features of these sites.

116. With regard to the Amberley Wild Brooks part of these designated sites, Natural England's conclusion was that "*provided the enmainment powers are secured and in place when the IDD is abolished and the Environment Agency continue to manage and coordinate the IDB ditches and water control structures there will be no likely damage*". There are 2 doubts about this. Firstly, enmainment involves a statutory procedure which is likely to be subject to objections, particularly as the current proposal does not comply with the Defra guidance on enmainment (Document INQ2). Thus the outcome is far from certain.

117. Secondly, even if enmainment were to take place, it would not guarantee that the EA would continue to manage and coordinate the IDD ditches and control structures. Whilst it would have the powers to do so, the provision of suitable funding would not be assured, and no detailed financial commitment has been given. Furthermore, no forecast of future cost liabilities has been made available, and it seems unlikely the EA would be able to commit any particular allocation towards these needs, particularly in the context of its strategic plan to withdraw almost all management functions on the River Arun as set out in the LTRAS.

118. NE also says (see Statement at Document 7) that the WLMP is an integral part of the necessary management regime for the Amberley Wild Brooks site, and that the Plan included a review of the structures on the IDD ditches and identified the need for a programme of maintenance and replacement. As far as is known, those actions have not been discharged and, without the certainty of IDD funding, there is no assurance they would be met in the future.

119. In view of these uncertainties the EA may not be able to deliver the required level of management envisaged by NE, and the conclusions of the HR Assessment seem far from certain. In these circumstances maintenance of the integrity of the site cannot be assured.

120. The use of Countryside Stewardship funding would be relied upon for future management of part of the designated sites, particularly the Pulborough Brooks SSSI area. This funding has been available to landowners in various forms for many years. It is for environmental management of the land and is not intended to be for the mitigation of the impacts of IDD abolition. Whilst the Countryside Stewardship Scheme is applicable to a wide range of scenarios, it has only currently been awarded for ditch and grassland maintenance in the Arun Valley. IDD funding has a much wider remit, including the upgrading of control structures, coordination duties under the WLMP and preparation for future climate scenarios. Thus the Countryside Stewardship Scheme can only play a limited role in securing site integrity.
121. For the Waltham Brooks SSSI area the HR Assessment has concluded that abolition of the IDD “would result in negligible practical change”. However, that is disputed. If Greatham PS was decommissioned, as seems most likely if the IDD is abolished, the drainage characteristics of part of the site would change (see Map 12 in Document 5). NE is aware that the EA has worked with the SWT (the landowners at Waltham Brooks) to find a solution to this, and at the public inquiry the EA has provided details of the proposed new drainage scheme (see Documents INQ15 and INQ23). However, there has been no formal agreement or environmental assessment of this scheme, and it is not known what wider effects it might have. In addition, in the absence of information on costs, it is not known whether the scheme would be deliverable or not.

Matter 5: Sufficiency of proposed mitigation measures

122. The sufficiency of the EA’s proposed mitigation measures is considered in the context of the enmainment proposal, the EA’s sustainability objectives and its wider duties as an IDB. Firstly, the enmainment proposal falls outside the guidance issued by Defra in November 2017 for the “Designation of main rivers” (Document INQ2).
123. That document sets out the principal criteria and the secondary considerations to be taken into account when determining whether or not a watercourse should become, or remain, a main river or a part of a main river. These are expressed in terms of the risks and consequences of flooding to people and property and are not applicable to a designated wildlife site such as Amberley Wild Brooks. Flow along these IDD watercourses makes a minimal contribution towards wider flooding in the catchment, and the proposal for enmainment is merely an expedient measure that would enable the EA to retain regulatory control if the IDD is abolished.
124. The guidance also says that short stretches of watercourse and alternating lengths of main river and ordinary watercourse should be avoided. The map provided by the EA at Appendix 15 of Document 5 shows the watercourses for which enmainment would be proposed, and these clearly involve both short and alternating stretches. This is contrary to the guidance and inconsistent with the approach being taken elsewhere in the Country where partnership arrangements have sought to minimise the problems of mixed responsibilities.
125. There would also be doubt about the funding for future maintenance work as the EA has formal plans to withdraw from maintenance activities on the River Arun as there is insufficient justification for the funding of its flood risk management function.

126. In addition to these matters, the EA has had no regard to the benefits or costs to the local community or to community representations, as required by the guidance. In response to the EA's advertisement in 2015 (see Appendix 15 of Document 5), an objection was submitted by the Amberley Landowners Group, comprising all of the affected landowners, but it made no difference to the EA's proposal.
127. The proposal to enmain watercourses at Amberley Wild Brooks falls comprehensively outside the statutory guidance, and the application for it should fail.
128. Even if enmainment were to take place it would not necessarily ensure the proper management of the drainage network in the future. Unlike the IDD budget, EA main river funding would not be ring-fenced and there would be no guarantee that adequate funding would be made available to secure the essential water level management of the site. It is also noteworthy that in other catchments the EA is working on pilot projects to identify main river watercourses that may be better re-classed as ordinary watercourses. If the IDD watercourses were to be enmained, they would immediately appear to fall within the criteria for watercourses suitable for demainment, particularly as the reasons for their enmainment do not fall within the Defra guidelines. The proposal is no more than an expediency.
129. The EA's Flood Risk Management Plan sets out a number of sustainability objectives, and it may be seen that several of the social and economic benefits identified in the EA's IDD cost benefit analysis (see Appendix 6 of Document 5) fall within these objectives. Abolition of the IDD would risk the delivery of these benefits and does not seem to be consistent with the EA's wider objectives.
130. Finally, mention must be made of the wider environmental effects. No information has been provided on any risks to cultural heritage or to non-designated flora and fauna. These fall within the duties of an IDB as specified in the 1991 Act, and the proposal to abolish the IDD should take into account these wider impacts.

Matter 6: Consequences for future management of IDD watercourses

131. It would be unfair to expect 35 riparian landowners to take on all future responsibility for the management and maintenance of the IDD infrastructure when the benefits extend to a much wider group of people: 152 drainage ratepayers (farmers/landowners); the local councils in respect of flood protection; and the wider general public in respect of the social and community benefits identified in the EA's Business Case for the Future Options (Appendix 6 of Document 5).
132. That unfairness would be even more pronounced for the landowners at the Greatham and Hardham PSs. At least 7 landowners benefit from the operation of these pumps (see Maps 11 and 12 in Document 5), though NFU members think the number may be higher. Without the coordination of these landowners, the 2 landowners for the pumping stations would be faced with an inequitable situation of either supporting the operation of the pumps or seeing the condition of their land and the income they derive from it deteriorate. The costs of running the pumping stations would be substantial: annualised maintenance costs of £7,600 and £3,500 respectively; and electricity costs of some £5000 pa.

133. The EA predicts that a total of about 145 ha of agricultural land would become wetter, and operation of the pumps is important to the local area. However, it would not be viable for the landowners to take responsibility for these costs, and a more workable and equitable solution would be for the costs to be funded by all of the beneficiaries. However, although the EA claims that “the costs of the drainage works within the area would be met by those who benefit”, that would not be the case if the IDD was abolished.
134. There is also confusion over whether the Special Levy funding obtained from local councils would be available for them to use themselves in the future if it did not have to be paid to the IDD. Arun DC has certainly earmarked this money to fund its enforcement duties in respect of ordinary watercourses, including the former IDD ones. It would intend to use it to ensure riparian landowners met their legal duties and maintained watercourses and structures in priority areas where the flooding of property may be put at risk. However, the assumption that that money would be available to the councils may not be correct.
135. Defra guidance of funding (see Appendix 15 of Document 13) is extremely complicated. However, it would appear that, if the IDD was abolished, any such income would be severely curtailed and would not necessarily be ring-fenced for flood risk management purposes. Thus the future prospects for active watercourse management would be bleak.
136. Two other matters need to be mentioned. First, although the WSSG moved to a majority recommendation for Option 2 (abolition of the IDD), the NFU considers it to be a failure of the consultation process that the EA and partner organisations were not willing to give due consideration to Option 3, “Communities and other interested parties to work in partnership to establish alternative arrangements outside the statutory IDD regime laid down in the Land Drainage Act 1991”. Subsequently the NFU has considered this option further in consultation with its members.
137. A number of alternative arrangements have been investigated, and it has become clear that they would be more likely to be effective as an augmentation to the activities of an IDB rather than a replacement for it. A commercial entity would not have the permissive powers and revenue raising capability held by a statutory body and could not guarantee effective management delivery. Thus it would not compensate for the loss of the IDB.
138. The Arun Valley Vision Group (AVVG) has been established to investigate potential alternative funding and management solutions for the River Arun, and the NFU is supporting this project, which is not due to report until early 2019. The NFU agrees with the AVVG position that the IDD should not be abolished until the AVVG has been able to review all of the options available. The retention of the IDD would not be inconsistent with the aims of the AVVG, and the formation of a new IDB would provide a suitable vehicle through which local accountability could be exercised.

Case by Mr Breasley on behalf of Several Landowners (Document 14)

139. Mr Breasley represented several affected landowners: Mr Strudwick (Downs Farm, Amberley – see Map 9 in Document 5); Mr Tedbury (Church Farm, Hardham – see RST Farming Ltd on Maps 11 and 12 in Document 5); Mr Ayling (Houghton), and the West Sussex Biodiversity Project (a privately funded nature

conservation project with land at Amberley, Coldwaltham and Widney, Greatham – see Map 12 in Document 5).

The material points are:

Conflation of Internal Drainage Board and Internal Drainage District

140. The need for the EA to divest itself from responsibilities for running the IDD is not disputed and it is agreed that it is no longer appropriate for the EA to carry out this role. However, that should not be conflated with the current proposal to abolish the IDD. That was never the intention, as is clear from the Minister's letter of 22 May 2014 replying to a letter from the West Sussex County and District Councils dated 10 March 2014 (Appendices AP2 and AP1 of Document 14 respectively).
141. The Minister's letter included the following: *"While I do not see a case for delaying further action necessary to dissolve the EA operated IDBs in West Sussex, I do recognise that there will be a need for flexibility from the Environment Agency to enable the transition to a new local management arrangement. In particular, I agree that the transfer of the IDBs to local management should be properly supported through transferring knowledge as part of the transition process and provision of clear up to date records. The Agency would also be flexible in considering any request to undertake work on behalf of a local authority or other local management body on a temporary basis during the period whilst alternative management arrangements are put in place and bedded in."*
142. The Minister clearly envisaged the dissolution of the EA's role as IDB and the setting up of a new IDB to manage the IDD rather than the complete abolition of the IDD itself. Indeed, that seems to have been the EA's own intention originally, as its Board approval in June 2012 was described as *"To divest the Environment Agency from its responsibilities regarding the running of the Environment Agency administered Internal Drainage Districts in West Sussex, East Sussex and Kent as swiftly as possible in an orderly manner"*. Furthermore, the Legal Opinion provided to the EA in October 2013 on whether or not its proposals at that time amounted to a "plan or project" for which assessment under the Habitats Regulations would be required (see Appendix AP5 of Document 14) was carried out on the assumption that the process involved "the transfer of responsibility for land drainage and water level management from one public body to another".
143. The distinction between the terms IDB and IDD is important, and yet it seems that these terms have been incorrectly conflated, and even interchanged, throughout the consultation and decision making process, and this has had an adverse influence on that process.

Benefits of the IDD

144. In the first paragraph of its publication, *An Introduction to Internal Drainage Boards (IDBs)* (Appendix AP4 of Document 14), the Association of Drainage Authorities says *An internal Drainage Board (IDB) is a local public authority that manages water levels. They are an integral part of managing flood risk and land drainage within areas of special drainage need in England and Wales."* The River Arun IDD is an area of special drainage need where the coordination of land drainage and flood risk management at a local level has been an important

feature over many years, and that need will continue in the future. In practice, there has been little separation between the EA's main river functions and its role as the IDB.

145. If the IDD was abolished that coordination would be lost, yet the EA seems to have given little regard to the fact that it is an area of special drainage need. That special need was demonstrated very clearly by the Christmas 2013 flooding event in the Arun Valley. That was an extreme flooding event where the extent of the flooding coincided almost exactly with the boundary of the IDD.
146. The ADA report above also states "*All land and properties within a Drainage District are deemed to derive benefit from the activities of an IDB and therefore subject to contributions to the expenses of the IDB paid annually to the Board*". It is not just the immediate riparian owners who benefit from works in the IDD. Residential and commercial properties also benefit, and an IDB is the most appropriate mechanism for ensuring a fair and equitable spread of costs amongst all those who benefit. The NFU supports the use of drainage rates (precepts on agricultural land and buildings) and levies (on local authorities) as the best way to raise funds to continue the necessary work of the IDB.
147. As demonstrated in the EA's own Business Case (Appendix 6 of Document 5), the benefits to farmers and landowners within the IDD (some 152 in number, of which only 35 are riparian owners) amount to about 24% of the total benefits of the IDD. Thus it is disingenuous of the EA to suggest that its proposals for abolition of the IDD would pass the costs and responsibilities for managing and maintaining the watercourses and structures to those who benefit. This burden would fall solely on to a small group of riparian landowners.

Confusion over Asset Ownership and Transfer

148. The proposed transfer of these responsibilities is also far from straightforward, and the EA's position over the past few years has been quite confusing. Firstly, the lack of proper records over the years has left confusion as to what items are identifiable as main river works and what are IDD works. Correspondence from the EA's solicitor in October 2015 (Appendix AP3 in Document 14) refers to Section 113 of the Water Resources Act 1991, which defines main river as "*a watercourse shown on the main river map and includes any structure or appliance for controlling or regulating the flow of water into, in or out of the channel which is a structure or appliance situated in the channel or in the banks of the channel and is not a structure or appliance vested in or controlled by an internal drainage board*".
149. The same correspondence goes on to talk about ownership, including "*The Environment Agency's view is that when it builds a structure on someone's land it becomes part of that land just as much as if the landowner had built it themselves*" and "*It is true that while many of the assets will be annexed to the land the contents may not to the same degree. It could be, therefore, that control boxes, Archimedes screws and other equipment within a pumping station are not fixtures attached to the pumping station but are instead fittings which can be removed by the Environment Agency.*" Thus there is confusion as to what assets the riparian landowners would become responsible for on abolition of the IDD.

