



The London Resort Development Consent Order

BC080001

Explanatory Memorandum

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Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Regulation 5(2)(c)

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The Proposed London Resort Development Consent Order

Draft Explanatory Memorandum

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1. **Introduction**

1.1 This memorandum explains the purpose and effect of each article of, and the Schedules to, the draft London Resort Development Consent Order 202[] (“the Order”), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹ which requires explanatory memoranda to explain “the purpose and effect of provisions in the draft Order”.

2. **Purpose of the Order**

Nationally Significant Infrastructure Project

2.1 London Resort Company Holdings Limited (“LRCH”) is applying to the Secretary of State for a development consent order (“DCO”) for a new entertainment resort to be called ‘London Resort’ (“the proposed development”).

2.2 The Infrastructure Planning (Business or Commercial Projects) Regulations 2013 (the “Regulations”) came into effect on 18 December 2013. The Regulations extended the range of developments that may be recognised to be nationally significant – and thus subject to the DCO process introduced by the Planning Act 2008 (as amended) (the “Act”), – to include major conference, sport, leisure and tourism projects. On 9 May 2014, following an application by LRCH, the Secretary of State for Communities and Local Government directed that the proposed development is a nationally significant infrastructure project (“NSIP”) for which a DCO is required under the Act.

2.3 The proposed development consists of the following components in the County of Kent, the District of Dartford, the District of Gravesham and in the administrative area of Thurrock Council:

2.3.1 the construction of buildings and facilities for tourism and leisure uses including:

2.3.1.1 events spaces, themed rides, entertainment venues, theatres, and cinemas;

2.3.1.2 a covered market and ancillary facilities with retail, dining and entertainment facilities;

2.3.1.3 guest facilities;

2.3.1.4 the construction of two internal visitor entrance areas comprising ticketing point and ancillary commercial uses;

2.3.1.5 hard and soft landscaping including amenity water features such as ponds and canals;

2.3.1.6 pedestrian and cycle access routes including the provision of pedestrian and cycle infrastructure; and

2.3.1.7 service and emergency service vehicle routes and associated facilities.

Associated development

2.4 A DCO can, in addition to the NSIP, authorise ‘associated development’.

2.5 The Order specifically authorises ‘associated development’, being development that is associated with the NSIP or any part of it. The Secretary of State may, under the provisions of section 115 of the Act, grant consent for development that is associated with the NSIP.

2.6 Guidance on associated development has been issued by the Secretary of State². This guidance explains that the Secretary of State will decide on a case by case basis whether or not development should be treated as associated development and provides the core principles that will be taken into account. These principles include:

'Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.'

'Associated development should not be an aim in itself but should be subordinate to the principal development.'

- 2.7 The description of the authorised development in Schedule 1 to the Order includes the following associated development which supports the construction and operation of the principal development and is subordinate to that development, in accordance with the core principles set out in the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government) guidance:
- 2.7.1 The construction of up to three multi storey parking buildings in Kent with drop-off and taxi provision as part of a maximum provision of 7,500 car spaces, overflow coach parking spaces, 350 motorcycle spaces and 250 secure cycle spaces for visitors and a multi storey parking building in Essex with drop-off and taxi provision as part of a maximum provision of 2,500 car spaces and 50 coach parking spaces for visitors.
- 2.7.2 Highway works comprising works to the A2(T) to provide a junction connecting the A2(T) with the road leading to the Entertainment Resort and associated works related to the safeguarding and diversion of underground utility connections in that area.
- 2.8 The construction of two hotels with a total of up to 1,900 rooms and one hotel with up to 850 rooms providing family, upmarket, luxury and themed accommodation; and the construction of one hotel with up to 800 rooms and covered market with food and beverage offer ancillary uses including kitchens, storage, loading, servicing and laundry services, including music and entertainment venues.
- 2.9 The construction of a "conferention centre" (a combined conference and convention centre) with a floor area of up to 11,000 m², an eSports Arena with a total floorspace of up to 18,000 m² and ancillary accommodation and loading bay.
- 2.10 The construction of a waterpark with majority of area enclosed including hard and soft landscaping and external pool area.
- 2.11 The construction of buildings and facilities to support the Entertainment Resort operations including emergency and security services facilities, maintenance facilities, costuming facilities, employee administration and welfare, medical facilities, offices, storage facilities, central kitchen facilities, service roads and access roads connection to local network and resort road, hard and soft landscaping including amenity features and staff parking spaces.
- 2.12 The construction of a visitor centre, staff training facilities building and concierge services with associated staff parking.
- 2.13 The construction of a road leading from the A2(T) to the Entertainment Resort (the "Resort Access Road"), including tunnels beneath the A226 London Road and the North Kent Railway Line, a bridge deck adjacent to Ebbsfleet International Station, a new bridge structure over the Resort Access Road adjacent and permitting connection to the existing HS1 "Bridge to Nowhere", an extension to the existing A2260 bridge structure over HS1 (see Work No. 26 for associated works), junctions with existing roads, relocation of affected car parking within Ebbsfleet International Station Car Park D, an associated pedestrian and cycle way, a "people mover" road, ecological mitigation and landscape works, associated attenuation; and works related to the safeguarding and diversion of underground utility connections and existing landfill systems in that area, including land affected by temporary works and construction compounds.
- 2.14 The construction of a transport interchange area with coach driver facilities, pedestrian plaza, hard and soft landscaping including amenity water features such as ponds and canals, public art, pedestrian and cycle way, 'people mover' road, vehicle road, up to
- 2.15 150 coach parking and a maximum provision of 200 car parking spaces.