150. For the 3 pumping stations it suggests a farcical situation where the pumping station structure would become the responsibility of the landowner but the EA would remain responsible for the functional parts. This is not the basis on which the proposed abolition was put to the local authorities, and it would seem these were misled in believing that functioning pumping stations would be fully transferred to the riparian landowners.
151. It is also arguable that the pumping stations fall within the definition of "main river" assets as they are situated on, under and through the main river flood defences, and they control or regulate the flow of water into the main river. These pumping stations must fall under a single management responsibility, which would not be the case if the IDD was abolished. Coordinated and funded single management would only be achieved through a new IDB.
152. There are also other complications over asset ownership. As the River Arun is tidal as far as Pallingham Weir (north of Pulborough), the part of the main river below Mean High Water Mark (MHWM) belongs to the Arundel Estate (Duke of Norfolk), rather than normal riparian ownership rights extending half way across the river. In the Amberley Wild Brooks area ownership of the main ditches is unknown and unregistered, so the ownership of half of the ditches and structures alongside them is also unknown. The EA has also not taken into account the particular circumstances of different types of tenancies and have over-simplified their proposals on such matters. Again, the EA, the West Sussex Steering Group and the Councils within West Sussex appear to have made their decisions without full knowledge of the implications of abolition.
153. This confusion runs right through to the wording of the Scheme for the abolition of the IDD (Document 1), where paragraph 6 reads *"For the avoidance of doubt, as from the commencement date, all property is transferred to and vested in the Environment Agency absolutely and the Scheme operates as conclusive evidence of such transfer and vesting without the necessity of any further assignments, conveyance or deed of transfer."* In the light of the EA's explanation about ownership of non-fixed parts of the pumping stations, the Scheme perpetuates the misunderstandings of how the abolition would take place.
154. Even Defra's letter of 22 July 2016 to a small group of affected landowners (Appendix AP8 of Document 14) referred to many of the same points. It indicated that the Steering Group decision to support Option 2 (abolition of the IDBs) was largely predetermined and based on conflation of the aim to abolish the IDBs with abolition of the IDBs, that there was no requirement for the EA to transfer the pumping station fittings to the riparian owners, and that there was no statutory duty on landowners to maintain any transferred watercourses and structures (the EA had previously said this would be a statutory duty).

The Decisions to Support Abolition of the IDD

155. EA Board Minutes of 17 October 2012 (Appendix AP7 of Document 14) report progress on the EA's intention to divest itself of its IDB responsibilities in East and West Sussex and Kent. It says 3 options were being considered:

"Option 1 – Communities or other suitable organisations set-up as new independent IDBs to take over some or all of the interests of the existing IDBs.

Option 2 – Dissolve the existing IDD so that watercourses in the IDD become ordinary watercourses for which:

- *Riparian landowners are responsible for the maintenance of the watercourse and structures (including pumping stations);*
- *District and Borough Councils have permissive powers to undertake maintenance;*
- *The Lead Local Flood Authority is responsible for enforcement and consenting.*

Option 3 – Dissolve the existing IDD, and communities and other interested parties work in partnership to establish alternative arrangements (outside the IDB structure)."

156. The minutes record Natural England's view that IDBs were essential to ensure the continued long-term management of the Pevensy Levels and River Arun IDD's because of the designated SACs and SPAs in these areas. The need for local authority support for IDBs is recorded and, as a possible alternative, the possibility of using enainment for conservation purposes is put forward. However, it is also clear that Option 2 was being considered on the assumption that like-for-like responsibilities would simply be passed on to other bodies: to riparian owners for the management and maintenance of the watercourses and structures; and to local authorities with powers to ensure the riparian landowners undertook their "duties". It is now known that this simple concept is flawed and that Option 2 is flawed.
157. However, these same 3 options were considered by the West Sussex Steering Group which, although it included representatives of the Arun and Rother Rivers Trust, Natural England, the NFU and the CLA, was dominated by the County, District and Borough Councils of West Sussex. Riparian landowners were not included in these meetings, and Option 2 was adopted by the Steering Group on a majority decision, which was made against a backdrop of financial pressures on local authorities and cuts in Central Government funding.
158. In March 2014 the combined County and District Councils wrote to the Minister setting out their concerns, and the Minister replied in May 2014 (Appendices AP1 and AP2 of Document 14). This has been described in more detail above. Its relevance at this stage is to demonstrate the tensions between the local authorities and the EA in respect of the lack of proper maintenance of the IDD and the Minister's expectation that, whilst the EA would be replaced by a new IDB, the IDD itself would remain.
159. The subsequent decisions of the District Councils to support the IDD abolition option are illustrated by the minutes and papers considered by Horsham District Council's Cabinet in September 2014. Firstly, a 3-4 years period of transition between the Secretary of State's decision and the actual abolition of the IDBs was proposed at that time (the current proposal is 6 months). Secondly, there were questions about possible effects on flood protection in the District.
160. The Horsham DC Cabinet resolved not to "*support the dissolving of the River Arun Internal Drainage Board without an alternative arrangement in place for the management of the Amberley Wild Brooks and Pulborough Brooks ecological areas, due to increased financial responsibilities and obligations that will be placed upon the Council*" and that the Council did not "*wish to take on the*

responsibility for infrastructure along the River Adur/Arun e.g. pumping stations, sluice gates, which should fall to the riparian landowners where the structures are sited". The papers also illustrate the continuing misunderstandings about future liabilities for maintaining the IDD assets and the belief that riparian landowners could be forced to take these on.

161. The EA, of course, overcame Horsham's reservations about the need for alternative arrangements to be put in place for future management of the IDD watercourses in the Amberley Wild Brooks area, though not those in the Pulborough Brooks area. The IDD watercourses in the former would be enmained to ensure their proper management after abolition of the IDD. As for the transfer of assets, it is only at the public inquiry itself that the EA has brought forward any proper list of the IDD watercourses, control structures and pumping stations. The proposed Scheme is bereft of adequate detail, and the decisions made by various bodies to support the proposed abolition have been based on widespread misunderstandings of its implications. Those decisions were flawed.

Fairness and Equity for the Riparian landowners

162. The abolition proposals are not fair or equitable and would place an unfair burden on the riparian landowners, particularly those adjacent to the 3 pumping stations (Mr Tedbury and Mr Ayling). The EA argues that the costs of drainage work would be met by those who benefit. However, without the fundraising provisions of an IDB, that would not be the case, and all of the costs would fall on the (relatively small number of) riparian landowners.
163. It is established in law that one person is not required to carry out work that benefits others who do not contribute to the costs. That would place a disproportionate burden on them and be a form of forced labour. At the pumping stations in particular the EA is seeking to exploit the riparian landowners in a discriminatory way. The costs involved in operating them are considerable, and yet the benefits extend to an extensive range of parties, including local authorities, the Highway Authority, commercial and residential properties and other landowners.
164. It would be quite unreasonable to expect riparian landowners to take on these unlimited responsibilities in perpetuity and, contrary to many assertions made in the past, they cannot be required to do so. The only fair way to fund these responsibilities is to either take over the IDD assets as main river assets or to transfer them to a new replacement IDB.
165. Having said this, it should not be forgotten that there is a need for stock farming to remain viable in both the designated sites and the valley as a whole. This can only occur if sufficient water can be removed from the IDD area in the summer and early autumn to allow for traditional stock grazing. Without such management, the interest features of these sites will be compromised or lost.

Evolution of EA Proposals for Pumping Station Management

166. The EA's current proposals are the latest in a long line of attempts to offload responsibility for management of the 3 pumping stations to other parties. The existing IDD assets have been put in place, managed and maintained by the EA (and its predecessor bodies) using compulsory powers. The common assumption by all parties involved has always been that "asset ownership" equated to "actual

- property ownership”, and they have always been referred to as EA structures in legal notices. Thus the clear understanding has been that they belonged to the EA rather than the riparian landowner.
167. However, this is no longer the EA’s position, and it is now explained (see EA Solicitor’s correspondence of November 2015 at Appendix AP3 of Document 14) that the structures have always belonged to the landowners (albeit that it is a criminal offence for them to interfere with them) but that the contents, such as pumps, electrical equipment and control boxes, belong to the EA. Thus the landowners do not own whole functioning pumping stations, and the West Sussex Steering Group and the local councils were not aware of this when they decided to support the IDD abolition option.
168. Whilst this may be the EA’s position nowadays, it took them several years to reach it. They originally tried to pass on responsibility for the 3 pumping stations to the local authorities, without success. Then they offered to sell them to the riparian owners before eventually threatening to force ownership upon them. Finally, they offered to make one-off payments to the landowners concerned to take on permanent responsibility for the pumping stations (see EA letters to Mr Tedbury in June and July 2016 at Appendices AP12 and AP13 of Document 14). Clearly, those actions were based on the assumption that the EA owned them and, only when these initiatives failed, did they come around to the latest legal assessment.
169. Taking on ownership and responsibilities for the pumping stations would be an uninsurable risk for a riparian landowner. Furthermore, none of the riparian owners would have powers and consents in place to allow them to operate the pumping stations or to undertake any ditch works or structure operations in the SSSIs. The only options for these IDD facilities to continue to be managed in a similar way as at present is either for a new IDB to be set up or for the EA to manage them as “main river” assets.
170. In recent years the EA has not maintained parts of the IDD or the main river as well as it should, and concerns have been raised by both riparian landowners and the local authorities, e.g. reduced channel capacity, and free operation of flap valves for discharges into the main river, both of which lead to the need for increased use of the pumping stations. It would be logical for the operation of these assets to be coordinated as main river assets in the same way as the nearby pumping station at Bury is run. A similar arrangement also exists on the River Adur.
171. It is also disturbing that the EA has already decided to decommission the Houghton Pumping Station. The landowners consider that it should really be classified as a main river asset as it sits on and in the main river flood defence. However, when operation of the pump deteriorated in 2016, the EA decided to decommission it rather than repair or replace it. In doing so, it has prejudged the results of its proposal to abolish the IDD, failed to meet its IDD duties and failed to assess the environmental impacts of the change in mode of operation in this part of the IDD.
172. Finally, mention has to be made of the discharges made by Southern Water Services (SWS) into the IDD watercourses upstream of the Hardham and Greatham PSs. SWS has used a series of boreholes in this part of the catchment to supply water to its water treatment works at Hardham for public water supply.

On occasions, surplus water is pumped to waste into the IDD ditch system and then, via either of the IDD pumping stations at Greatham or Hardham, into the River Arun. The EA reports that a discharge consent was granted for this facility in 1966 (see Document INQ16). However, it is understood that SWS pays just £7 per annum for this facility and so is substantially subsidised by the IDD rate payers.

173. Recently, a new water abstraction facility from the River Arun has been constructed close to the IDD Greatham PS, which pumps water into a reservoir on the banks of the river, from which the water is then pumped on to the SWS water treatment works at Hardham (see description of scheme in leaflet at Document INQ13). This new scheme includes provision for water to be flushed from the pumping main or from the new reservoir into the adjacent IDD ditch network on occasions, which adds to the pumping load on the Greatham PS. It is reported that the size of these discharge pipes falls below the limit requiring formal discharge consent, but the landowners believe they exceed that size. However, whether that is the case or not, the SWS discharges cause increased pumping costs at that IDD pumping station. (See correspondence at Appendix AP11 of Document 14)
174. The landowners have drawn these matters to the EA's attention, and it is understood that SWS has undertaken to make alternative arrangements for these discharges if they are unable to reach agreement with any future operator of the pumping stations. However, SWS clearly relies on these IDD facilities at present, and the best way to ensure acceptable future arrangements, including fair recovery of costs, would be through a replacement IDB.

Shortcomings in Habitat Regulations Assessments

175. In the Southern Regional Flood and Coastal Committee minutes of 17 October 2012 (see Appendix AP7 of Document 14) it is reported that "*Natural England consider an IDB to be essential to ensure continued long-term management for the Pevensy Levels and River Arun IDDs*" because of the international importance of the SPAs and SACs. Shortly after that it is on record that the EA took legal advice which concluded that its proposal to abolish the IDD would not amount to a plan or project requiring assessment under the Habitats Regulations. However, that was based on the assumption that responsibilities would merely be transferred from one public body to another, which is clearly no longer the case, and the EA confirmed at the Inquiry that it now accepts its proposals for future management of the sites are subject to HRA.
176. It is also subject to duties under the NERC Act 2006 and the Wildlife and Countryside 1981 (as amended). Under Section 40 of the former it has a duty to conserve biodiversity in carrying out its functions, and under Section 28G of the latter it has to have regard to conservation and biodiversity and has a duty to further the conservation and enhancement of SSSIs.
177. Contrary to those early assumptions, the current proposals for IDD abolition would not entail simply transferring responsibilities to a similar body, and that change in management arrangements has to be reflected in any HRA. The Habitat Regulations also require the assessment of whether a plan or project would be likely to have significant effects to be considered either individually or in combination with other plans/projects. In this case, full account should have been taken of the LTRAS proposals, particularly as all 3 European sites lie within

Unit SU3 of the LTRAS scheme, i.e. a stretch of the River Arun where the commitment for maintaining flood defences is only for a further 6 years to 2024. The EA has already ceased the maintenance of flood defence works on the LTRAS units upstream and downstream of SU3. Until the EA decides on its long-term strategy for this part of the River Arun, any HRA contains considerable uncertainty.

178. The EA proposes to address NEs concerns about the need for the Amberley Wild Brooks WLMP to be properly coordinated by enmaining that network of current IDD ditches. That has not yet been done and is likely to be the subject of objections as and when the EA brings the proposal forward through its statutory procedures. However, even if that enmainment were to occur, it would not guarantee that management would continue as at present. That management would be subject to the EA's wider budgetary constraints, which have resulted in the stark cut-backs over the River Arun as a whole under LTRAS, a situation that the EA has acknowledged in correspondence.
179. The Pulborough Brooks and Waltham Brooks European sites would not be under the management of any public body, and responsibilities would fall on the landowners, the RSPB and Sussex Wildlife Trust respectively. NE has expressed concern in the past about their ability to adequately manage the ditches for favourable conservation status for the designated species and considered reliance on the Countryside Stewardship scheme to be insufficient. It also had reservations about the interest feature, *Anisus vorticulus*, at the Pulborough Brooks site and about designated populations of that and another feature outside the European site boundaries. Funding under the Countryside Stewardship scheme is discretionary and only guaranteed for 5 years; it is also only sufficient to fund about a third of the annual maintenance work carried out by the IDB in the Pulborough Brooks SSSI. Thus, there can be no guarantee that future management of the Pulborough Brooks ditches would be comparable to the current and past practices.
180. It should not be overlooked that landowners would also be required to carry out environmental assessment of any works they proposed to do and that taking on these responsibilities would impose unknown liabilities and uninsurable risk on the landowners. The only workable solution to all of these issues is the creation of an empowered replacement authority or group to cover the current IDB functions.
181. It is misleading for the EA to present a picture that all NE consents are in place. The NE has submitted its own written evidence to the Inquiry. However, attention is drawn to its summary which states "*It is Natural England's view that there would be no material change to the management of the designated sites whether the existing arrangement remains in place, or the IDD is abolished with the mechanisms agreed in place. If the IDD is abolished, provided all the measures detailed in table 3 are in place and in operation at the time of the abolition, there will be no likely damage to Amberley Wild Brooks, Arundel Park, Pulborough Brooks and Waltham Brooks SSSIs and we are certain there will be no adverse effect upon the integrity of the Arun Valley SPA, SAC or Ramsar*". However, those mechanisms are not agreed or in place.
182. As described above, at Amberley Wild Brooks the proposed enmainment is not in place, and that process is likely to take some time. Even if it were put in place,

it would provide no guarantee of adequate long-term funding. No arrangements at all are put forward for the Arun Banks SSSI. The type and frequency of the management of the ditches at Pulborough Brooks would change and future funding would be uncertain, and at Waltham Brooks eleventh hour appreciation of the connectivity with the Greatham PS has led to proposals for a new ditch scheme to be carried out. The final details of that are not yet known, its environmental effects have not been assessed, its costs would be far more than the IDD's normal annual budget, and it would be some time before it would be constructed.