- 2.16 The construction of pedestrian and cycle routes, 'people mover', road, vehicle road, landscape works and works related to the safeguarding and diversion of underground utility connections in that area.
- 2.16.1 The construction of service facilities, including
- 2.16.1.1 roll-on roll-off and barge unloading and loading facilities and enhancement works on the existing wharf (Bell Wharf), refurbishment of White's Jetty, dredging adjacent to Bell Wharf, the construction of warehouse services and infrastructure buildings including waste-water pumping station, and waste transfer facilities and the safeguarding and diversion of underground utility connections in that area;
- 2.16.1.2 services and infrastructure buildings including energy centre, district cooling and heating plant, service yard, welfare facilities, substations, data centres, security facilities, central backup generators, central gas boiler backup, water storage and treatment stations, and waste transfer facilities and the safeguarding and diversion of underground utility connections in that area;
- 2.16.1.3 services and infrastructure buildings including water storage, waste-water treatment, outfall to discharge treated effluent into the river Thames, leachate treatment facility and the safeguarding and diversion of underground utility connections in that area; and
- 2.16.1.4 services and infrastructure buildings including energy centre, district cooling plant, service yard, welfare facilities, substations, data centres, security facilities, central backup generator, central gas boiler backup, water storage and treatment stations, and waste transfer facilities and the safeguarding and diversion of underground utility connections in that area. The construction of a river boat terminal and floating pontoon on the south side of the river Thames including dredging adjacent to Bell Wharf, temporary outfalls, barge berth and access ramp, and the creation of salt marshes.
- 2.16.2 Works to the existing Tilbury Riverside Terminal including ticketing, luggage storage, food, beverage and catering facilities, the creation of pedestrian routes and landscaped amenity areas, a surface outfall within the existing river wall and a floating pontoon and flood defence works on the north side of the river Thames.
- 2.16.3 The construction of a dedicated terminal building for visitors and staff arriving by rail at Ebbsfleet International Station, including ticketing, luggage storage, food, beverage and catering facilities, and upgrade capacity works to Ebbsfleet International Station as required to improve circulation.
- 2.16.4 The creation of a green zone to include areas of environmental enhancement and wildlife habitat creation, landscape and ground works, pedestrian walkways and cycle routes and public amenity area, beside the river Thames including the creation of vehicle, pedestrian and cycle routes and allow flood defences to be constructed, and enhancement of road works for maintenance access to infrastructure within the marshes.
- 2.16.5 The enhancement of flood defence works including shore protection works, vehicle, cycle and pedestrian routes and the creation of a green zone to include areas of environmental enhancement and wildlife habitat creation, the creation and enhancement of salt marshes, landscape and ground works, pedestrian walkways and cycle routes and public amenity area, adjacent to the river Thames.
- 2.16.6 The construction of staff accommodation of up to 500 dwellings, including associated vehicle, cycle and pedestrian routes, shared workspace and multifunctional spaces, small scale retail facilities for residents, outdoor and indoor amenity space, landscape works and subsoil works to London Road relating to the construction of tunnel through the chalk spine.

- 2.16.7 Roundabout upgrade works; highway upgrade and capacity works and new pedestrian bridge; highway upgrade and capacity works and pedestrian footpath enhancement works; works to an existing surface level car park; the construction of either a multi-storey car park for up to 1,200 parking spaces or a multi-storey car park for up to 1,200 parking spaces; and highways improvements works to the A2260 for potential dualling of the carriageway on the vehicle bridge over HS1.
 - 2.16.8 Landscape works related to ecological enhancement, pedestrian walkways and minor highways alterations and street works to improve pedestrian and cycle safety; and landscape works related to ecological enhancement, pedestrian walkways, and drainage works.
 - 2.16.9 Works and connections related to the existing UKPN Ebbsfleet substation, and the existing UKPN Northfleet East substation.
 - 2.16.10 Temporary works and construction compounds and the creation of access to and relocation of affected car parking spaces within Ebbsfleet International Station Car Park D.
 - 2.16.11 Works to the existing landfill infrastructure including gas pipes and flares.
- 2.17 LRCH considers that all elements of the proposed development either constitute part of an NSIP or are 'associated development' within the meaning of section 115(2). Schedule 1 to the Order contains a list of numbered works comprising the proposed development described above.

Ancillary matters

- 2.18 The Order also contains several powers that are ancillary to the authorised development, i.e. provisions not consisting of development.
- 2.19 The main ancillary matter is a power to acquire land or rights over land compulsorily in accordance with section 120(4) of the Act, required for the authorised development, or to facilitate, or that are incidental to the authorised development under section 122 of the Act. Justification for these powers is set out in the Statement of Reasons (application document reference 4.1) that accompanies the application.
- 2.20 The Order seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. It is for this reason that, under sections 117 and 120(5) of the Act, the Order must be made by way of a Statutory Instrument. The Order is therefore in that form.
- 2.21 Other ancillary matters include provisions for the improvement, alteration, diversion and stopping up of lengths of existing highways in the vicinity of the proposed development, the stopping up of private means of access and the creation of new private means of access and the application and disapplication of legislation relating to the proposed development.

3. Draft Order

- 3.1 The purpose and effect of the provisions of the Order are now explained in sequence. Although the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ('the Model Provisions') has been repealed, the Order draws on the Model Provisions, as well as precedent set by DCOs that have been made, although this is the first application for a DCO of this type. For completeness, references to 'LRCH' below should be read as references to its agents and contractors, and to any other persons who have the benefit of the Order or any statutory rights transferred to them pursuant to Article 7.

4. **Part 1 – Preliminary**

Preamble

4.1 The Order, in common with all statutory instruments, is introduced by a preamble.

Article 1 (Citation and commencement)

4.2 Article 1 sets out the name of the Order, establishing how it may be cited in subsequent legislation. It also states the date on which the Order comes into force. There is no such provision in the model provisions, but it is considered necessary to name the Order and this is a standard article that is included in all DCOs.

Article 2 (Interpretation)

4.3 Article 2(1) defines the terms used in the remainder of the Order.

4.4 The definitions used in the model provisions are amended and supplemented to reflect the particular circumstances of the proposed development and changes to the Act which have been made since it was originally enacted. A number of definitions are added, including: "the 1981 Act"; "the 2009 Act", a number of different plans and other 'control documents' that are intended to be certified, and miscellaneous terms such as "electronic transmission"; "limits of deviation"; and "maintain".

4.5 Other amendments have been made to the definitions used in the model provisions, including the fact that "relevant planning authority" has been amended to refer to the local planning authority for the areas to which the specific provision relates, and to mention the Ebbsfleet Development Corporation (EDC). This is necessary as the site of the authorised development currently straddles four planning authority areas, on top of which EDC was created in 2015 to carry out certain planning functions for parts of Dartford and Gravesham Borough Councils' areas.

"The undertaker" is defined as London Resort Company Holdings Limited ("LRCH") in relation to the authorised development.

4.6 Other definitions to note are:

"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and pre- construction ecological mitigation, environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus, site clearance for construction compounds, the installation of site compounds, and the temporary display of site notices or information and "commencement" is to be construed accordingly. The pre-commencement works have been given their own definition for clarity.

This makes it clear that a number of works that would constitute a "material operation" may be carried out within meaning that the authorised development has been "commenced". This enables LRCH to undertake certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2, which LRCH considers to be proportionate. These activities may in some cases need to be carried out in order to comply with the pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval). LRCH should be permitted to carry out low-impact preparatory works following the grant of the Order while it is working to discharge the pre-commencement requirements, thereby helping to minimise the construction timetable. This provision is widely precedented (The M20 Junction 10a Development Consent Order, The Silvertown Tunnel Development Consent Order) and, in particular, closely follows the definition contained in the M42 Junction 6 Development Consent Order 2020.

"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not replace the whole of the authorised development, but only insofar as such activities do not give rise to any materially new or materially different

environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly.

“replace” includes to demolish, clear, remove existing rides, buildings and facilities and the construction of new rides, buildings and facilities for tourism and leisure use providing such works do not give rise to any materially new or materially different environmental effects to those identified in the Environmental Statement. This has been given a definition because of the project being an entertainment resort where the rides and other attractions will change over time.

The inclusion of “adjust” and “alter” is justifiable on the basis that during maintenance operations changes to existing specifications may be required. Similarly, “remove” is included as it may be necessary to remove something in order to repair, clean or replace it, for example. LRCH consider this is appropriate and it is an approach that is precedented – see for example the A19/A1058 Coast Road (Junction Improvement) Development Consent Order

2016, the A19/A184 Testo’s Junction Alteration Development Consent Order

2018, and the M42 Junction 6 Development Consent Order 2020. In addition,

activities that would give rise to materially new or materially different environmental effects in comparison to those identified in the environmental statement are excluded from the ambit of permissible maintenance activities for the purpose of this definition, which means that there is an effective control on the limit of the extent of this power to maintain.

- 4.7 Article 2(2) has been amended to clarify references to the imposition of restrictions on the Order land.
- 4.8 Article 2(3) defines measurements as approximate, in line with the general model provisions. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order there is no issue over whether the works are permitted by the Order. This provision allows for a small tolerance with respect to any distances and points, although all works will take place within the limits of deviation. It is commonplace to include such a provision in an Act or instrument authorising linear infrastructure.
- 4.9 Paragraphs (4) to (10) of Article 2 are not in the general model provisions.
- 4.10 Article 2(4) provides that areas given in square metres the book of reference (application document reference 4.3) are approximate since the book of reference is outside the scope of article 2(3). Paragraphs (5) to (6) of article 2 explain how references in the Order to letters or numbered points and to numbered works are to be construed. Paragraph (10) can be found in the M42 Junction 6 DCO 2020 and clarifies the extent of the phrase ‘rights over land’.

5. **Part 2 – Principal powers**

Article 3 (Development consent granted by the Order)

- 5.1 Article 3 grants development consent for the authorised development within the Order limits. The authorised development is described in Schedule 1. The authorised development means the development described in Schedule 1, which includes associated development under section 115(2) of the Act, and any ancillary development. The development consent is subject to the requirements set out in Schedule 2.
- 5.2 Paragraph (3) of article 3 allows for the replacement of Work No. 1(a) (i.e. the rides and other attractions) and not the remainder of the resort, which is not covered by this provision.
- 5.3 Paragraph (4) of article 3 confirms the parameters and limits of deviation within which the works described in Schedule 1 must be carried out. Further commentary on this is provided below in relation to article 5.

Article 4 (Maintenance of authorised development)

- 5.4 This article authorises LRCH to maintain the development. “Maintain” is defined in article 2(1) as described above. Maintenance of the authorised development, within the meaning that

would be authorised by this article, has been assessed in the Environmental Statement (application document reference 6.1), and the power is constrained, through the definition of “maintain”, by the proviso that maintenance works must not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement.

Article 5 (Parameters of authorised development)

- 5.5 This article sets out the degree of flexibility that the works may involve.
- 5.6 Laterally, the works must be contained within the limits of deviation to be set out in the table and shown on the works plans; vertically, they must be contained within the heights shown in the table and on the parameter plans, reflecting the ‘Rochdale envelope’ approach to environmental impact assessment.
- 5.7 The lateral limits of deviation are shown on the works plans and constrain the location of these works within the limits of deviation but the definition does allow construction activities for those works to be carried out anywhere within the order limits.
- 5.8 The vertical limits of deviation have been set to any extent upwards within the limits of deviation shown on the parameter plans and any amount necessary or convenient downwards, with two exceptions: highway works can only deviate up to 1.5 metres upwards from the levels shown on the highway plans, and where two works are adjacent on the works plans they can deviate by up to 20 metres between them, although the overall area they occupy must remain the same. Again, the purpose is to provide a necessary but proportionate degree of flexibility in the construction of the authorised development and to reduce risk. The reference to “...any extent downwards...” is taken from the DCO general model provisions and also the TWA model provisions and is common in linear projects. An element of flexibility in downwards deviation is required so that any construction can reflect extant ground conditions when the works are carried out.
- 5.9 The ability to deviate within the prescribed limits of deviation is important to ensure that, if the precise “as built” alignments or elevations are different to those indicatively shown on the application plans, no question arises as to whether or not the works are permitted by the Order. As further detailed design will take place, the limits of deviation therefore ensure that LRCH (or, where any powers are transferred, other statutory undertakers or persons) have sufficient flexibility to design and construct the authorised development post consent.
- 5.10 The limits of deviation set out in article 5 have been developed through the design and environmental impact assessment process for the authorised development. As such, the article is an adaptation of the article set out in the Model Provisions and, in terms of principle, it accords with the majority of DCOs made to date (for example article 6 of the A19/A184 Testo’s Junction Alteration Development Consent Order 2018, and article 8 of the A30 Chiverton to Carland Cross Development Consent Order 2020). The use of parameter plans is not common in DCOs, where vertical limits of deviation are normally described in words and the table has been added as a suggested addition to this article for clarity.
- 5.11 The maximum limits of deviation set out in paragraph (1) do not apply where it is demonstrated to the satisfaction of the Secretary of State (and the Secretary of State has certified accordingly following consultation with the relevant planning authority) that such deviation would not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement (application document reference 6.1).
- 5.12 This is not an impermissible “tailpiece” provision as the limits of deviation referred to in this article and shown on the application plans have been taken into account in the preparation of the Environmental Statement and the potential impacts of a deviation within the permitted limits have been assessed. LRCH is only permitted to exceed the limits specified in this article if it can demonstrate to the satisfaction of the Secretary of State that no materially new or materially different environmental effects would arise.

- 5.13 Paragraph (2) clarifies that the process set out in part 2 of Schedule 2 to the Order, which applies in relation to applications to discharge any of the requirements in Part 1 of Schedule 2, will also apply to any application to the Secretary of State for certification under paragraph (1), as though it were an application for approval under the requirements. This ensures there is a clear, defined process in place for applications to the Secretary of State under this article. Paragraph (2) is identical to article 6(2) of the A19 Downhill Lane Junction Development Consent Order 2020.

Article 6 (Benefit of Order)

- 5.14 Article 6 overrides section 156(1) of the 2008 Act (as permitted by section 156(2) to give the benefit of the Order to LRCH rather than anyone with an interest in the land. Under section 156 of the 2008 Act, an order granting development consent in respect of any land has effect for the benefit of the land and all persons for the time being interested in the land, unless contrary provision is made in the Order. This article makes such contrary provision, overriding section 156 (as permitted by section 156(2)) to restrict the benefit of the Order to LRCH (subject to paragraph (2) and article 7) rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to be afforded powers to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to remain.
- 5.15 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others, e.g. in relation to the construction of a new private means of access. Absent this provision, there would be a contradiction since strictly speaking only LRCH could benefit from these works. The same wording has been accepted and approved by the Secretary of State in other orders, for instance the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (see article 8(2)) and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 (see article 7(2)).