183. There are clearly multiple existing and foreseeable risks where the European sites would be at risk of deterioration as a result of abolition of the IDD. It is impossible to conclude that there would be no likely significant effect on the European sites as mitigation relies on uncertain future actions and NE's conditions have not been met. The EA has failed to fully and properly meet its statutory duties in respect of nature conservation, and it is considered that a full appropriate assessment under the Habitat Regulations is required.

Case for Sussex Wildlife Trust (Documents 6.9, 15 and INQ32)

184. Sussex Wildlife Trust (SWT) is a registered charity whose objectives concern the conservation and enhancement of wildlife and wildlife habitat in Sussex for the public benefit. It was formed in July 1961 and has 30,000 members. It currently manages some 5,000 acres of land, including 30 nature reserves.
185. SWT owns and operates land as nature reserves at Waltham Brooks and Amberley Wild Brooks (see Map 1 in Document 15). The Waltham Brooks land is a SSSI and one of the components of the Arun Valley SPA and Ramsar site. The Amberley Wild Brooks land is part of the wider SSSI which is a component of the Arun Valley SAC as well as the SPA and Ramsar site.

The material points are:

Waltham Brooks SSSI

186. Waltham Brooks SSSI was designated in 1987 due to its national importance for wintering birds, particularly Bewick's Swan, Teal and Shoveler. Its citation also notes a wide range of other birds over-wintering in large numbers and a range of birds which breed on the site. In addition, the ditches support a species rich community of aquatic plants, including the nationally rare Cut-grass *Leersia oryzoides* and Greater Water Parsnip *Sium latifolium*, and the wet alluvial grasslands support a number of scarce plant species. The rare Cut-grass has the international status "Red Data Book Listed", and its management requirements are important. Only 3 native populations are known in the South East of England and it is classed as endangered. It inhabits ditches and other wet edge habitats and, in order to be able to compete with other plants, requires early successional stage or cattle poaching (damage caused to turf by the feet of livestock).
187. At present the condition of the Waltham Brooks SSSI is assessed by NE as "unfavourable recovering", largely because lack of grazing leaves the grassland unsuitable for ground nesting birds and overwintering birds and lack of ditch management results in poor aquatic plant diversity. It is a complex site to manage essentially because all of the special interest features are dependent on suitable water level management and suitable sward heights at different times of

- the year. Regular ditch management allows water to flow off the site, while sluices hold water back to maintain higher levels when required.
188. The requirements of the different features involve a complicated annual cycle of management. It must be dry enough to allow tractor access for mowing and soft rush wiping in late summer after the bird breeding season (late July - September). Ditch management has to wait until after 1 October to meet protected species regulations for water vole protection. It has to be dry enough for cattle grazing to reduce the sward height to 5-15 cm by 1 November each year for breeding waders and to poach the ditch margins. In addition, only light grazing is allowed during the bird nesting season to avoid the risk of nest trampling. This regime is also affected by rainfall, tides and water flow through the ditches. Clearly the site requires continual management and water level control in its ditch network.
189. SWT is working to bring the site into favourable condition, and since 2013 it has reinstated management of the IDD ditches, which had been subject to negligible management by the IDB for the past 25-30 years and had become heavily over-vegetated and silted-up. SWT secured external grant funding to get the ditches back into a rotational management system, work which really should have been the IDB's responsibility. SWT has a 10 years management plan for the reserve which runs up to 2022.
190. The EA appeared to stop managing the IDD ditches regularly around 1987, and it is not known why. Since then its input has been, at best, occasional, and SWT has managed the ditches itself using grant funding. Its current Countryside Stewardship scheme expires in January 2019. In its assessment of the impacts of the proposed IDD abolition the EA says nothing much would change so far as Waltham Brooks is concerned. However, that is because the EA has failed to carry out its IDD duties properly for many years, and it is not appropriate that its case should be supported by its own performance deficiencies. Future funding to enable SWT to continue managing the ditches at Waltham Brooks cannot be relied upon, and its designated features would be put at risk if the IDD is abolished.
191. SWT estimates that ditch maintenance costs amount to approximately £2,250 per annum and that, if it were successful in gaining funding under the new Countryside Stewardship scheme from 2020 onwards, it would cover about a third of this cost. In addition, capital costs would arise from time to time in connection with the control structures and outfalls. SWT does not have the technical expertise to assess the serviceable life of these structures or the costs of their replacement. However, it would expect such costs to run into several tens of thousands of pounds. Thus abolition of the IDD would have significant financial implications for the SWT.
192. A matter that has been subject to quite limited consideration is the likely decommissioning of the Greatham PS, which controls water levels on Widney Brooks to the north of Waltham Brooks (see Map 4 of Document 15). This pumping station is currently active on a daily basis during the winter and sometimes in other periods of wet weather. The need for pumping is also affected by SWS's occasional releases of waste water from its water treatment works. If Greatham PS were to cease to operate, the drainage of the Waltham Brooks area into the Widney Brooks would be affected.

193. To compensate for this the EA is now proposing a scheme of drainage improvements on the northern part of Waltham Brooks (see Map 5 of Document 15). The EA's outline proposals have been considered by SWT's conservation committee and agreed in principle, and it is acknowledged it could improve water level control on the site (see Appendix 2 of Document 15). However, it is uncertain how well these proposals would actually mitigate loss of the pumping station, and it is understood no detailed hydrological assessment has been carried out. Consequently, the impacts on protected ecological features are uncertain. The scheme now proposed also appears to be slightly different from that previously considered by SWT.
194. In view of this it is considered that the proposed scheme would need to be put in place and tested under a range of weather and hydrological conditions before the EA gave up control of the Greatham PS. Without access to appropriate funding and successful control of water levels (including to enable access for maintenance at appropriate times of the years), SWT may not be able to ensure there would be no detrimental impact, and the risks of losing the protected flora and fauna would be high.

Amberley Wild Brooks SSSI

195. The Amberley Wild Brooks SSSI was notified for its scientific interest in 1954 and confirmed as a SSSI in 1985. The citation states that the site contains an extensive area of alluvial grazing marsh, dissected by drainage ditches. The ditches contain a rich flora which includes a number of nationally rare plant species, and these support a rich assemblage of invertebrates, including dragonflies. A nationally significant number of birds over-winter at Amberley Wild Brooks (102 different species have been recorded), and the site has a rich community of breeding birds (57 different species), and is one of the most important wet meadow sites in the Country for breeding redshank. The citation also notes rare Cut-grass *Leersia oryzoides* and a wide range of other plants.
196. NE's latest assessment is that the majority of the SSSI is in "unfavourable recovering" condition, primarily due to insufficient grazing pressure. The management of this wetland site is complicated due to difficulty of access, seasonal rainfall variation, hydrology, grazing by wild deer and invasive species, as well as by the fact the land has 6 different landowners. The floodplain grassland sward is managed by a combination of grazing and mowing, and a complex system of ditches (some IDD and some non-IDD) and water control structures provides the surface water, water table and ditch water depths required at particular times of the year. There is a simple spring-fed network of ditches across the southern and eastern parts of the site. However, the western and central parts are more complex with water also rising up through the peat.
197. Management is complicated by the different land ownerships, and each parcel of land impacts on the neighbouring landowners, which are a mixture of conservation charities, farmers and the local Parish Council. The RSPB has recently prepared a 10 years management plan for the SSSI which runs up to 2027. The current WLMP has not been accepted by all of the landowners, and it cannot be assumed that its continued use would be assured if the IDD was abolished.
198. At present the EA manages 5 No. water level control structures at Amberley Wild Brooks and carries out regular maintenance of the IDD ditches there. If the

IDD was abolished, SWT accepts that the EA's proposal for enmainment of the IDD ditches would have the potential to allow adequate coordination across the various landholdings. However, enmainment has to go through a statutory process that would be likely to take some time and may even not be successful. If enmainment was not in place when the IDD was abolished, it would not be possible to conclude that the IDD abolition would not have a likely significant effect on the SAC and SPA features.

199. In addition, even if enmainment was in place, SWT doubts that the same level of resources would be made available by the EA. For the IDD financial rates are collected from local authorities and landowners in the IDD, and these are set annually based on the needs of the IDD. However, under enmainment EA funding would be competing with other funding priorities, both nationally and locally, and there must be a real risk that funding would be reduced given the pressures on Government funding. Thus, even if the IDD ditches were enmainned, it is considered that abolition of the IDD would be likely to affect the management of the WLMP and the coordination of the area as a whole.

Habitat Regulations Assessment Requirements

200. The Arun Valley SPA is designated under the Wild Birds Directive for its wetland birds assemblage and the use of the site by wintering Bewick's Swans. The Arun Valley SAC is designated under the Habitats Directive due to the presence of the Little Whorlpool Ram's-horn Snail *Anisus vorticulus*. The Arun Valley Ramsar site was designated in 1989 for its Red Data Book invertebrates and plant species, very rich ditch flora and waterfowl assemblages.
201. SACs and SPAs are protected by the Habitats and Wild Birds Directives which have been transposed into UK law by the Habitats Regulations. Regulation 9 provides that: "(1) *The appropriate authority [in this case the Secretary of State], the nature conservation bodies and, in relation to a marine area, a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.*"
202. The abolition of the Arun Valley IDD is capable of leading to the deterioration of the condition of the SPA and SAC and is a "plan or project" that is capable of having influence on the conservation status of the SPA and SAC. Accordingly, Articles 6(2) and 6(3) of the Habitats Directive are applicable:
- "Article 6(2) *Member states shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Directive.*
- Article 6(3) *Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of*

paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, having ascertained the opinion of the general public."

203. The heart of the legal protection conferred by Article 6(3) of the Habitats Directive and Chapter 1 of Part 6 of the Habitats Regulations lies in the two-part appraisal process. Firstly, Regulation 63(1)(a) specifies consideration of whether the plan or project is likely to have a "significant effect" on the SAC or SPA, and the leading authority on interpretation of this "significance test" is the Waddenzee judgement (*ECJ case C-127/02: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*).
204. That judgement stated:
- "43 *It follows that the first sentence of Article 6(3) of the Habitats Directive subordinates the requirement for an appropriate assessment of the implications of a plan or project to the condition that there be a probability or a risk that the latter will have significant effects on the site concerned.*
- 44 *In the light, in particular, of the precautionary principle, which is one of the foundations of the high level of protection pursued by Community policy on the environment ... and by reference to which the Habitats Directive must be interpreted, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will not have significant effects on the site concerned ..."*
205. If the "significance test" is not met then "appropriate assessment" is required, and Regulation 63(5) says: "*In the light of the conclusions of the assessment, and subject to [considerations of overriding public interest] the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the [SAC]*".
206. In this case the EA's position is that only the first part of the process applies because they believe that the abolition of the IDD is not likely to have a significant effect on the SAC and SPA. SWT disagrees with that assessment and believes that the second step, appropriate assessment, needs to take place. As it has not been done, a decision in this case is premature.
207. The Waddenzee judgement sets out the necessary tests for Habitat Regulations Assessment, and this area of law is clearly described in ODPM Circular 06/2005, Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, which provides administrative guidance on the application of law relating to planning and nature conservation. Paragraph 20 of the Circular makes it clear that it is not for the decision maker to show that the proposal would harm the site in order to refuse it; rather the decision maker has to ascertain that the proposal will not have an effect on the integrity of the site before it may grant permission.
208. Paragraph 21 refers to the Waddenzee judgement that a plan or project may only be authorised if the competent authority has made "certain" that it will not affect the integrity of the site. The authority must be "convinced" there will not

be adverse effects, and that is the case where “no reasonable scientific doubt remains as to the absence of such effects”. Thus the threshold at which significant effect cannot be excluded is a very low one, and the EA has not made sufficient case to demonstrate that there would be no risk.

209. If the EA was carrying out its IDB duties in respect of Waltham Brooks, the effects of abolition would not be negligible. The Countryside Stewardship funding on which future management arrangements would be based would be insufficient and not guaranteed, particularly as there has been no financial analysis of the costs and liabilities that would pass from the EA to the landowners. It cannot be assumed that enainment of certain IDD watercourses would ensure a responsible authority would be in place to manage and coordinate them. And, the transfer or decommissioning of the 3 pumping stations, especially Greatham PS would inevitably have implications.
210. The EA’s own assessment of likely significant effects (Appendix 10 of Document 5) acknowledges *“Any change in the governance of the IDD including its abolition, and risks associated with gaps in funding for ditch management might be expected to result in a change in the management regime and therefore the extent to which conservation objectives are met and the integrity of the sites maintained”*. It is not accepted that the “solution” set out in that assessment justifies the EA’s subsequent conclusion that *“there would be no significant change in management regime following abolition of the River Arun IDD and therefore no likely significant effect on interest features in any of the European and international designations ...”*.
211. It is noted that Natural England’s Assent, dated 13 October 2015 (Appendix 12 of Document 5), was not unconditional and required mechanisms to be put in place before an unconditional Assent could be given. Furthermore, there was no mention of Greatham PS and the likely effects of its decommissioning. There are clearly numerous matters which are uncertain, and consequently the EA’s reluctance to look beyond the first stage of Habitat Regulations Assessment is flawed. Full appropriate assessment is required, and the proposal should not be approved until that has been carried out.

Other Matters

212. The EA’s statement that in future “the costs of the drainage work in the area will be met by those who benefit” is clearly misplaced. The greatest benefits of the IDD are to wider society in respect of the facility for proper management of the designated environmental sites. The position on the benefits and arrangements for future responsibilities for these sites was not appreciated by the West Sussex Steering Group or the local authorities when they resolved to support the option for abolition of the IDD. The EA should have been more proactive in providing information on the importance of these sites. The Arun Valley Vision Group has been formed to review the complex issues in the Arun Valley, including the coordinated management of the SSSIs, and no decision on abolition of the IDD should be taken until the AVVG has produced its report early in 2019.
213. In addition, there are a number of preconditions that need to be addressed before abolition:

- The revenue costs of maintaining assets that would be transferred to the riparian owners should be assessed and arrangements made for funding this in perpetuity.
 - The capital costs of replacing aging assets that would be transferred should be assessed and arrangements made for funding in perpetuity.
 - The hydrological effects of losing the Greatham PS, and of the proposed Waltham Brooks mitigation scheme, should be properly assessed.
 - The enmainment of the watercourses within Amberley Wild Brooks should be confirmed and in place.
 - The AVVG should be given the opportunity to complete its work.
214. Finally, the matters of fairness and human rights need to be mentioned. The EA's proposals for abolition of the IDD would involve it "giving" various drainage assets to the riparian landowners even though they have no wish to be responsible for them on account of ongoing maintenance costs and possible third party liabilities. No financial compensation is proposed, even though the value of the land would inevitably be reduced as it would be burdened with extra costs and liabilities.
215. Article 1 of the First Protocol (protection of property) of the European Convention on Human Rights provides for the peaceful enjoyment of possessions and says that no one shall be deprived of his possessions except in the public interest and subject to certain conditions. Whilst there is no intention to deprive landowners of their possessions in this case, the diminution in the value of the land is relevant. European case law has established that Article 1 is brought into play if expropriation of value by an act of an administrative authority occurs and that, at the least, compensation should be considered. Diminution of the value of a person's land may be justified in the public interest. However, in this case it is not justified in the public interest but in the interest of economies that the EA wishes to make. Public interest might be served if abolition of the IDD would benefit the protected sites but no such argument is made here.
216. Article 6 of the Convention (the right to a fair trial) requires that, in a process such as this one which could have the outcome of conferring fresh liabilities on peoples' land, the people in question should understand what those liabilities are and be able to discuss alternatives or compensation arrangements. In this case the EA's list of IDD assets and details of their condition only emerged during the course of the public inquiry. Thus landowners have not been able to give evidence on these details or to understand their potential liabilities in advance. This is a breach of the due process requirements of Article 6.

RSPB (Documents 6.12.1 and 6.12.2)

217. The RSPB did not present evidence at the public inquiry but submitted a lengthy written statement. The RSPB was set up in 1889 and is a registered charity incorporated by Royal Charter. It is Europe's largest wildlife conservation organisation with a membership of 1.18 million people, and it owns land at Pulborough Brooks and Amberley Wild Brooks. It also manages land owned by the SWT at Amberley Wild Brooks. The RSPB is therefore a major landowner in the Arun Valley and manages 2 nature reserves at Pulborough Brooks and Amberley Wild Brooks (see map at Appendix 4 of Document 6.12.1)

The material points are:

Management of the RSPB Nature Reserves

218. Lowland wet grasslands, of the sort prevalent in this part of the Arun Valley, are a conservation priority, with nature reserves, site designation and agri-environment schemes considered crucial mechanisms to protect the remaining habitat resources. Lowland wet grassland supports diverse communities of plants, invertebrates (in particular in ditches and ditch margins) and birds. In particular, it is important for breeding waders such as lapwing, redshank, snipe, black-tailed godwit, ruff, oystercatcher and curlew, as well as wintering wildfowl including Bewick's swan, whooper swans and wigeon.
219. There was a significant decline in the extent and quality of lowland wet grasslands in the second part of the 20th century due to agricultural intensification with grasslands drained and subject to cutting and grazing. This was linked to the species populations also declining. The remaining areas of lowland wet grassland remain at risk and are vulnerable to inappropriate management, changes in hydrological regimes and fragmentation.
220. The key management requirements may be summarised as follows:
- The grassland itself requires traditional sward management (grazing and mowing) and weed-wiping, the maintenance of ditches as wet fences, and control of ditch and field water levels;
 - Wintering waterfowl need the site to remain wet throughout the winter, whilst allowing lower levels in parts of the site for breeding bird nesting habitat;
 - Breeding waders depend on sward and water management to provide a range of breeding habitats for the various species;
 - Aquatic plant communities depend on water quality and levels and on sensitive ditch and grazing management, including the timing of grazing; and
 - Aquatic invertebrate communities are similarly dependent on water quality and levels and on sensitive ditch and grazing management.
221. The RSPB's priority management objectives on both of its reserves are to maintain the wet grassland in favourable condition to support the internationally important numbers of wintering water birds and to increase the breeding populations of key breeding waders and passerines (perching songbirds), and to maintain the ditch systems in favourable condition for the Whirlpool Ramshorn Snail *Anisus vorticulus* and for their nationally important assemblages of aquatic plants and other invertebrates.
222. The floodplain grassland sward management at both sites comprises a combination of grazing and mowing, and the complex system of ditches and water control structures that provide surface water, water table and ditch water depths suitable for the various features is maintained by a programme of desilting and vegetation removal. The hydrology at Amberley has been explained in the SWT evidence. At Pulborough water enters from several streams and springs (the latter dry up during late spring and summer) along the eastern boundary. Three sluices control the flow of water from the ditches into the River Arun.

223. Management problems at Pulborough are experienced when river flooding occurs as it can take 2-3 years to recover from the effects of the deposited sediment. In addition, the river levels are higher than they used to be due to the river silting up in places, and this reduces the time available during each tidal cycle for water to drain from the IDD area. Problems are also experienced in controlling water levels accurately as 2 of the 3 EA sluices leak and allow water to enter the ditches from the main river.

Designated Sites

224. The Arun Valley's importance for nature conservation is recognised through its national, European and international nature conservation designations. The Arun Valley SPA was designated in 1999, and that designation was for one species of bird listed on Annex 1 of the Birds Directive, the overwintering Bewick's swan. The SPA also qualifies under Article 4.2 of the Birds Directive by regularly supporting an assemblage of at least 20,000 waterfowl. Whilst that number has substantially increased nowadays, the numbers of Bewick's swans are now typically less than half the number at the time of designation.

225. The Arun Valley SAC was formally designated in 2016 because of its population of Little Whirlpool Ramshorn snails *Anisus vorticulus*, a species listed on Annex 2 of the Habitats Directive and a European Protected Species. The Arun Valley is one of the 3 main population centres for this species in the UK. The Ramsar site was listed in 1999 as a Wetland of International Importance under the Ramsar Convention. It qualifies under several of the Convention's criteria, particularly due to the presence of 7 wetland invertebrate species listed in the British Red Data Book as threatened, including the Swollen Spire Snail *Pseudamnicala confuse*, and 8 nationally rare or scarce plant species, the particularly diverse and rich flora in the ditches, and the wintering waterfowl assemblage of international importance.

226. The 3 SSSIs are notified under Section 28 of the Wildlife and Countryside Act 1981 (as amended): Pulborough Brooks SSSI for its rich aquatic flora and invertebrate fauna and its outstanding ornithological importance for wintering wildfowl and breeding waders; Waltham Brooks SSSI for its species-rich community of aquatic plants, including one nationally rare species, and important wintering populations of bird species; and Amberley Wild Brooks SSSI for its rich ditch flora, which includes one nationally rare plant, overwintering birds in nationally significant numbers, a rich community of breeding birds, and several uncommon invertebrates, including a rich assemblage of dragonflies.

227. As a result of these designations the proposal to abolish the IDD has to meet the statutory requirements of the Habitats Regulations and the Wildlife and Countryside Act 1981 (WRA).

228. Regulations 63, 64 and 68 of the Habitats Regulations set out the sequence of steps to be considered by the competent authority when considering authorising a plan or project that may have an impact on a European site and its habitats and species:

Step 1: Identify the plan or project.

Step 2: Consider whether the project is directly connected with or necessary for the management of the European site [Regulation 63(1)(b)].

Step 3: Consider, on a precautionary basis, whether the project is likely to have a significant effect on the European site, either alone or in combination with other plans or projects (the Likely Significant Effect Test) [Regulation 63(1)(a)].

Step 4: Make an appropriate assessment of the implications for the European site in view of its conservation objectives [Regulation 63(1)].

Step 5: Consider whether it can be ascertained that the project will not, alone or in combination with other plans or projects, adversely affect the integrity of the European site and its habitats and species, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions on any authorisation granted (the Integrity Test) [Regulation 63(5) and (6)].

Step 6: In the light of the conclusions of the appropriate assessment and in accordance with Regulations 63(5) and (6), the competent authority shall agree to the project only after having ascertained that it will not adversely affect the integrity of the European site and its species and habitats, alone or in combination with other plans or projects.

229. Section 28 of the WCA provides for duties in respect of SSSIs, and the EA falls within the definition of "Statutory Undertaker" in Section 28G. As such, it has a duty to take reasonable steps to further the conservation and enhancement of the flora, fauna or physiographical features by reason of which a SSSI is of special interest. In addition, Section 28H requires it to give notice to NE before carrying out operations likely to damage any of these features, and Section 28H includes provision for NE to refuse to give assent to the proposed operations or to assent them (with or without conditions).

Shortcomings in Habitat Regulations Assessment

230. The RSPB does not object to the principal of the proposed abolition but considers that the timescale proposed does not allow for adequate safeguards to be put in place for the Arun Valley SPA, SAC and Ramsar site and the SSSIs and appears to transfer significant costs to the RSPB and other landowners. The inadequacy of safeguards is reflected in shortcomings in the Habitat Regulations Assessments.
231. The EA's assessment has only gone so far as the Likely Significant Effect Test. However, there remain a number of uncertainties that have either not been addressed or have been inadequately addressed, such that it is not reasonable to reach a conclusion of "no likely significant effect" on the designated site features. Consequently, before the scheme can go ahead full appropriate assessment (Step 4 above) is required, including the identification and securing of necessary mitigation measures.
232. The EA's assessment is essentially based on the assumption that the current IDD ditches, control structures and pumping stations would continue to be maintained and operated in a manner similar to the way they are managed at present by the EA. However, none of the mitigation arrangements currently proposed would guarantee that.
233. The EA acknowledges that, due to its multiple landowners and the complexities of the WLMP, proper arrangements for coordination would still be required in the Amberley Wild Brooks SSSI area after abolition of the IDD. It proposes to achieve this by enmaining the IDD watercourses in that area, a proposal that raises 2

- concerns. Firstly, the enmainment process is a statutory process that would be unlikely to be completed within the 6 months period specified in the draft Order. Indeed, the process would be likely to be subject to objections and could take some considerable time.
234. Secondly, even if the watercourses were enmained, there is no guarantee that they would continue to be managed and maintained as they are at present. At present the IDD is funded by specific rates and levies raised by the IDB and that funding is ring-fenced for the IDD. However, funding for the enmained ditches would be from the EA's national main river budget and would be subject to competition with other priorities. So similar funding would not be guaranteed, and so nor would future management arrangements for those ditches and control structures.
235. For Pulborough Brooks SSSI it is interesting to compare NE's conclusions on the EA's Habitat Regulations Assessments. In October 2015 (see Appendix 12 of Document 5) NE concluded that the proposal to pass the ditch management duties to the RSPB, and then into the Countryside Stewardship scheme, would be insufficient to ensure the conservation status of the Little Ramshorn Whirlpool Snail *Anisus vorticulus* would be maintained. However, in May 2017 NE reached the conclusion that the same arrangements would be sufficient to maintain the conservation status. The only additional considerations seem to have been that RSPB had made an application for the Countryside Stewardship funding and that the EA undertook to ensure that the drainage infrastructure was still in place and in a state fit for purpose for use by RSPB. These conclusions seem inconsistent.
236. However, regardless of this, the proposed future arrangements do not provide sufficient certainty to justify a conclusion of "no likely significant effects". The future funding arrangements would be both uncertain and inadequate. Defra's Countryside Stewardship funding awards are for periods of 5 years. So, even if funding was secured for the first 5 years, there would be no guarantee of comparable funding further into the future, a situation quite different from the current IDD funding arrangements.
237. In addition, the Countryside Stewardship funding would fall well short of that needed to manage and maintain the Pulborough Brooks ditches to the standards of operation maintained by the EA. The EA says (see Document 5) that it currently spends about £6,000 per annum maintaining the IDD ditches at Pulborough Brooks. The Countryside Stewardship funding would be based on standard rates per metre of ditch, and it is calculated that it would amount to less than £1,000 pa. Thus substantial additional costs would fall on the RSPB (as the landowner) if it were to try to maintain the ditches to their current standard.
238. It is clear that the possibility of significant effects on the conservation status of the designated European site features cannot be discounted and that more detailed attention needs to be paid to the proposed mitigation measures and arrangements for future management of the IDD infrastructure. This requires full appropriate assessment to be carried out.
239. It also requires the following conditions to be met:

- Appropriate maintenance and management for Amberley Wild Brooks must be set up before the IDD is abolished, and to achieve this the necessary legal process for enmainment of the IDD watercourses must have been completed.
- Arrangements for adequate funding for the management and maintenance of the newly enmainned watercourses must be identified and guaranteed.
- Assurance must be provided that the EA would continue to deliver the necessary maintenance works even if it were to withdraw from its main river duties elsewhere on the River Arun.
- Funding must be provided for landowners to enable them to take over the other IDD infrastructure and maintain it to a standard sufficient to ensure that favourable conservation status is maintained for the designated features.

Transfer of Assets to Landowners

240. Whilst there has been some dispute as to ownership of the current IDD assets, the important issue is that, if the IDD is abolished, the EA proposes to transfer full responsibility for them to the riparian landowners. The condition of these assets at handover is clearly of considerable importance to the landowners as it would affect their ability to use them in the future, and the RSPB already has particular concerns about the condition of some of the sluices at Pulborough.
241. The EA says it has a programme of investment to bring all IDD assets, with the exception of Houghton PS, up to "target" condition in order to provide assurance to the landowners that they are acceptable for takeover. However, it has provided no information on what work has actually been done in this respect, and RSPB's first sight of any information on the assets is the list provided at the public inquiry.
242. Furthermore, its definition of "target" condition is Condition 3 (fair), i.e. "whilst they may have defects which could reduce their performance, they are performing to the standard required of them". Thus the assets could have some faults that affect their operation. It is considered that all assets should be brought up to "good" working order before they are transferred to the landowners. In addition, the EA has provided no information on its assessment of the condition of the assets. In fairness to the landowners, an independent assessment of condition should be carried out, and any work identified to bring the assets up to "good" condition should be carried out prior to the assets being transferred.

Conclusions

243. In conclusion, the RSPB does not object to the principle of the EA ceasing to act as IDB for the Arun Valley IDD. However, it has serious concerns about several matters. Firstly, the legal requirements of the Habitat Regulations and the WCA have not been met, and RSPB's concerns about the adequacy of measures and safeguards to secure the long-term management requirements of the designated sites have been detailed above. These essentially come down to the enmainment proposals and the security of future funding.
244. Secondly, there is lack of clarity on the condition of the IDD assets, particularly the water control structures, and these need to be put in good working order before the responsibility for them is transferred to the riparian

landowners. And, finally, the RSPB supports the work of the AVVG and considers that that group should be given time to complete its deliberations before any Order to abolish the IDD is brought into effect.

Other Objections and Comments

245. Letters of objection or statements were also submitted by the Country Land and Business Association, The Norfolk Estate and The Angmering Park Estate, Mr Robert Ayling (farmer), Horsham District Council, the Arun Valley Vision Group, Mr Roger Gillam (landowner), Mr Mark Dallyn (farmer), and Arundel Town Council.

The material points are:

The Country Land and Business Association (CLA) (Document 6.1)

246. Despite the CLA and others expressing a preference for a new IDB/IDD to be set up, the Steering Group passed a majority decision in 2013 recommending that the IDD be abolished and management of the IDD watercourses and assets revert to the riparian landowners. Thus the proposal to abolish the IDD would significantly affect the rural land managers and businesses that would be given the responsibility of management of the area. This is unjustified and irresponsible, and in proposing it the EA is disregarding its responsibility to safeguard the greater good of the tax payers.

247. The CLA's main concerns fall within the scope of Matters 3 and 6 identified by the Secretary of State, i.e. the implications for local interested parties, and the consequences for future management of the watercourses and pumping stations. The first concerns the legality of the transfer of vital equipment to an individual landowner. The structures were originally erected by a public body, which imposed them on the landowners, and the legal means of now reversing this imposition is open to question.