Article 7 (Transfer of benefit of Order)

- 5.16 This article allows any or all of the benefits of the provision of the Order to be transferred or leased to others by LRCH, with the consent of the Secretary of State.
- 5.17 Article 7(3) ensures that the exercise of any transferred benefits or statutory rights (e.g. the power of compulsory acquisition of land or rights) is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were exercised by LRCH. The consent of the Secretary of State is required for a transfer or grant, except where it is made under Article 7(4) which sets out a limited number of instances in which the consent of the Secretary of State is not required.
- 5.17 This article is based on article 5 of the Model Provisions. It differs in that paragraph (4) allows a transfer or grant to the holder of a licence under section 6 of the Electricity Act 1989 (so for example to allow the infrastructure constructed under Works Nos. 27a and 27b to be transferred to UKPN) or where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant to take place without the Secretary of State's consent. This wording is used in a number of made DCOs, including the Eggborough Gas Fired Generating Station Order 2018 and the West Burton C (Gas Fired Generating Station) Order 2020. It is justified as it is considered that in granting a generating licence under the Electricity Act 1989, the Secretary of State will have established the fitness of the licence-holder and its suitability to take the benefit of the Order.

Article 8 – Application of the 1990 Act

- 5.18 This article applies to specified works which, though temporary in nature, would be in place for a considerable period of time (e.g. temporary office accommodation). The article applies section 57(2) of the Town and Country Planning Act 1990 to those works to clarify that planning permission is not required for the resumption, at the end of that period, of the purpose for which that land was normally used before the development consent was granted.

Article 9 – Planning permission

- 5.19 This article ensures that free-standing planning permissions may be granted for development within the Order limits and will not constitute a breach of the terms of the DCO. Class B of Part 18 of the Town and Country Planning (General Permitted Development) (England) Order 2015 refers to development at amusement parks.
- 5.20 Paragraph (2) confirms that permitted development provisions continue notwithstanding the provisions of this DCO.
- 5.21 Paragraph (3) equates this DCO to planning permission for the purposes of tree preservation, hedgerow and forestry legislation, where planning permission obviates the need for certain permissions.
- 5.22 Paragraph (4) provides that the DCO overrides any works licences under the Port of London Authority Act 1968 or conditions attached to any planning permissions. The latter provision is preceded in several made DCOs, such as the Lake Lothing (Lowestoft) Third Crossing DCO granted in 2020. The former part is because works licences are not publicly available and may conflict with the provisions of the DCO unknown to LRCH.

6. **Part 3 – Streets**

Article 10 (Street works)

- 6.1 This article allows works to be carried out in or upon streets identified in Schedule 3 (streets subject to street works) within the Order Limits and follows the general model provisions.
- 6.2 The authority given by this article is a statutory right for the purposes of section 48(3) (Streets, street works and undertakers) and 51(1) prohibition of unauthorised street works) of the 1991 Act which means that the Order replaces the need to apply for a street works licence under that Act.

Article 11 (Application of the 1991 Act)

- 6.3 Article 11 modifies the application of the New Roads and Street Works Act 1991 (the 1991 Act) to works carried out under the powers of the Order.
- 6.4 Paragraph (1) provides that works carried out under the powers of the Order which match the description of “major highway works” in the 1991 Act will be treated as major highway works for the purposes of the 1991 Act. The effect of this is to clarify that the provisions for sharing the burden of dealing with apparatus in the street (under sections 84 and 85 of the 1991 Act), which would normally apply only to major works carried out by the highway authority, will apply in respect of the works authorised by the Order irrespective of who in fact carries them out.
- 6.5 Paragraph (2) relates to “major highway works” which are defined at section 86 of the 1991 Act. The definition includes, at sub-sections 86(3)(b) and (f), works undertaken under powers conferred by sections 64 and 184 of the Highways Act 1980. As that would not be relevant in this context (where the works will be undertaken under the powers of the Order), these sub-sections are omitted from paragraph (1)(a). Works equivalent to works undertaken under those sections of the Highways Act 1980, but carried out under powers conferred by the Order, are included through paragraph (1)(b). The effect is that any works which would be “major highway works” under the 1991 Act if carried out by a highway authority in relation to one of its streets are also “major highway works” if carried out under the powers of the Order regardless of who carries them out.
- 6.6 Paragraph (3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order (particularly article 3 and Schedule 1), and the provisions in the Order (including the requirements) which would regulate the carrying out of the Order works.
- 6.7 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to any streets which are temporarily closed, altered, diverted or restricted under the

Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporary closure, alteration, diversion or restriction are "street works" for the purposes of the 1991 Act and, secondly, it simplifies the implementation of the works by providing for a single process in respect of streets which are temporarily closed, altered, diverted or restricted and those which are not.

- 6.8 Paragraphs (7) to (9) cover permit schemes, whereby highway authorities have schemes for the coordination of street works – permit schemes will continue to apply, but cannot be granted subject to conditions that would result in the a breach of the DCO were they to be complied with. Kent County Council has a permit scheme created by the Kent Permit Scheme Order 2015 and Thurrock Council has the Thurrock Council Permit Scheme 2017.

Article 12 (Power to alter layout, etc., of streets)

- 6.9 This article is not included in the Model Provisions but does appear in a similar form in a number of made DCOs – see for example article 12 of the National Grid (Hinkley Point C Connection Project) Order 2016 and article 10 of the Southampton to London Pipeline order 2020. This article is provided for under section 120(3) and (4) together with paragraph 15 of Part 1 of Schedule 5 to the 2008 Act, namely the carrying out of civil engineering or other works. The powers under this article are subject to the protective provisions set out in Schedule 11.
- 6.10 Paragraph (1) would permit LRCH and anyone else with the benefit of the Order permanently to alter the layout of the streets listed in Schedule 4 to the Order to accommodate the authorised development.
- 6.11 Paragraph (2) provides a broader power to permanently or temporarily alter the layout of any street within the Order limits and the layout of any street having a junction with such a street (i.e. where the street is not listed in Schedule 4) and the person undertaking the work is not the street authority for that street. To exercise this broader power, the consent of the street authority must be obtained.
- 6.12 This power is included to ensure that LRCH has the necessary flexibility to alter streets which, at the date on which the Order is made, are not listed in Schedule 4 (for example, due to issues arising during construction). This provision has been accepted in other made DCOs – see for example article 11(2) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and article 10(2) of the Southampton to London Pipeline Order 2020 – and is considered to be reasonable because the consent of the street authority must be obtained before it can be exercised.
- 6.13 Paragraph (2) also sets out a broad range of works that LRCH may undertake on any street, including altering the level or increasing the width of any kerb, footpath, footway, cycle track or verge, making and maintaining vehicle crossovers and passing places and providing or altering parking places, loading bays and cycle tracks. The works listed in article 10(2) do not limit the scope of works that can be undertaken by LRCH on streets listed in Schedule 4, however by virtue of paragraph (4) they need the consent of the street authority. The range of activities provided for in article 10(2) has precedent in other DCOs –see for example article 12 of the River Humber Gas Pipeline Replacement Order 2016 and article 10 of the Southampton to London Pipeline Order 2020.
- 6.14 Paragraph (3) provides that any street altered temporarily under this article must be restored to the reasonable satisfaction of the street authority.
- 6.15 Paragraph (5) provides that where a street authority (other than National Highways) fails to respond to an application for consent within 28 days of the application being made, it is deemed to have given its consent. This provision is necessary to enable LRCH to exercise its powers and undertake works in an efficient and expeditious manner and to give full effect to the power to carry out the authorised development as is provided for under section 120(5) of the 2008 Act. Its inclusion was approved in the National Grid (Hinkley Point C Connection Project) Order 2016 and the Southampton to London Pipeline Order 2020.