248. The second concern is to question how individual management of the various structures could deliver coherent management to protect the wider community. This needs a drainage district wide management scheme and, rather than abolish the IDD, a body equivalent to an IDB should be established to provide that overarching management. It is irresponsible to fail to provide this.

The Norfolk Estate and The Angmering Park Estate (Document 6.2)

249. The 2 Estates cover an area of approximately 800 acres within the Arun Valley IDD, surrounding the villages of Bury and Houghton and south to the town of Arundel. They also share the ownership of the tidal river bed extending downstream from Pallingham Lock at Pulborough to the sea at Littlehampton. Although the EA's performance in maintaining the IDD ditches has left much to be desired in recent years, the regular maintenance of ditches and watercourses has proved to be the most cost effective way of reducing flood risk to farmland and surrounding areas.

250. Abolition of the IDD would leave this in the hands of individual landowners and there would be no overarching authority responsible for providing the necessary coordination. Maintenance and control of the river's feeder ditches and structures would be carried out in a piecemeal fashion dictated by financial ability and social conscience rather than by public need. That is not an appropriate way to manage

a farmed floodplain and would be bound to lead to increased levels of flooding, environmental and property damage, litigation and possibly even loss of life.

251. With some fine tuning, the EA is the right body to continue to manage and control the River Arun floodplain. However, if responsibility were to be handed over to some other organisation, it would be inequitable to do so until all of the ditches and control structures had been put into good working order and deemed fit for purpose, which could take several years. Any replacement body should also have sufficient powers and financial resources to be able to exercise its duties in a socially responsible and efficient manner.

Mr Robert Ayling (Document 6.3)

252. Mr Ayling's family farms in the Arun Valley and 2 IDB pumping stations are located on their land at Bury and Houghton. In proposing the abolition of the IDD the EA has failed in its duty to protect important sites and features in the Arun Valley, failed to make provision for a suitable alternative body and failed to establish funding streams for the riparian owners to help them to take on responsibilities for the IDD ditches and structures. As a result, landowners would be placed in an impossible situation. If the EA also withdraws from maintenance of the main river, flooding and drainage issues would arise from areas outside the control of individual landowners, and an unacceptable burden would be placed on farming businesses in respect of drainage of the wider area (with associated human rights issues).

253. The decisions taken to the Steering Group and the local Councils to support the abolition of the IDD were all taken without consulting landowners and tenants, and the direct implications for them were not taken into account. As a small farmer, Mr Ayling does not qualify for stewardship funding and, in any case, there is no guarantee of funding being available beyond the current 5 years plan. The financial implications of landowners becoming responsible for the current IDD watercourses and structures would be significant. In view of the potential problems of properly coordinating flood risk and drainage throughout the Arun Valley, the results of the Arun Vision project should be considered before any decision is made to abolish the IDD.

Horsham District Council (Document 6.4)

254. Horsham District Council approved a resolution in November 2015 to support the EA's proposal to abolish the IDD. It was satisfied that, under the new arrangements, costs would fall on riparian owners to deal with the ordinary watercourse issues and that the Council would have duties in monitoring and inspecting them. It had previously had concerns about the possibility of the Council becoming responsible for drainage infrastructure and becoming competent authority for the Amberley Wild Brooks and Pulborough Brooks SSSIs. However, the EA provided assurances on the former and would continue to be responsible for Amberley Wild Brooks SSSI by enmaining the present IDD ditches in that area. Responsibility for the Pulborough Brooks IDD ditches would fall to the RSPB, as the riparian landowner, and they would be influenced by NE in their future management.

The Arun Valley Vision Group (Document 6.5)

255. The Arun Valley Vision Group was established in January 2017 with the aim of carrying out a new community-led partnership project. It has the support of all the major stakeholders in the Arun Valley, and its main objective is to agree an integrated catchment approach, supported and owned by all sections of the community, which will enable future flood and coastal erosion risk management, water quality and land use changes to be made and funded effectively. The AVVG comprises representatives of a wide range of interested organisations, is independently chaired, and is supported by EA staff. It is due to report by January 2019.

256. The AVVG recognises that the current IDD arrangements are anomalous (in national EA control) and that there is local support for its abolition. However, the work of the AVVG so far has identified the following areas of concern:

- Abolition of the IDD could result in a lack of coordination and efficiency of maintenance activity in the Valley without a strategic plan for management of the Valley as a whole.
- The location and condition of all existing IDD structures (including penstocks and pumping stations), which would become the responsibility of the landowners, need to be documented and assessed prior to the coming into effect of the proposed abolition.
- All relevant structures need to be put into good order and be maintained during any interim period prior to the coming into effect of the proposed abolition.
- An ongoing inspection regime needs to be established to monitor that effective maintenance is being carried out, as potentially put in place by Arun District Council in their area of the Valley.
- Affected landowners need to know exactly what legal liabilities they would be taking on if and when they become responsible for the maintenance and repair of relevant structures on their land and the availability of insurance to cover such liabilities.
- They also need to understand how financial responsibility would be apportioned between the owners of the land on which the structures are located and the owners of other land that benefits from their presence and operation.
- The current levels of expenditure on maintenance of the IDD watercourses and structures need to be examined in order to identify a mechanism to finance and manage the annual maintenance programmes and coordinate this with related EA work.

257. It may be possible to address some of these concerns by the inclusion of appropriate conditions should the Order to abolish the IDD be confirmed.

Mr Roger Gillam (Document 6.6)

258. Mr Gillam owns a parcel of land in the Amberley Wild Brooks area and raises a number of concerns. Firstly (on Matter 2), abolition of the IDD would mean the loss of local funding and oversight of future work, and there would be a lack of coordination of the efforts of the individual landowners. If flood risk for the wider

community is to be kept to a minimum and usable agricultural land is to be maintained, a properly formed and funded replacement IDB must surely be put in place.

259. Secondly (on Matter 3), notwithstanding the legal arguments about ownership of the IDD infrastructure, a landowner may not have the technical expertise or finance to maintain and operate the IDD structures transferred to him and may be forced to abandon them. Should that occur, the degree of liability owed to other landowners would be uncertain and unmeasurable. Thus the risk would be uninsurable and the value of the land would be reduced, placing the landowner in an inequitable position purely so that the EA can divest itself of its responsibilities regardless of the implications.
260. On Matter 4, if the IDD drainage network was not maintained, the land served by it would become wetter and possibly even waterlogged. The practical effects on the land would be detrimental to the conservation and designation status of the land, and would affect access to the land for ditching and equipment maintenance and use of the land for grazing.
261. Finally, the mitigation measures proposed by the EA seem to be limited to passing on its responsibilities to landowners and other agencies, with no central management or oversight into the future. The abolition Order should be set aside or, at least, delayed to allow time for an organisation to be created to replace the powers, function and funding of the current IDB.

Mr Mark Dallyn (Document 6.7)

262. Mr Dallyn's family has farmed in this area since 1876, and nowadays his home farm extends westwards for about one mile along the Arun from Pulborough and a further one and a half miles along the Western Rother towards Fittleworth. Some of the modern occupiers of the Arun Valley, particularly single-interest species groups, water supply companies and wetland interest conservation groups, have affected the general balance of the flora and fauna species that have traditionally had a home here and reduced the acreage and quality of grazing traditionally available. This has occurred due to changes in drainage practices and, if the EA's current responsibilities are dissolved, those changes are likely to continue in the future. Whilst the EA has done little to control this deterioration, it is the body most able to control it in the future.
263. The area upstream of Pulborough into the Western Rother has changed the least (as the flood protection scheme built in the 1960s did not cover that stretch) and it has quite different needs to the area below Pulborough. In particular, its drainage network does not need to be pumped. If the EA's responsibilities are dissolved, the upstream area should not have to pay for the pumping needed by the southern area or for the higher repair and renewal costs associated with the drainage arrangements in that area.
264. The entire area is uniquely bio-diverse, and grazing animals is a critical part of local history and the resultant flora and fauna. Consideration should be given to the ecology of the whole of the area and not just to the SSSIs. In recent years the management of the drainage network has been manipulated to benefit certain single species interests or to create a "special" wetland environment, and this has been detrimental to the wider interests of the area and to grazing farmers in particular. The traditional farming methods of gentle hand, foot and

hoof are needed to keep the land unique and bio-diverse. At least the EA has tried to steer a reasonable middle ground amongst the competing interests in the Valley. If the EA was not involved in the future, the interests of the grazing farmers would be likely to be overridden by the specialist conservation interests.

Arundel Town Council (Documents 6.8.1 and 6.8.2)

265. The town of Arundel is at risk of tidal, fluvial and surface water flooding. There are 6 IDD watercourses in the vicinity of the town and these play an important role in reducing surface water flooding and dissipating fluvial and tidal flooding. Their regular inspection and maintenance is essential to minimise risks of flooding.
266. For many years the EA has been a poor steward of the IDD watercourses in the area and has carried out little in the way of regular liaison with local landowners and farmers. The Town Council is in no doubt that this contributed to the severity of the flooding experienced in the town in January and February 2014. Its efforts since then have been much improved and serve to demonstrate the clear potential for reversal to the previous unsatisfactory situation if the IDD was abolished. Arundel Town Council has no formal role in the IDB arrangements but it is opposed to its abolition if no alternative to replace it can be found.
267. The EA's main reason for abolition of the IDD seems to be to reduce costs and administrative inconvenience. If it walked away from its IDB responsibilities, the coordination of ditch inspection and maintenance would be lost. Instead, responsibilities would rest with a variety of uncoordinated riparian landowners who may or may not give sufficient attention to management of the watercourses. In the interest of minimising risks of flooding, unless suitable alternative arrangements for proper coordination are set up, the status quo should continue.
268. The proposal also includes split responsibilities for discharges to the main river, as the EA would be responsible for the outfall structures and the landowner would be responsible for the control structures on the inner sides of the floodbanks. This would not be the most effective way of managing flood risk.

Submission by Natural England (Document 7)

269. Natural England (NE) is the statutory adviser to Government on nature conservation in England and promotes the conservation of England's wildlife and natural features. It did not give evidence at the public inquiry but provided a written statement on its position with regard to possible effects of abolition of the IDD on the various designated sites in the catchment.

The material points are:

Key Legislation

270. Section 40 of the NERC Act imposes a duty on public authorities and the Secretary of State to have regard to the purpose of conserving biodiversity. For European sites a "competent authority" has duties under the Habitats Directive and the Wild Birds Directive (for the conservation of natural habitats and of wild fauna and flora, and for the conservation of wild birds respectively).

271. Article 6 of the Habitats Regulations applies to both SACs and SPAs. Article 6(2) requires Member States to take appropriate steps to avoid in the European sites the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the area has been designated. Article 6(3) requires any project likely to have a significant effect to be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment the project can only be approved if it has been ascertained that it will not adversely affect the integrity of the site concerned.
272. The Regulations describe a sequence of steps to be taken by the competent authority in respect of a European site when deciding whether to authorise a project. These steps have been described in the RSPB's evidence above (albeit with minor differences of no significance) and are not repeated here. In addition, some of the later steps are not relevant to the current proposal.
273. The UK is party to the 1971 Convention on Wetlands of International Importance held at Ramsar, Iran ("the Ramsar Convention"), and it designates Ramsar sites in accordance with the criteria set out in the Convention. In accordance with Government Circular ODPM 06/2005, Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, it is Government policy that Ramsar sites are subject to the same procedures for HRA as SACs and SPAs.
274. SSSIs are designated under Section 28 of the Wildlife and Countryside Act 1981 (WCA) where the land is of special interest by reason of its flora, fauna or geological or physiographical features. Section 28G of the Act places legal obligations on public authorities to exercise their functions to further the conservation and enhancement of those features for which the site is of special scientific interest.

Conservation Designations

275. The following nationally and internationally designated sites sit within the River Arun IDD:
- Arun Banks SSSI
 - Arundel Park SSSI
 - Amberley Wild Brooks SSSI
 - Pulborough Brooks SSSI
 - Waltham Brooks SSSI
 - Upper Arun SSSI
 - Arun Valley Special Protection Area (SPA)
 - Arun Valley Special Area of Conservation (SAC)
 - Arun Valley Ramsar site.
276. Amberley Wild Brooks, Pulborough Brooks and Waltham Brooks SSSIs are component parts of the Arun Valley SPA and Ramsar site. Amberley Wild Brooks and Pulborough Brooks SSSIs are component parts of the Arun Valley SAC.

277. Arun Banks SSSI and Upper Arun SSSI were scoped out at an early stage as both sites are part of the main river with minimal IDD overlap and it was concluded that there would be no material changes to their management. Arundel Park is notified for breeding bird and invertebrate assemblage, woodland and calcareous grassland. The Swollen Spine Snail, a rare mollusc, requires special habitat requirements involving the cycle of ditch management. However, as the main ditch is part of the main river network rather than the IDD it would continue to be managed by the EA and the management regime would not change. NE has been satisfied that there would be no damage to the SSSI if the IDD was abolished. The rest of this evidence concentrates on the River Arun SAC, SPA and Ramsar site and their component SSSIs.
278. Amberley Wild Brooks, Pulborough Brooks and Waltham Brooks SSSIs comprise primarily wet grassland meadows dissected by a network of ditches which support rich and diverse assemblages of invertebrates, vascular plants and assemblage of wintering and breeding birds. Amberley Wild Brooks and Waltham Brooks SSSIs are assessed as being in "unfavourable recovering" condition, whilst Pulborough Brooks SSSI is in "favourable" condition. Details of the notified features for each site have already been described by other parties.
279. The management requirements for the designated features may be summarised as follows:
- Ditch Management: A cycle of ditch management is required to ensure there is a balance of habitats at different times of the year; this depends on the size and depth of the ditch, the prevailing weather conditions, the available nutrients, the water levels and the ditch management.
 - Water Levels: Water levels need to be sufficiently low in the fields to provide optimal habitat for ground nesting birds during the spring, and wet enough during the winter to support overwintering birds; during spring and summer months ditch water levels need to be sufficient.
 - Grazing: Grazing is required to manage the sward height for a range of breeding birds, to help control the growth of shading plants that are detrimental to some aquatic plant species and invertebrates, and to poach ditch edges to provide important habitat for those species.
 - Water Quality: Good water quality is required to support many aquatic plants and invertebrates that are sensitive to water quality.
280. Most of the land within the SSSI areas benefits from Environmental Stewardship schemes (the current scheme is the Countryside Stewardship scheme) which run for either 5 or 10 years and provide incentives for land managers to manage their land in an environmentally sensitive way. Payments are based on lengths of ditches or areas of grassland and are paid annually.