Article 13 (Permanent stopping up of streets, rights of way and rights of access)

- 6.16 This article allows streets named in Schedule 5 to be permanently stopped up (i.e. the legal right of way along them to be extinguished). In the case of Parts 1, 3 and 5, a substitute is to be provided. In the case of Parts 2, 4 and 6, no substitute is to be provided. Additionally, Part 7 creates two rights of way that do not correspond to the stopping up of any existing rights of way.
- 6.17 Paragraph (2) confirms that, in respect of the streets in Parts 1, 3 and 5, the power under this article is not to be exercised unless:
- 6.17.1 The new street to be substituted has been completed and is open for use; or
- 6.17.2 A temporary alternative route for the street to be stopped up is first provided and subsequently maintained by LRCH.
- 6.18 Paragraph (4) provides a right to compensation for any person who suffers loss due to the suspension or extinguishment of any private right of way under this article.
- 6.19 Since the definition of a "street" in section 48 of the 1991 Act includes highways and footways, the stopping up and diversion of footpaths and footways are also dealt with in this article and Schedule 5. The wording is based on numerous highways DCOs, see for example article 12 of the A19/A1058 Coast Road (Junction Improvement) Order 2016 and article 13 of the A19/A184 Testo's Junction Order 2018.

Article 14 (Temporary closure, alteration, diversion and restriction of use of streets and rights of access)

- 6.20 This article allows for the temporary closure, alteration, diversion or restriction of the use of streets and rights of access for the purposes of the authorised development.
- 6.21 Paragraph (2) differs from the Model Provisions and confers a power on LRCH to use a street or right of access which has been temporarily closed, altered, diverted or restricted as a temporary working site. This provision which has precedent in recent orders made under the Transport and Works Act 1992.
- 6.22 Paragraph (3) states that reasonable access for pedestrians going to or from properties abutting a temporarily closed, altered, diverted or restricted street must be provided.
- 6.23 Without limitation on the scope of paragraph (1), paragraph (4) provides for the temporary closure, alteration, diversion or restriction of streets specified in Schedule 6 (in fact there is only one street listed), subject to the provision of temporary diversions as specified in Schedule 6 where the consent of the street authority is not required.
- 6.24 Paragraph (5) confirms that LRCH must not close, alter, divert or restrict those streets listed Schedule 6 without first consulting the relevant street authority and, in respect of any other street, without the consent of the street authority, which may impose reasonable conditions.
- 6.25 Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article.
- 6.26 Paragraph (7) states that a street authority (other than National Highways) which fails to notify LRCH of its decision in respect of an application for consent within 28 days of the application being made to it is deemed to have given its consent. It is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by LRCH in a timely fashion. The article is a standard provision in made DCOs (see for example article 11 of the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016) although the article has been updated to reflect LRCH's understanding that Highways England no longer refers to "temporary stopping up" (the particular drafting used in the Order reflects the Southampton to London Pipeline Development Consent Order 2020).

Article 15 (Access to and from works)

- 6.27 This article allows LRCH to provide or form means of accesses to and from public highways within the Order limits.
- 6.28 Such accesses may only be created with the consent of the planning authority after consulting the highway authority. If the authority (other than National Highways) fails to respond to the application within 28 days (as explained above), it will be deemed to have granted consent. Otherwise, the article follows the general model provision.

Article 16 (Agreements with street authorities)

- 6.29 This article is a provision relating to, or to matters ancillary to, the proposed development under section 120(3) of the 2008 Act and provides that LRCH and relevant street authorities may enter into agreements relating to such matters as are listed in paragraph (1) (a) – (g).
- 6.30 The list in paragraph (1) is based on and broadly reflects article 14(1) of the Model Provisions. Subparagraph (1)(b) has been added to clarify that, as well as providing for the construction of streets (including any structures carrying those streets) an agreement may relate to strengthening, improving, repairing or reconstructing streets. A very similar provision has precedent in the Southampton to London Pipeline Development Consent Order 2020.
- 6.31 This power to enter into agreements with street authorities is necessary as section 278 of the 1980 Act (agreements as to the execution of works) does not relate to the powers under the Order but to a local authority devolving its powers (under section 278 of that Act). A similar approach has been taken in made DCOs, such as article 17 of the Southampton to London Pipeline Development Consent Order 2020.
- 6.32 Paragraph (2) outlines what matters the agreements may address. This list covers the same matters as article 13(2) of the general model provisions.
- 6.33 Paragraph (3) makes clear that the article does not apply to streets within the main site which are intended to be private streets.

Article 17 (Traffic regulation)

- 6.34 This article allows LRCH to regulate traffic on the roads and in the ways specified in Schedule 14. Part 1 of the Schedule establishes one road as a clearway, and part 2 prohibits vehicular traffic and two right turns.
- 6.35 Should further traffic regulation be necessary, paragraph (2) allows this to be imposed with the consent of the relevant traffic authority. Paragraph (3) sets out procedural requirements for such traffic regulation and paragraph (4) deems the regulation as if it had been made by the traffic authority. Paragraph (5) allows any traffic regulation under paragraph (1) or (2) to be varied by following the procedure in paragraph (2). Paragraph (7) deems consent to have been given by the traffic authority (other than National Highways) if it does not respond within 28 days of a request being made to it.

Part 4 – Supplemental powers

Article 18 (Discharge of water)

- 6.36 This article establishes statutory authority for and sets out the circumstances in which LRCH is entitled to discharge water into a sewer, watercourse or drain in connection with the carrying out or maintenance or use of the authorised development. This statutory authority is subject to LRCH obtaining the consent of the owner of the sewer, watercourse or drain, but that consent must not be unreasonably withheld.
- 6.37 Paragraph (6) requires LRCH to take such steps as are reasonably practicable to ensure that any water that is discharged is free from gravel, soil or other solid substance, oil or matter in suspension.

- 6.38 Paragraph (8) states that a person who fails to notify LRCH of their decision in respect of an application for consent/approval within 28 days of the application being made is deemed to have given consent/approval. This time limit is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by the undertaker in a timely fashion. As an NSIP, the authorised development should not be at risk of being held up due to a failure to respond to an application for consent/approval.
- 6.39 It is too early to say whether such discharges to private watercourses will be needed, as they will be very specific to ground conditions at the time of construction. LRCH has not, at this time, approached any such owners though they will be contacted as soon as possible when appropriate. Any owner that may potentially be affected will have been included in consultation.
- 6.40 The article is similar to the general model provision, except—
- 6.40.1 Paragraph (7) provides that nothing in the article overrides the requirement for an environmental permit under Regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016;
- 6.40.2 paragraph (8) has been added to provide that if an authority fails to respond within 28 days of an application for approval or consent under this article it shall be deemed to have been given or granted; and
- 6.40.3 a definition of “main river” has been added for clarity.
- 6.41 This article has been included in previous other made DCOs (see for example article 20 of the M42 Junction 6 Development Consent Order 2020 and article 18 of the Southampton to London Pipeline Development Consent Order 2020).