Assessment of Effects

281. NE provided advice to the West Sussex Steering Group on the likely impacts on the designated features of the protected sites. Measures were required to ensure mechanisms would be in place after IDD abolition to ensure continued ditch management within the Amberley Wild Brooks and Pulborough Brooks SSSIs (the Waltham Brooks ditches have already been managed by the

- landowner (SWT) for many years) and to ensure measures would be in place for the control of water levels at all 3 SSSIs.
282. NE received the EA's formal assessment of likely impacts on the designated sites in July 2015 (see Appendix 11 of Document 7). The assessments concluded that there would be no likely damage to the Amberley Wild Brooks, Pulborough Brooks and Waltham Brooks SSSIs and no likely significant effect on the Arun Valley SAC, SPA and Ramsar site. The EA proposed 2 measures to address the risk of impact: enmainment of the IDD ditches and control structures at Amberley Wild Brooks; and the use of the Countryside Stewardship scheme to provide funding to the landowner (RSPB) for ditch management at Pulborough Brooks.
283. NE gave assent (under Section 28H of the WCA) with respect to Amberley Wild Brooks and Waltham Brooks SSSIs, including assent in respect of the enmainment proposal. However, it requested further information on Pulborough Brooks SSSI and on the maintenance of populations of *Potamogeton acutifolius* and *Anisus vorticulus* outside the SAC boundaries (Appendix 12 of Document 7). The EA subsequently provided additional information to address both of these aspects (Appendix 15 of Document 7). The 2 species were not found to be present in any IDD ditches outside the SAC. So far as Pulborough Brooks was concerned, the EA confirmed it would continue to manage the 2 IDD ditches until a new Stewardship Agreement commenced, and that the 2 water control structures on those ditches would be transferred to the landowner in working condition.
284. These measures were all incorporated into a revised HRA and SSSI assessment received by NE in May 2017 (Appendices 16 and 17 of Document 7), and NE gave assent in respect of Pulborough Brooks SSSI. The assent was subject to a condition to ensure that the infrastructure necessary for water level conservation management of the site was still in place and fit for purpose for use by the landowner (Appendix 18 of Document 7).
285. In 2016 NE was informed by the EA that the Greatham IDB pumping station was likely to be decommissioned as the landowner was reluctant to take responsibility for maintaining it if the IDD was abolished. The EA reported that use of the pumping station affects water levels on part of the Waltham Brooks SSSI at certain times of the year. NE requested measures be put in place to address this issue, and the EA has since worked with the landowners (SWT) to find a solution so that they would be able to control water levels in the Waltham Brooks site if the pumping station was decommissioned.

Mitigation Measures

286. The statement includes a useful summary of likely impacts, avoidance measures and efficacy comments for each of the 3 main SSSIs. For Amberley Wild Brooks the WLMP is vital to coordinate water level site management across a number of different landowners where there is a complex network of IDD and ordinary ditches and water control structures. Enmainment of the IDD watercourses and structures would ensure the EA had the powers to coordinate ditch and water level management in the future. Subject to the enmainment order being in place when the IDD was abolished, there would be no likely damage to the SSSI, and abolition of the IDD would not adversely affect the integrity of the Arun Valley SAC, SPA or Ramsar site.

287. At Pulborough Brooks ditch management and water level control would need to be maintained. The measures proposed comprise the provision of funding through the Countryside Stewardship scheme to enable the landowner, RSPB, to manage the 2 IDD ditches in the future, and the assurance from the EA that the IDD water control structures would be left in working order. Subject to these measures being in place, abolition of the IDD would not adversely affect the integrity of the SAC, SPA or Ramsar site.
288. Finally, in order to meet the conservation objectives at Waltham Brooks, appropriate water levels need to be maintained. If the Greatham PS was decommissioned, as is currently expected, it would lead to increased flooding of parts of the site at certain times of the year. The EA has proposed a scheme which would enable the landowners (SWT) to control those water levels when necessary. Provided that this water control scheme was secured in place and operable when the IDD was abolished, there would be no damage to the SSSI and abolition of the IDD would not adversely affect the integrity of the SPA and Ramsar site.
289. To summarise, it is NE's view that there would be no material change to the management of the designated sites if the IDD was abolished provided the arrangements detailed above were in place and operational at the time of abolition. Consequently, there would be no likely damage to the SSSIs, and NE is confident there would be no adverse effect on the integrity of the Arun Valley SAC, SPA or Ramsar site.

Conditions and Transition Arrangements (Document INQ20)

290. At the pre-Inquiry meeting several objectors submitted that a number of pre-conditions needed to be met and transitional arrangements be put in place before an Order to abolish the IDD could come into effect. Thus a round-table discussion was held on these matters at the public inquiry. The EA provided a "without prejudice" discussion document (Document INQ20) as the basis for the discussions. In addition to the draft River Arun Internal Drainage District Order (see Appendix 2 of Document 5), the EA also provided copies of the River Adur Internal Drainage District Order 2016 and the Pevensy and Cuckmere Water Level Management Board Order 2016 (Documents INQ21 and INQ22 respectively) as models for discussion.

The material points are:

291. Six matters were discussed: enmainment; the proposed Waltham Brooks scheme; the resource implications for RSPB and SWT; asset transfers, including their condition, EA advice and possible commuted sums; the possibility of how the abolition scheme might relate to a new IDB being created at a later date; and the transfer period.
292. The EA's proposals include enmainment of a number of IDD ditches in the Amberley Wild Brooks area, and all parties agree this would need to be in place before the IDD was abolished (or at least commenced on the same date). The EA proposes to make these changes as "determinations" (i.e. a formal decision to change the main river map) under Section 193C(1) of the Water Resources Act 1991. Objectors indicated that there were likely to be objections to this process which would lead to delays, and the EA estimated it would take 6-12 months.

293. The EA suggested the process could be achieved either by the issue of a “minded to grant” letter from the Secretary of State or by introducing formal wording in the Order. The former could be problematic and the latter would be preferred.
294. It is also common ground that, if the Greatham PS was to be decommissioned on abolition of the IDD, the proposed scheme at Waltham Brooks (see Documents INQ15 and INQ23) would need to be completed before operation of the pumping station ceased. To deal with this and the enmainment proposal the EA has suggested that Clause 1 of the Order be changed to say the abolition scheme would come into force 6 months after both the enmainment and the Waltham Brooks scheme were completed (see Document INQ20).
295. Some objectors say the results of the Waltham Brooks scheme should be monitored for a period of 2 years to make sure it was effective and that the possibility of recommissioning the Greatham PS should be kept open until that time. However, the EA says the Waltham Brooks scheme is considered to be so beneficial that it will be constructed whether or not the pumping station is decommissioned, and so a probationary period is unnecessary.
296. Turning to the funding implications for the RSPB and the SWT associated with taking over responsibility for the IDD ditches and structures in the Pulborough Brooks and Waltham Brooks SSSIs respectively, the EA says there is no obvious mechanism for transferring funds to such a third party. An objector asked if the equivalent of a Section 106 Undertaking (under the Town and Country Planning Act 1990 (as amended)) might be a means of achieving this. However, as the EA has not put forward any such undertaking, it is not an issue that arises in this case.
297. Turning to the need for IDD assets to be transferred to the relevant landowners in reasonable operational condition, the EA confirmed it intended such assets to be in “fair” condition, as defined in its Protocol for the maintenance of flood and coastal risk management assets (Document INQ4) and that the EA would continue to act in accordance with its published policy regarding the decommissioning of flood defence assets. That policy includes a notice period and the provision of EA advice to help the landowners make an informed choice about what to do with the IDD assets. It is for this reason that the Order includes the 6 months transitional period.
298. The EA says these arrangements do not lend themselves to incorporation in an Order. However, it has suggested suitable wording for an additional Clause in the draft Order. That Clause would make it doubly clear that the EA would have no interest in any of the IDD physical assets after abolition of the IDD, and that the pumping stations and pumping equipment would be available for transfer in “fair” condition if the landowners confirmed they intended to use them in the future (see Document INQ20).
299. In its evidence the EA has implied that the IDD physical assets would be available for transfer to a new IDD should one be created after the present IDD has been abolished. However, it now acknowledges that, as no “shadow IDB” has been identified, there is no obvious legal mechanism to enable this to take place. If a new IDD was to be created in the future (as many local objectors would like), its boundaries, constitution and assets would have to be resolved at that time.

300. Finally, several objectors say the present 6 months transfer period specified in the Order is too short. Whilst the EA acknowledges that it may take longer than this to put in place the enmainment proposals and the Waltham Brooks scheme, it says there is a need for legal certainty, and so any longer period must remain reasonable.

Inspector's Conclusions

[The numbers in square brackets indicate the relevant paragraphs of the report.]

301. I have structured my conclusions on the basis of the Statement of Matters issued by Defra in October 2017. [6, 7]

Matter 1: Implications for the EA of continuing to manage the IDD

302. Continued management of the Internal Drainage District (IDD) by the Environment Agency (EA), acting as the Internal Drainage Board (IDB), is a cumbersome arrangement. An IDB should be a local public body comprising a mixture of elected and appointed local members, and prior to the Flood and Water Management Act 2010 the EA was able to replicate that arrangement by delegating much of the IDB management to the Southern Regional Flood Defence Committee, which comprised local representatives. However, the 2010 Act replaced that Committee with the Southern Regional Flood and Coastal Committee, which may sound similar but is, in fact, predominantly a consultative committee with no executive powers. [19, 20, 97]

303. Consequently, it is now the EA's main national board that is the IDB and it is clearly quite unsuited to be responsible for the management of a small local IDD. Whilst a small group of local managers provide day to day control, strategic, policy and executive control rests with a remote national board, whose main duties relate to the running of a large national organisation. [22]

304. In addition, it is reported that the Local Audit and Accountability Act 2014 and the Accounts and Audit Regulations 2015 now prescribe requirements for small public bodies like the IDB to meet standards of accountability and visibility which the EA (as IDB) is unable to meet without excessive cost (e.g. publishing data on an accessible website; the availability of public documents; and the ability of local stakeholders to attend meetings). A new locally based IDB would be able to meet these requirements far more readily. It would probably also be able to let ditch maintenance contracts far more cheaply than the EA, which is restricted by national rules and procedures. I agree with many of the local objectors that, if it were possible, the best solution would be to simply replace the EA with a new locally accountable IDB. [21, 23, 98, 99, 140, 144-147, 248, 250, 258, 261, 262, 266, 267]

305. Some objectors say the proposal to abolish the IDD is driven by the EA's desire to save money. However, that has no factual basis whatsoever. In the first place, the IDBs annual budget is typically only about £82,000 per year, which is a drop in the ocean compared with the EA's annual budget of over a billion pounds. Furthermore, the IDD funding is raised by a combination of specific levies and taxes on local landowners, property owners and local authorities (including a rate support grant from central government). The financial effect on the EA of abolishing the IDD would be virtually neutral. [24, 267]

306. In conclusion, the implications for the EA of continuing to manage the IDD would be continuing inability to meet the usual requirements of an IDB to be a local public body and to demonstrate local accountability and visibility, and continuing difficulty in appreciating and meeting the needs of local interested parties.

Matter 2: Likely impacts of abolishing the IDD on local flood risk

307. The main purpose of an IDD is drainage of the land which also involves controlling local flooding. If the riparian landowners continued to maintain and operate the ditches, control structures and pumping stations as they are run at present, then there would be no change in the drainage regime. However, it is unlikely the landowners would do that, and the EA has carried out an assessment of the worst case scenario which assumes the pumping stations would cease to operate and the landowners would not maintain the drainage ditches. On this basis, there would be an increase in risk of local flooding to 23 properties on the edges of Arundel and Littlehampton and to 2 locations on the local road network if ditches in those localities were not maintained. [25, 28, 265]
308. So far as the agricultural land is concerned, some would become wetter at certain times of the year and some might even become waterlogged. There are 3 pumping stations in the IDD. Houghton PS broke down some time ago and has not been repaired as it was considered its benefits did not justify the cost. If Hardham PS was switched off approximately 40 hectares of agricultural land owned by the riparian owner and one other landowner would be at risk of being wetter at certain times of the year. If Greatham PS ceased to operate some 105 hectares of agricultural land belonging to the riparian owner and 2 other landowners would be at risk of being wetter at certain times of the year. [26, 27]
309. Continuing to operate the pumping stations would be a significant commitment for the riparian owners concerned and it is more likely than not that the pumping stations would be decommissioned. However, the maintenance and management of the ditches and water level control structures would be a much simpler proposition, particularly as many landowners already manage similar ordinary watercourses that drain the land in the same way as the IDD ditches. The degree of maintenance carried out on these in the future would depend on the landowners' commercial judgements for agricultural efficiency and effectiveness, and I consider it likely some maintenance and management would occur. [57, 132, 133, 162-165, 169, 259]
310. Thus, although abolition of the IDD would probably lead to some areas of agricultural land being wetter than at present, the effects on local flood risk would probably be much less than assessed by the EA in its worst case scenario. [29]
311. Briefly turning to the question of risks of fluvial flooding from the main River Arun, those risks would be largely unchanged. Fluvial flooding can involve such large quantities of water that, when the flood embankments are overtopped, the drainage ditch network becomes completely overwhelmed, as is reported to have happened in the winter of 2013/14. When fluvial flooding of that sort occurs, whilst the IDD drainage network can help the land to drain more quickly once river levels have dropped and flood waters have subsided, their effects on the risks of such flooding are quite limited. [30-32, 102, 145, 266]
312. The pumping stations would obviously help to return the floodwater to the main river more quickly. However, they are quite small submersible pumps not designed to pump large quantities of water, and so even their effects on the duration of fluvial flooding would not be great. Thus, overall, I conclude that abolition of the IDD would not significantly affect the risks of local flooding,

except for some areas of agricultural land, or the risks and consequences of fluvial flooding. [31, 103]

Matter 3: Implications of abolition on local interested parties

313. The first thing to say about the implications for local interested parties is that they would no longer be liable to pay drainage rates and levies to fund the work of the IDD. About 150 landowners currently pay drainage rates which amount to about £15,600 per annum. In addition, the local councils would no longer be subject to special annual levies in respect of the IDD. These currently amount to about £66,400 per annum, almost all of which is from Arun District Council. This is partially subsidised by central government's rate support grant, which would also be lost within a year or two. These savings (or net savings) would be available for the parties to spend in maintaining the drainage network or on other unrelated things. [37, 38, 40, 134, 135]
314. Other implications for these parties would vary, and I consider them as follows: local councils; riparian landowners; riparian landowners with pumping stations on their land; charitable status landowners (SWT and RSPB); other landowners; and Southern Water Services Ltd. The local councils would save money in respect of their IDD levies: Arun DC would save several thousand pounds; the other 2 councils would only save a few hundred pounds. It is reported that Arun DC would propose to use that money to fund its supervisory duties in respect of ordinary watercourses in the District, including ensuring that riparian landowners met their responsibilities for such watercourses. [40]
315. Riparian landowners would assume responsibility for the former IDD ditches and water control structures on their land. As I have explained above, the implications depend on how much work they decide to do in maintaining and managing these networks. For some this would be negligible; for others it would be more demanding. However, to a large extent they would have a choice in how much work to do depending on the potential benefits to their farming businesses. If little work were done, parts of their land would be likely to be wetter at certain times of the year. [12, 39, 41, 131, 246, 252, 253, 260]
316. In addition to this, the landowners with pumping stations on their land would be likely to experience more impact. If they were to accept responsibility for the pumping stations they would incur significant costs (approximately £15,000 pa for the 2 PSs) to run them and potential for future capital costs for repair or replacement in due course. They would also be unfamiliar with the equipment concerned, though the EA would provide guidance during a transitional period. However, the main landowner concerned has indicated he would be unwilling to take over responsibility for the pumping stations, and so the most likely outcome would be the decommissioning of the pumping stations and the reduced drainage performance associated with their operation. [132, 133]
317. I have described above what areas of land would be affected by the closure of the pumping stations, and this would include land belonging to other owners as well as the one on whose land the pumping stations are sited. The implications for those parties would be that parts of their land would be wetter at certain times of the year, which would reduce its output and reduce the value of the land. All of the land in question is Grade 3 agricultural land. There is potential for significant effects on the value of some of the farming businesses. [16, 104-106, 131, 162-165, 259]

318. The Sussex Wildlife Trust (SWT) owns the land at the Waltham Brooks SSSI and part of the land that makes up the Amberley Wild Brooks SSSI. The EA would propose to enmain the IDD ditches on the latter site and, if that were to occur, abolition of the IDD would have negligible impact on that land. However, at Waltham Brooks responsibility for the IDD ditches and water control structures would fall on the SWT, with potential to lead to additional costs to SWT. However, as a result of the EA's failure to properly meet its duties for many years for maintaining the IDD ditches at Waltham Brooks, SWT has already assumed responsibility for them (with latterly some limited assistance from the EA). Consequently, unfair as it might seem to reward the EA for its past deficiencies, I consider that abolition of the IDD would have little impact on the SWT. [39]
319. An additional factor at Waltham Brooks is the EA's stated intention to carry out a drainage improvement scheme on part of the land to compensate for any effects caused by turning off the Greatham PS, which contributes towards the drainage of a small part of the Waltham Brooks SSSI site. This may be seen as a benefit of the proposed abolition, though its actual environmental effect is uncertain. [39]
320. Turning to the RSPB, that charity owns the land at Pulborough Brooks SSSI and would become responsible for maintaining and managing the IDD ditches and water control structures on that land if the IDD was abolished. The EA argues that this would be akin to a like-for-like takeover, and I have no doubt the RSPB would be perfectly capable of taking on those duties. However, the EA currently spends about £6,000 per annum in maintaining the ditches in that area, and that cost would fall on the RSPB. It is likely that funding would be available through the Countryside Stewardship scheme, though that would only cover part of the cost. The remainder would have to be found by the RSPB if it were not to reduce the maintenance schedule currently practiced by the EA. [39, 236, 237]
321. Finally, I consider Southern Waters Services Ltd (SWS). SWS has abstracted water from boreholes within or close to the IDD for many years and it treats that water at its Hardham water treatment works before putting it into the public water supply. On occasions it discharges waste water into the IDD network in accordance with a discharge consent. On the whole this has barely been noticed in the IDD. However, in 2012 a substantial quantity of water was discharged, and that single incident brought it to the attention of the local landowners. [43, 172]
322. More recently, SWS has constructed a facility to abstract water from the River Arun into a bankside reservoir from which the water is pumped to the water treatment works. The reservoir and the pumping arrangement have facilities to discharge surplus water into the adjacent IDD ditches. These and the discharge from the water treatment works would both impose a pumping requirement on Greatham PS. Thus, abolition of the IDD would affect SWS's ability to continue with these discharge facilities. [44, 173]
323. The EA has consulted SWS who has said that, if it was no longer able to use the present discharge facilities, it would have to make other arrangements. No suggestion has been made as to what these might be. However, abolition of the IDD would clearly have an impact on SWS. [44, 174]

324. In conclusion, the impacts on local interested parties due to abolition of the IDD may be summarised as follows:

- Landowners and local councils would not have to pay drainage rates and annual levies, thus making savings of several thousand pounds per annum;
- Riparian landowners may or may not choose to maintain and manage the IDD ditches and water control structures on their land to the same level as the EA, with the associated costs; if they did not, their agricultural land would be likely to be wetter at certain times of the year and probably less productive;
- Landowners with pumping stations on their land would incur significant costs if they chose to continue to run the pumping stations; if they did not, parts of their land (and some of their neighbours' land) would be wetter at certain times of the year and thus less productive and reduced in value;
- There would be little impact on the SWT;
- The RSPB would incur additional costs to maintain the IDD network to its current standard; and
- SWS would have to make alternative arrangements for waste discharges from its water treatment works at Hardham and its new River Arun water abstraction scheme.

Matter 4: Likely environmental impacts on SSSIs and European sites

325. There are 6 SSSIs in the IDD but 2 of these (Arun Banks and Upper Arun SSSIs) were scoped out at an early stage. A third, Arundel Park SSSI, was assessed and it was concluded there would be no likely damage. There is no dispute of any substance on these and I have considered them no further. The remaining 3 sites are the Amberley Wild Brooks, Pulborough Brooks and Waltham Brooks SSSIs. These are also the components of the Arun Valley SPA and Ramsar site, and the Amberley Wild Brooks and Pulborough Brooks SSSIs are components of the Arun Valley SAC. [18, 52, 53, 224-226, 270-280]

326. The Amberley Wild Brooks SSSI contains land in 6 different ownerships and, as the control of water levels is critical to maintaining the designated features, the EA tries to manage the drainage area in accordance with a Water Level Management Plan (WLMP). If the IDD was abolished without appropriate arrangements being made for this coordination role, there would be significant impacts on the designated ecological features. To avoid this the EA proposes to enmain the IDD ditches within that area, i.e. to adopt these small watercourses as "main river" so that they would continue to be managed by the EA after the IDD had been abolished. Thus there would be no, or very little, change to the management regime and no likely significant effect on the features of the SSSI, SAC, SPA or Ramsar site. [54, 59, 60, 195-198, 233, 282]

327. Doubts have been expressed about whether funding for this work would be as secure as it is under the IDD regime as it would have to compete with other demands for EA funding from its main river budget. Whilst protection against flood risk is the EA's highest priority, it has a statutory duty to have regard to conserving biodiversity and to protecting designated environmental sites, and it would be obliged to make adequate provision to fund the necessary maintenance and management work in the Amberley Wild Brooks area. I am aware that the EA

- is seeking to minimise its expenditure on managing flood risk in this part of the Arun Valley through its Lower Tidal River Arun Strategy (LTRAS). However, even that aim would have to take into account its statutory environmental duties, and I am satisfied that suitable funding would be available in the future. [55, 115, 117, 125, 128, 178, 199, 233, 234]
328. Natural England is of the view that, provided the enmainment process was put in place before the IDD was abolished (or at the same time), there would be no likely significant effect on the features of this designated site, and I share that conclusion. However, one matter remains of concern. [63, 119, 181, 182, 283]
329. That matter is the use of the enmainment process to overcome these environmental issues. It seems to be a very contrived solution to the problem. Watercourses adopted as "main river" are usually larger rivers and streams with potential for significant risk of flooding, and the Defra guidance on the designation of "main rivers" concentrates on this aspect. Whilst the guidance mentions that consideration may also be given to the EA's other functions, such as environmental considerations, I find it difficult to believe that the current circumstances were ever envisaged when the statutory provisions for enmainment were enacted. [116, 122-124, 127]
330. Thus, whilst I am satisfied that the proposed enmainment would ensure that abolition of the IDD would not have any significant effect on the designated features of the Amberley Wild Brooks SSSI, consideration should be given to whether the enmainment of several lengths of relatively small ditches is an appropriate application of this statutory provision. I offer no opinion on this. [54, 59]
331. Turning to the Pulborough Brooks SSSI, the EA currently maintains 2 IDD ditches and their associated control structures. If the IDD was abolished responsibility for these would fall to the landowner, the RSPB, and the EA is of the opinion that the RSPB would be able to continue to maintain and manage those ditches in the same way as the EA, with funding provided through the Countryside Stewardship scheme. NE says that, subject to the condition that the ditches and control structures were handed over in reasonable condition, it is certain that abolition of the IDD would not affect the integrity of the designated sites. [58, 68, 235, 282, 284]
332. However, both parties have assumed that the RSPB would continue the same operating regime as currently carried out by the EA. Unless the RSPB provided most of the funding itself, that would not be possible as the Countryside Stewardship scheme would only provide a fraction of the funding currently spent by the EA each year. The EA has said that a reduced level of maintenance would probably be beneficial for some of the designated features, and I do not know whether that would be the case or not. However, what is clear is that the Habitat Regulations Assessment prepared by the EA and approved by NE was based on the RSPB continuing with the same operating regime as at present and that that led to the conclusion that there would be no significant effect on the designated features. [59, 61, 65, 115, 120, 177, 179, 182, 220-223, 228, 230-232, 236-238]
333. In my view, the situation is not as simple as that and consideration needs to be given to the uncertainties of the availability of future funding for the work and to the immediate shortfall in funding. Clearly, matters such as the possible

- benefits of less frequent ditch maintenance could also be considered at the same time. Thus I consider that full appropriate assessment needs to be carried out to inform the Integrity Test. Until that is done the competent authority cannot be certain that the project would not adversely affect the integrity of the site. [67, 183, 202-209, 238]
334. Turning finally to the Waltham Brooks SSSI, in most practical terms the Sussex Wildlife Trust (SWT) would continue to maintain and manage the IDD network on the site much as it has over the past few years. Rightly or wrongly, the EA has carried out very little work in this area in recent years, and so in this respect the regime would be little changed. Consequently, I agree with the EA's assessment that, in this respect, abolition of the IDD would not adversely affect the integrity of the site. [56, 59, 64, 186-191, 209, 283]
335. However, there is a complication if the Greatham PS were to be decommissioned, as is now expected. At present this pumping station affects the drainage of the northern part of the Waltham Brooks site at certain times of the year, and to compensate for this the EA now proposes to carry out a new drainage scheme in that area. Whilst the scheme has been discussed with the SWT and details were provided at the public inquiry, there is no evidence that its impact on the designated site has been properly assessed, as required by the Habitat Regulations. [57, 115, 121, 182, 192, 193]
336. NE says it was informed of this matter by the EA in 2016 and is now aware a scheme has been devised which would enable the owners to control water levels in that part of the site. However, I would have expected NE to have satisfied itself on the merits of the scheme rather than rely on the EA's assurances. This is not a straightforward change to the way the Waltham Brooks site would be managed, and I consider further appropriate assessment under the Habitat Regulations to be required so that the competent authority can be certain that abolition of the IDD would not adversely affect the integrity of this site. [183, 285]
337. Thus, in conclusion for the 3 designated sites:
- Whilst I have reservations about whether this is appropriate use of the statutory facility for the enainment of watercourses, if the IDD ditches in the Amberley Wild Brooks SSSI were enained, I consider there would be no likely significant effect on the integrity of the designated sites if the IDD were abolished.
 - I consider insufficient information has been provided to enable appropriate assessment under the Habitat Regulations to be carried out for Pulborough Brooks SSSI, taking into consideration the uncertainties of the availability of future funding for the maintenance and management of the IDD ditches and the immediate shortfall in funding for it due to the apparent limitations of the Countryside Stewardship scheme.
 - I consider insufficient information has been provided to enable appropriate assessment under the Habitat Regulations to be carried out into the impact of ceasing operation of the Greatham PS and the introduction of a new drainage scheme on the northern part of the Waltham Brooks site.

Matter 5: Sufficiency of mitigation measures

338. The 3 mitigation measures put forward by the EA are essentially:
- enmainment of the IDD ditches in the Amberley Wild Brooks SSSI;
 - construction of a new drainage scheme at Waltham Brooks SSSI to compensate for loss of the Greatham PS; and
 - takeover of the IDD ditches at Pulborough Brooks SSSI by the RSPB, with the support of funding under the Countryside Stewardship scheme.
- [70, 243, 286-288]
339. I have discussed each of these above. So far as their sufficiency is concerned, I consider the enmainment proposal would enable the EA to continue to maintain and manage the ditches at Amberley Wild Brooks and to coordinate water level management in the area as required by the WLMP. For continuity the enmainment would need to be in place by the time the IDD was abolished and, on that basis, there would be no significant effect on the integrity of the site. [181, 182, 211, 213, 286, 292]
340. Similarly, for continuity the proposed new drainage scheme at Waltham Brooks would also need to be in place before the IDD was abolished and Greatham PS was decommissioned. The EA says the scheme would be beneficial to the management of Waltham Brooks whether or not the pumping station ceases to operate. However, I have seen no evidence to demonstrate the sufficiency of this measure, and no formal assessment has been carried out. It has been suggested that the scheme should be trialled for 2 years before Greatham PS is abandoned. However, if its efficacy was properly assessed, there would be no need for such a trial period. [181, 194, 211, 213, 288, 294, 295]
341. Finally, I have expressed reservations above about whether there would be adequate funding to enable the RSPB to continue to maintain the IDD ditches at Pulborough Brooks SSSI to the same standards as the EA maintains them at present. I am unable to assess the sufficiency of this measure in the absence of information for an appropriate assessment. [181, 211, 287]

Matter 6: Consequences for future management of watercourses, etc.