Article 19 (Protective work to buildings)

- 6.42 This article sets out the circumstances in which protective works can be carried out to buildings within the Order limits that it is considered might be damaged by the works. Except in an emergency, 14 days’ notice must be given to the owner of the building, and the owner can seek arbitration by serving a counter-notice. The power lasts until five years after the relevant part of the authorised development comes into operation. There is an entitlement to compensation for loss or damage.
- 6.43 article is identical to the general model provisions article 15.

Article 20 (Authority to survey and investigate land)

- 6.44 This article gives LRCH the power to enter land within the Order limits for the purpose of surveying or investigating it. The article provides that LRCH must give at least 14 days’ notice before exercising the powers of entry, and that compensation is payable for any loss or damage. Paragraphs (1) to (6) are based on the general model provisions and have precedent in a number of made DCOs to date. Paragraph (7) has precedent in the Southampton to London Pipeline Development Consent Order 2020.
- 6.45 The Drafting in paragraph (1) departs from the general model provisions by authorising surveys on land which may be affected by the authorised development. This extension beyond the Order limits has precedent (see article 23 of the M42 Junction 6 Development Consent Order 2020, article 19 of the A19 Downhill Lane Development Consent Order 2020 and article 22 of the A30 Chiverton to Carland Cross Development Consent Order 2020). Powers to make excavations and boreholes to investigate groundwater and discharge water onto land are also included, to ensure that LRCH is able to undertake all necessary activities in connection with surveying the land.
- 6.46 The ability to survey land affected by the project is required so that LRCH can be confident that the surveys can be conducted to assess the effects of the project, or on the project, from outside its limits. It imposes a lesser burden than seeking compulsory acquisition of such land.

6.47 Paragraph (7) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused.

7. **Part 5 – Powers of Acquisition**

Article 21 (Compulsory acquisition of land)

7.1 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire such land as is required for the authorised development or is incidental to it or necessary to facilitate it. This is subject to article 23 (time limit for exercise of authority to acquire land compulsorily), article 24 (compulsory acquisition of rights and imposition of restrictive covenants), article 29 (acquisition of subsoil or air-space only) and article 31 (temporary use of land for carrying out the authorised development).

7.2 This provision is necessary to secure the delivery of the project as set out in more detail in the Statement of Reasons (application document reference 4.1) accompanying the application. There is precedent for this form of article (see for example article 20 of the A19/A184 Testo's Junction Alteration Development Consent Order 2018, which reflects the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014).

Article 22 (Power to override easements and other rights)

7.3 For the avoidance of doubt, this article provides that, by virtue of section 158 of the 2008 Act, in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, LRCH (or any person deriving title from LRCH or any contractor, servant or agent of LRCH) may interfere with any interest or right to which the article applies or breach any restriction as to the use of land arising by virtue of a contract.

7.4 The above power is specifically conferred by paragraph (1), with paragraph (3) clarifying the definition of the interests and rights to which this article applies.

7.5 It also provides that, by virtue of section 152 of the Act, compensation may be payable under section 10 of the 1965 Act for any such interference or breach.

7.6 This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. The article has precedent in article 20 of the Brecha Forest Wind Farm Connection Order 2016.

Article 23 (Time limit for exercise of authority to acquire land compulsorily)

7.7 This article gives LRCH five years to issue 'notices to treat' or to execute a 'general vesting declaration' to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring land may be undertaken should this Order be made. The time period is the same as that contained in the general model provisions article.

Article 24 (Compulsory acquisition of rights and imposition of restrictive covenants)

7.8 This article allows LRCH to acquire rights over the Order land, listed in Schedule 7, including by creating new rights for the purpose of the authorised development.

7.9 Paragraph (1) provides that LRCH may acquire or create rights as described in the book of reference with the general nature and extent of these rights also shown in the land plans.

7.10 As well as providing for the acquisition of rights, the article enables LRCH to impose restrictions (as described in the book of reference) over the Order land for the purposes of the authorised development. This power to impose restrictions on the use of land is considered a proportionate means of protecting the authorised development whilst minimising the extent of land to be compulsorily acquired. This power has appeared in Orders made under the Transport and Works Act 1992, particularly in contexts where it is

necessary to restrict use of land or airspace above or beneath an authorised development which consists of a viaduct or tunnel. The power to impose restrictions is appropriate in the context of the proposed development to restrict use of land or airspace above or beneath the overhead electric lines or underground cables. The plots and the restrictions to be imposed are confirmed and described in the book of reference.

- 7.11 General model provision paragraph (2) has not been included as a similar provision is instead included in article 24 (extinguishment and suspension of private rights).
- 7.12 Paragraph (2) provides that where LRCH needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 7.13 Paragraph (3) and Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) impose modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictions in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired), and is commonplace in Transport and Works Act Orders and other compulsory purchase orders made by local authorities. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
- 7.14 General model provision paragraph (4) has not been included as equivalent provision has instead been made in article 24 (extinguishment and suspension of private rights).
- 7.15 Paragraphs (4) and (5) provide that LRCH, with the consent of the Secretary of State, may transfer to statutory undertakers its power to acquire rights or impose restrictions, where the diversion, replacement or protection of apparatus is required on Order land. The benefit of this is that it would avoid possible delay and uncertainty by statutory undertakers being required to exercise their own powers. For them to do so would be unnecessary given that the action taken would be no different than if the powers were created within this Order.
- 7.16 Paragraph (6) provides that the power to acquire rights or impose restrictive covenants does not preclude the acquisition of other rights or covenants by others and the exercise of the rights in the article cannot preclude such acquisition. It is the same as article 28(2) in the Great Yarmouth Third River Crossing Development Consent Order 2020.

Article 25 (Private rights over land)

- 7.17 As outlined above in the commentary, this article has expanded upon the general model provision so as to apply to private rights generally and not just to rights of way.
- 7.18 It provides for the extinguishment of private rights over land subject to compulsory acquisition and the extinguishment of private rights over land subject to the compulsory acquisition of rights (in so far as the continuance of the existing right would be inconsistent with the right acquired) from the date of the acquisition of the land or rights, or the date of entry, whichever is earliest. Private rights on land already owned by LRCH within Order limits would be extinguished on the commencement of any activity authorised by the Order which interferes with or breaches such rights. This draws on the approach taken in article 17 of the Rookery South (Resource Recovery Facility) Order 2011. It allows LRCH to “clear title” on land it already owns.
- 7.19 All private rights over land that is temporarily occupied by LRCH are suspended and unenforceable for the duration of the occupation.
- 7.20 The article makes provision in relation to the payment of compensation. There is a saving for statutory undertakers. Private rights are defined in paragraph (9). This builds on the definition of rights given in article 21(2) of the general model provisions and includes the wider definition used in article 18(3) of the Rookery South (Resource Recovery Facility) Order 2011.

Article 26 (Application of the 1981 Act)

- 7.21 This article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a DCO) the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 (the 1981 Act) to compulsory acquisition under the Order, so that LRCH has the option of acquiring Order land that is subject to the powers of compulsory acquisition by vesting declaration.
- 7.22 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase. The other method involves serving a notice to treat on the land owner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.
- 7.23 A vesting declaration, in contrast, sets the date on which title in the land is transferred to the acquiring authority. Compensation is negotiated or determined and paid later. Vesting declarations therefore allow title in the land to pass to the acquiring authority more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. Their use is subject to serving notices and observing time limits as required by the 1981 Act (as amended by the Housing and Planning Act 2016).
- 7.24 The modifications ensure that appropriate references are made to the 2008 Act.
- 7.25 The modifications are based in large part on previous highways NSIPs and, following amendments to the 1981 Act by the Housing and Planning Act 2016, the High Speed Rail (London - West Midlands) Act 2017. More specifically:
- 7.25.1 Paragraph (4) modifies section 1(2) so that section 1 applies to LRCH.
- 7.25.2 Paragraph (5) modifies section 4(1) so that acquisition on behalf of a third party is included;
- 7.25.3 Paragraph (6) modifies section 5 to remove the reference to situations where the compulsory purchase order is subject to special parliamentary procedure.
- 7.25.4 Paragraph (7) omits section 5A, on the basis that the Order prescribes the time limit for compulsory acquisition in article 23.
- 7.25.5 Paragraph (8) modifies the statutory reference in section 5B(1), on the basis that the 2008 Act contains equivalent provisions that apply in respect of DCOs. The cross-reference to section 5A is also modified, to reflect the time limit applicable to the Order.
- 7.25.6 Paragraph (9) modifies the statutory references in section 6(1)(b), on the basis that the 2008 Act contains equivalent provisions that apply in respect of DCOs.
- 7.25.7 Paragraph (10) modifies section 7(1)(a) in respect of constructive notice to treat under the Acquisition of Land Act 1981.
- 7.25.8 Paragraph (14) modifies paragraph 1(2) of Schedule A1 to change the reference to compulsory purchase orders excluding land that is 9 metres or more below the surface from the counter-notice procedure to article 29, which has the same effect in relation to the acquisition of subsoil or airspace only.
- 7.25.9 Paragraph (15) clarifies that references to the Compulsory Purchase Act 1965 in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act and as modified by article 28, on the basis that both section 125 and article 28 modify the provisions of the 1965 Act.
- 7.26 The above provisions are based on article 23 of the Model Provisions. Due to extensive changes to the relevant provisions of the 1981 Act since the Model Provisions came into force, the wording of this article departs from the Model Provisions and LRCH has instead sought to follow the precedent established by recent DCOs (see for example article 26 of the A19 Testo's Junction Alteration Development Consent Order 2018, article 28 of the M20 Junction 10a Development Consent Order 2017 and article 24 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016).

7.27 Paragraphs (3), (5), (11), (12) and (13) are intended to allow the compulsory acquisition of rights and land in favour of a third party such as a statutory undertaker. These provisions are not contained in the Model Provisions but are intended to provide confirmation that the 1981 Act can be used to acquire rights and land on behalf of third parties, without the need to acquire the land in favour of LRCH and then transfer such land or rights to a third party, thereby causing a delay to any transfers of land or rights to those who are intended to benefit from such acquisition.

Article 27 (Modification of the 2017 Regulations)

7.28 This article modifies the Compulsory Purchase of Land (Vesting Declaration) (England) Regulations 2017 to ensure that the interests and rights in land which are intended to benefit a third party, such as a statutory undertaker whose apparatus may be re-located in order to construct the authorised development, will vest in that third party instead of LRCH, who would otherwise be the acquiring authority in respect of those interests and rights.

7.29 The amendments to these regulations, as well as the changes described in paragraph 7.24 above, confirm the position that notwithstanding references in the 1981 Act and 2017 Regulations to vesting land "in themselves" (i.e., in the Acquiring Authority), land and rights can be acquired by LRCH in favour of any third party identified directly. This is a drafting change which confirms the ability for LRCH to acquire such rights and land (where such powers of acquisition are not transferred to another person to acquire rights/land directly), and is not a substantive change to the rights or land sought for permanent acquisition.

Article 28 (Modification of Part 1 of the 1965 Act)

7.30 This article modifies the provisions of Part 1 of the Compulsory Purchase Act

1965 as applied to the Order by section 125 of the 2008 Act. In accordance with section 126(2) of the 2008 Act, these provisions are modified only to the extent necessary to ensure that they apply properly to the compulsory acquisition powers authorised by the Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017 and article 29 of the M42 Junction 6 Development Consent Order 2020.

Article 29 (Acquisition of subsoil or air-space only)

7.31

7.32 This article allows LRCH to compulsorily acquire land, rights or both, in the subsoil or of the airspace over land that is subject to compulsory acquisition, as required for the Project and its protection from subsequent development and other conflicting events or actions, instead of acquiring all of the land up to and including the surface and airspace.

7.33 The purpose of this article is to give LRCH the flexibility to minimise so far as is possible the extent of surface interests to be acquired, with consequently less impact on landowners and lower compensation payments. It is considered to be in the public interest to provide this flexibility at the point at which LRCH begins to acquire the necessary land.

7.34 Provision has been added in (5) that the power in article 21 will be restricted for certain land to subsoil or airspace only. These plots will be set out in Schedule 8.

Article 30 (Rights under or over streets)

7.35 The purpose of this article is to allow LRCH to appropriate streets within the Order limits, without being required to acquire any part of the street or any easement or right in the street. The exercise of this power, without full acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

7.36 This article was included in the Model Provisions and the majority of DCOs made to date. It is considered that the article remains necessary for the authorised development, notwithstanding the effect of the Housing and Planning Act 2016, and it was retained in recent DCOs (see, for example, article 32 of the M42 Junction 6 Development Consent Order

2020 and article 29 of the Southampton to London Pipeline Development Consent Order 2020).