342. I have dealt with this matter to some extent under Matter 3 above. If the IDD was abolished, management of the IDD ditches and the water control structures would rest with the riparian landowners. Apart from meeting the basic duties of a riparian owner, it would be up to each landowner to decide how much work he carried out on the drainage network, and it would be likely to be a commercial decision based on the needs of his agricultural business. If reasonable maintenance was carried out there would be little change in the drainage of the land. However, if less maintenance work was done on the ditches, the land would tend to be wetter at certain times of the year. [72, 73, 75]
343. The most significant changes would be likely to occur if the pumping stations were no longer maintained and operated. As explained above, the operation of these involves considerable costs, and it is thought to be likely that the relevant landowners would not wish to take responsibility for their operation. Hence they would be likely to be decommissioned and substantial areas of land (belonging to

- both that landowner and several others) would be less well drained, probably wetter at certain times of the year and even waterlogged in some places. [79]
344. These conclusions would not apply to the IDD ditches in the Amberley Wild Brooks SSSI of course, as the EA would propose to enmain those and to continue to maintain and manage them as "main river" in the future.
345. Some objectors have argued that the IDD ditches and associated structures should be upgraded to "good" rather than "fair" condition as the EA has proposed. However, "fair" condition is the EA's target operating condition and, although by definition they may have some faults, an asset in "fair" condition is entirely serviceable and provides an optimal balance of operational performance and value for money. The EA has given an undertaking that all assets would be transferred in "fair" condition, and I consider that to be entirely reasonable. [76-78, 241, 242, 244, 256, 297, 298]
346. Questions have also been raised about the legal ownership of the various assets, including the current and past situations. Whilst this may be of academic interest, in practice it is of little consequence. The EA has explained that, if the IDD was abolished, ownership of all the IDD assets would rest with the riparian landowners, with the sole exception of the moveable pumping equipment, which would also be transferred to the landowners if they wanted to be able to run the pumping stations in the future. Whatever interpretation is placed on past legal ownership (and I consider the EA's recent interpretation to be correct), the future position would be very clear. [80, 81, 148-154, 166-171, 240, 247]
347. Some objectors have also complained that the EA has not provided information on its IDD assets before the public inquiry. I am surprised it did not produce a comprehensive asset register any earlier. However, I find it difficult to believe this has seriously affected any landowner's understanding of what IDD assets he would become responsible for if the IDD is abolished. In my experience, farmers have detailed and extensive knowledge of their own land and would be entirely familiar with all of the drainage ditches and control structures on their land. Only the pumping stations would be the exception to this. [256]

Other Topics Raised by Objectors

348. Finally, I move on to other topics raised by objectors. The first is the assertion that the Steering Group and District Councils made ill-informed decisions about abolition of the IDD and that, if they had been properly informed of the implications of abolishing the IDD, they would never have opted for that choice. The West Sussex Steering Group considered the various options throughout 2013, and in 2014 the 3 District Councils all resolved to support the chosen option. These bodies all followed appropriate procedures, and none of the Councils have indicated any more recent second thoughts. Although questions have been raised about their levels of knowledge and interest in drainage matters, I have no reason to doubt the capabilities or the reasonableness of those decisions. In any case, they are decisions that still stand, and criticism of them is of limited relevance to consideration of the proposal now before the Secretary of State. [83-87, 89, 108-114, 136, 140-143, 155-161, 212, 254, 281]
349. The second issue is that, rather than abolish the IDD, the best solution would be to dissolve the IDB and reform it as a locally accountable public body. There are legal reasons why that option would also involve the abolition of the IDD and

the forming of a new IDD. However, that is a fine point of law which can be ignored when considering the basic principle. This was one of the options originally considered by the Steering Group in 2013 but the current proposal was preferred. It is not clear from the evidence before me why the IDB option was not adopted. However, that is what occurred, and the proposal before the Secretary of State is for abolition of the IDD and nothing else. [88, 90, 91, 144-147, 248, 250, 251, 258, 261, 267]

350. Many parties have also argued that no decision should be made on the future of the IDD until the Arun Valley Vision Group (AVVG) has been given time to review a range of matters associated with the future management of the River Arun. The Group, which is supported by the EA, includes representatives of a wide range of interested parties and is due to report early in 2019. AVVG's main focus is on how future flood and coastal erosion risk management can be funded in the context of the EA's LTRAS strategy, which has signalled a clear intention to minimise future expenditure in the Arun Valley. Whether the IDD is abolished or not is quite peripheral to this, and I consider little would be gained by delaying making a decision until the AVVG has completed its report. [33-36, 42, 88, 100, 138, 213, 244, 253, 255]
351. The third issue relates to Southern Water Services' (SWS) use of the IDD network to discharge waste water occasionally from its water treatment works at Hardham and its new water abstraction and storage scheme nearby. The practical implications for SWS have been explained earlier. However, surprise has also been expressed that SWS pays only a very small annual charge for this facility, even though it adds to the IDD pumping requirements. This matter has little relevance to consideration of the current proposals. [92, 93, 172]
352. Finally, I consider the human rights arguments made by the Sussex Wildlife Trust in its closing submissions. These referred to Article 6 of the European Convention on Human Rights (the right to a fair hearing) and to Article 1 of the First Protocol (the protection of property). [45]
353. As regards the submissions made under Article 1 of the First Protocol, I recognise that abolition of the IDD would result in interference with a number of riparian landowners' enjoyment of their property. European case law has established that diminution in the value of the land can amount to interference under this Article and that, while that may be justified in the public interest, compensation should at least be considered. [46, 48, 214, 215]
354. The interference must be balanced against the public interest and, in this case, it is difficult to justify the interference without the payment of compensation, as little public interest has been identified. However, I have decided to recommend against confirming the abolition and so the question of violation of rights under Article 1 of the First Protocol would not arise. [47, 49, 214, 215]
355. As regards the submissions made relating to Article 6, I acknowledge that the EA's list of IDD assets and details of their condition only emerged during the course of the public inquiry and that some landowners consider that caused difficulties in understanding what their potential future liabilities would be. However, the public inquiry was the end of a long process dating back to the EA's initial application in August 2015 during which there has been ample opportunity for landowners to understand the EA's proposal. I would also expect every landowner to be familiar with their own land and the ditches on it. [50, 216]

356. At the public inquiry objectors had ample opportunity to present their cases before an independent and impartial tribunal, and the inquiry process made provision for anyone who wished to do so to bring forward evidence for consideration. I therefore consider that their rights under Article 6 of the Convention have not been violated. [51]

Overall Conclusions

357. I have concluded above that it would be difficult and inappropriate for the EA to continue to act as the IDB for this small IDD in Sussex on a long-term basis. It is unable to meet the usual requirements for an IDB of being a local public body that is locally accountable and visible and readily able to respond to local needs.

358. I do not consider that abolition of the IDD would significantly affect the risks of local flooding, except some areas of agricultural land at certain times of the year, or that it would significantly affect the risks and consequences of fluvial flooding from the River Arun. If the IDD was abolished, landowners and local Councils would no longer be liable to pay drainage rates and annual levies to the IDB. However, riparian landowners would become responsible for the former IDD ditches, water control structures and pumping stations on their land. Although "responsible" for them, it would largely be up to each landowner to decide how much work they do in maintaining and managing that drainage network. That decision would mainly be a commercial decision based on the benefits to their land.

359. If significantly less maintenance work was carried out there would be potential for some of their land to be wetter at certain times of the year, particularly those areas served by the pumping stations if their operation was not continued. Whilst most of the land affected by ceasing to operate the pumping stations would be in the same ownership as the pumping station land, several adjacent landowners would also be affected. The state of the land affects its productivity and ability to support grazing, and the value of some land would be affected.

360. So far as impacts on the designated environmental sites are concerned, there would be no significant effect on the features of the Amberley Wild Brooks SSSI (which is also part of the Arun Valley SAC, SPA and Ramsar site) provided the IDD ditches in that area were enmained (i.e. adopted as "main river" watercourses) to enable the EA to continue to take responsibility for their maintenance and management and for coordination of the Water Level Management Plan for that site. However, the adoption of a network of small ditches as "main river" would seem to be a very contrived means of overcoming problems associated with the designated environmental site. It does not sit well with the circumstances envisaged when the provisions for enmainment were enacted to allow the adoption of larger rivers and streams with potential for significant risks of flooding.

361. At Pulborough Brooks SSSI (also part of the SAC, SPA and Ramsar site) I consider that the Habitat Regulations Assessment has not taken into account the uncertainties of the availability of future funding and the adequacy of that funding to ensure the RSPB would be able to continue to manage the IDD ditches to the same maintenance schedule as at present. Thus it is not possible to reach a conclusion of "no significant effect", and insufficient information has been provided to allow a full appropriate assessment to be carried out (the Integrity Test).

362. At the Waltham Brooks SSSI (also part of the SPA and Ramsar site) there would be little change to the management of most of the site and I am satisfied there would be no significant effect on the designated features of the site. However, to compensate for the likely closure of the Greatham PS, which affects water levels on part of the site, the EA proposes to construct a new drainage scheme on that part of the site. Whilst it is likely the scheme would provide the landowner (the Sussex Wildlife Trust) with improved control over water levels on the site, no evidence has been provided to show that its impact on the site has been properly assessed under the Habitat Regulations.
363. In the absence of the necessary environmental impact information for these 2 sites, the competent authority cannot be certain that the project (abolition of the IDD) would not adversely affect the integrity of the designated features on the European sites. Without that certainty, the project cannot be approved.
364. Since the public inquiry was held the Court of Justice of the European Union (CJEU) has issued an important judgement on interpretation of the Habitats Directive (Case C-323/17, *People over Wind, Peter Sweetman v Coillte Teoranta*, judgement dated 12 April 2018). For the avoidance of doubt, I have taken that judgement into consideration but it does not affect my conclusions on the matter of appropriate assessment.
365. Whilst abolition of the IDD would not have significant effects on some matters and only relatively modest effects on others, the lack of certainty over its possible impact on the designated features of 2 of the SSSIs and of the River Arun SAC, SPA and Ramsar site leads me to the conclusion that the IDD should not be abolished.

Recommendation

366. I recommend that the Order to abolish the River Arun Internal Drainage District be not made.

Clive Nield

Inspector

APPEARANCES

FOR THE ENVIRONMENT AGENCY:

Mr William Upton of Counsel	Instructed by Peter Bilbrough, Senior Solicitor, Environment Agency.
He called:	
Mr David Robinson, BSc(Hon)	Operations Manager, Solent & South Downs Area, EA.
Mr Peter Carver, BSc, AICA	Clerk and Financial Advisor to River Arun Internal Drainage District.
Mr Andrew Strudwick, HNC	Asset Performance Technical Advisor, Solent & South Downs Area, EA.
Mr Richard Fuller, MEng, CEng, MICE	Senior Technical Advisor, Solent & South Downs Area, EA.
Mrs Jane Birch, BSc, MSc	Biodiversity Technical Specialist, Solent & South Downs Area, EA.

OBJECTORS:

Mr Tom Ormisher, BSc	Environment and Land Use Advisor, National Farmers Union.
Mr Martin Rogers, MSc	Flood Management and Access Advisor, NFU.
Mr Simon Breasley, BSc	Thyme Consultants Limited (representing several farmers and landowners).
Ms Jane Willmott, BSc(Hon)	Reserves Manager, Sussex Wildlife Trust.

MAIN DOCUMENTS

- 1 Environment Agency's Scheme for Abolition of the River Arun Internal Drainage District, dated 19 August 2015.
- 2.1-2.15 Letters of Objection submitted to Defra following advertisement of Proposed abolition scheme.
- 3 Defra's Notice of Intention to hold a Public Inquiry, dated 11 October 2017.
- 4 Statement of Matters on which the Secretary of State particularly wishes to be informed, dated October 2017.
- 5 Environment Agency's Statement of Case.
- 6.1-6.12 Other parties' Representations or Statements of Case:
 - 6.1 – Country Land and Business Association.
 - 6.2 – The Norfolk Estate and The Angmering Park Estate.
 - 6.3 – Mr Robert Ayling, farmer.
 - 6.4 – Horsham District Council (Cabinet Report 13 Nov '15)
 - 6.5 – Arun Valley Vision Group.
 - 6.6 – Mr Roger Gillam, landowner.
 - 6.7 – Mr Mark Dallyn, farmer.
 - 6.8 – Arundel Town Council (Statement of Case and Proof of Evidence).

- 6.9 – Sussex Wildlife Trust.
- 6.10 – National Farmers’ Union.
- 6.11 – Mr Simon Breasley, Thyme Consultants Ltd.
- 6.12 – RSPB (Statement of Case with Appendices, and Supplementary Statement).
- 7 Natural England’s Written Representation with plans and 18 Appendices.
- 8 Mr Robinson’s Proof of Evidence with Appendices.
- 9 Mr Carver’s Proof of Evidence with Appendices.
- 10 Mr Strudwick’s Proof of Evidence with Appendix.
- 11 Mr Fuller’s Proof of Evidence with Appendices.
- 12 Mrs Birch’s Proof of Evidence with Appendices.
- 13 Messrs Ormisher/Rogers’ Joint Statement of Evidence with 15 Appendices.
- 14 Mr Breasley’s Statement of Evidence with 23 Appendices.
- 15 Ms Willmott’s Proof of Evidence, Summary, Maps and Appendices.

DOCUMENTS SUBMITTED AT INQUIRY

- INQ1.1-1.3 Environment Agency’s Opening Statement, accompanied by 2 legal judgements.
- INQ2 Defra Guidance on the Designation of “main rivers”, submitted by EA.
- INQ3 ADA/EA Guidance on Establishing New Internal Drainage Boards, submitted by EA.
- INQ4 EA Protocol for the maintenance of flood and coastal risk management assets, submitted by EA.
- INQ5 IDD Asset Register, dated February 2018, submitted by EA.
- INQ6 Agricultural Land Classification Maps (2 No.), submitted by EA.
- INQ7 Arun IDB Drainage Rates and Special Levies, 2017-18, submitted by EA.
- INQ8 The “Medway” Letter of 28 June 1933, submitted by Mr Breasley.
- INQ9 2 No. Flood Zone Maps, submitted by Mr Breasley.
- INQ10 9 No. Maps of Watercourses and Structures North of Houghton, submitted by EA.
- INQ11 6 No. Maps of Watercourses and Structures South of Houghton, submitted by EA.
- INQ12 Extract from MEICA Asset Database for Greatham and Hardham Pumping Stations, submitted by EA.
- INQ13 Leaflet describing Southern Water Services’ Hardham Water Resources Project, submitted by Mr Breasley.
- INQ14 Network Rail letter, dated 20 February 2018, submitted by EA.
- INQ15 3 No. plans of proposed Waltham Brooks Ground Reprofiting Scheme, submitted by EA.

- INQ16 Southern Water Services' Discharge Consent for Hardham Pumping Station and Treatment Works, dated 1966, submitted by EA.
- INQ17 Map 11A, correcting Map 11 in EA's Statement of Case and showing correct position for IDD's Hardham Pumping Station, submitted by EA.
- INQ18 Defra Guidance on Water Level Management Plans for European Sites, submitted by Mr Breasley.
- INQ19 2004 Report (for Defra and English Nature) on Review of the Contribution of Water Level Management Plans, submitted by Mr Breasley.
- INQ20 Discussion Document: Possible Wording of Conditions in the Scheme, submitted by EA.
- INQ21 The River Adur Internal Drainage District Order 2016, submitted by EA.
- INQ22 The Pevensey and Cuckmere Water Level Management Board Order 2016, submitted by EA.
- INQ23 Description of Coldwaltham Scheme at Waltham Brooks, submitted by EA.
- INQ24 MEICA Asset Status Summary for Greatham, Hardham and Houghton Pumping Stations, submitted by EA.
- INQ25 Email from Mr Breasley concerning the availability of information on the Hardham Water Treatment Works abstraction licence and discharge consent.
- INQ26 EA Email concerning records of the Hardham WTW discharge facilities.
- INQ27 Arun District Council Land Drainage Byelaws, submitted by EA.
- INQ28 "Living on the Edge" Guidance Document concerning Owning a Watercourse (Referred to by the NFU), submitted by EA.
- INQ29 Pack of documents concerning Abstraction Licence and Discharge Consent re Hardham WTW (as referred to in Mr Breasley's email), submitted by EA.
- INQ30 Old Aerial Photograph (by Luftwaffe) indicating absence of any previous channel at Waltham Brooks.
- INQ31 Note explaining funding arrangements for District Council responsibilities for land drainage and flood risk, submitted by EA.
- INQ32 Closing Submission for the Sussex Wildlife Trust.
- INQ33 Mr Breasley's Closing Summing Up.
- INQ34 NFU's Closing Submission.
- INQ35 Closing Submissions for the Environment Agency.
- INQ36.1-36.3 Addendum to EA's Closing Submissions (responding to human rights issues raised by the Sussex Wildlife Trust in its Closing Submission) with 2 No. accompanying legal judgements, submitted to timetable set by Inspector.
- INQ37 9 No. detailed maps used for accompanied site visit.