Article 31 (Temporary use of land for carrying out the authorised development)

- 7.37 This article follows, in part, general model provision 28 and allows the land set out in column 1 of Schedule 9 to be occupied temporarily by LRCH while the works are carried out.
- 7.38 A modification to the model provision has been made to allow LRCH also to take temporary possession of any of the Order land which may be subject to compulsory acquisition of land or rights but in respect of which LRCH has not yet served a notice of entry or made a general vesting declaration. This provision has appeared in Orders made under the Transport and Works Act 1992.
- 7.39 It allows LRCH to occupy land to construct the authorised development without having to acquire the land, or a right over the land. Once constructed, that land, or rights in the land, may be compulsorily acquired. This means that LRCH will be able to compulsorily acquire rights to retain, operate and maintain the authorised development over an area of land which matches the final footprint of the authorised development. This provides flexibility to LRCH and, for the landowner, minimises the area of land required for the compulsory acquisition of land or rights, which has a lesser impact on the landowner. There is a consequent amendment to paragraph (4) to refer to the two different categories of land.
- 7.40 Paragraph (1)(d) has also been added to the model provision to allow specified works to be constructed on the land listed in Schedule 1. Paragraph 1(e) has been added to allow permanent mitigation works to be constructed.
- 7.41 Paragraph (5) provides that before giving up temporary possession of land listed in column 1 of Schedule 10 LRCH must remove all temporary works and restore the land save for the exceptions listed in sub-paragraphs (a) to (d) which has been amended to allow works of mitigation and other works to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided but LRCH does not need to retain a permanent interest in the land and has precedent in the Network Rail (Nuneaton North Chord) Order 2010⁶.
- 7.42 Paragraph (6) provides that LRCH must pay compensation for any loss or damage caused by the temporary possession.
- 7.43 Paragraph (10) prevents LRCH from acquiring the land listed in Part 1 of Schedule 10 but allows rights or subsoil only to be acquired, as long as the land is listed in Schedule 7 (recent applications have not had this proviso, which meant that permanent rights could be imposed on all land apparently subject only to temporary possession). The model provision has been amended to also allow restrictions to be imposed on the Schedule 10 land and for air-space to be acquired (as long as so shown on the Land Plans). These changes reflect the powers in articles 21 (compulsory acquisition of land) and 29 (acquisition of subsoil and air-space only).
- 7.44 Paragraph (13) makes clear that the power in this article can be exercised on more than one occasion. This change is intended to clarify the intention behind the model provision rather than to expand its scope.

Article 32 (Temporary use of land for maintaining the authorised development)

- 7.45 This article provides for entry upon, and the taking temporary possession of, land within the Order limits (except for houses, gardens and any other building for the time being occupied) reasonably required to maintain the authorised development. At least 28 days' notice must be given, and compensation must be paid for any loss or damage.

Article 33 (Statutory undertakers)

- 7.46 This article provides LRCH with statutory authority to acquire interests in and rights over land owned by statutory undertakers (i.e. utilities operators such as electricity and gas companies).

- 7.47 It also allows LRCH to extinguish rights owned by statutory undertakers over the Order land, and to remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the Land Plans and described in the Book of Reference. In practice, it is impractical to show and describe all such apparatus as its existence is often unknown, and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order land is required.
- 7.48 As the land over which this power may be exercised is shown on the Land Plans, and the beneficiaries of such rights are described in the Book of Reference, the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 7.49 The article is subject to Schedule 10 which contains protective provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions despite the interference with their rights/apparatus required to facilitate the Project.
- 7.50 This article has broad precedent (see article 32 of the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, article 29 of the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 and article 30 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016).

Article 34 - Apparatus and rights of statutory undertakers in stopped up streets

- 7.51 This article governs what happens to statutory undertakers' apparatus (e.g. pipes, cables) under streets that are stopped up by the Order. Without the article, the statutory undertaker would not have access to the apparatus, since there will no longer be a right of way along the street. Under paragraph (2), the statutory undertaker may remove, relocate or replace any affected apparatus of its own volition, or must do so if it is reasonably requested by the undertaker.
- 7.52 Under paragraph (3), the statutory undertaker would receive compensation from LRCH for any relocation works and associated costs. Paragraphs (4) and (5) discount from this compensation the cost associated with a higher specification in the replacement apparatus. Paragraph (6) discounts from this compensation the increase in value to the statutory undertaker for having new rather than old (i.e., older than 7½ years) apparatus.
- 7.53 Paragraph (7) provides that where statutory undertakers are affected by a stopping up in relation to those parts of the Project that constitute "major bridge works", "major transport works" or "major highways works", as defined in the 1991 Act, the cost sharing provisions under that Act will apply instead of the compensation provision in this article.
- 7.54 This article is a standard provision for DCOs (see, for example, article 36 of the A30 Chiverton to Carland Cross Development Consent Order 2020).

Article 35 (Recovery of costs of new connection)

- 7.55 This article is identical to the general model provisions article and provides that if any statutory undertaker's apparatus is removed and this cuts a service to anyone, such that they have to seek a connection to other apparatus, then the cost of establishing a new service can be claimed from LRCH.

8. Part 6 – Miscellaneous and general

Article 36 (Protective provisions)

- 8.1 This article simply gives effect to Schedule 10, which contains provisions protecting the interests of third parties. The schedule is based on the standard protective provisions approved by the Secretary of State in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 and the M42 Junction 6 Development Consent Order 2020. These provisions will apply unless either side agreements disapplying them are reached with statutory undertakers, or bespoke provisions are added to the Schedule. LRCH has sought the views of the statutory undertakers who have interests affected by the authorised development and continues to negotiate with the statutory

undertakers to ensure any concerns are dealt with appropriately. LRCH will provide a full update of the status of the negotiations throughout the examination.

Article 37 (Crown rights)

- 8.2 This article prevents the undertaker from acquiring any Crown land (as defined in the 2008 Act and shown on the Crown Land Plans (application reference 2.3)), or from otherwise interfering with such land, without the written consent of the relevant Crown authority. The Crown's consent may be given unconditionally or subject to terms and conditions. The proposed Order land includes parcels of land which constitute Crown land. This article has been included to ensure that any acquisition of other landholdings, creation or extinguishment of rights cannot create any interference with the rights of the Crown.
- 8.3 This article reflects the provisions of section 135 of the 2008 Act. The drafting is based on recent DCO precedent, see for example article 57 of the Lake Lothing (Lowestoft) Third Crossing Order 2020 and the Southampton to London Pipeline Development Consent Order 2020.

Article 38 (Deemed marine licence)

- 8.4 This article constitutes deemed consent (as provided for under section 149A of the 2008 Act) under section 65 of the Marine and Coastal Access Act 2009, the successor provision to section 34 of the Coast Protection Act 1949. Schedule 12 sets out the terms on which the licence would be granted. The overall structure of this licence reflects that found in the Norfolk Vanguard Offshore Windfarm Order 2020 (Schedules 9-12) at the request of the Marine Management Organisation, and authorises the deposit and removal of substances and structures from the River Thames.
- 8.5 This article identifies the relevant part of the River Thames that may have to be closed during the construction of the authorised development, which is shown on the Access, Rights of Way and Public Rights of Navigation Plans (application reference 2.6).
- 8.6 This article would also enable the closure of the relevant part of the river during the construction of the works. This work is necessary so that works adjacent to, and over, the river can be completed safely.
- 8.7 This article is not a general model provision but has precedent in Transport and Works Act Orders where the completion of the works also required interference with waterways.

Article 39 (Temporary closure of, and works in, the river Thames)

- 8.8 This article governs the temporary closure of, and works in, the river Thames that will be necessary to construct the authorised development. The works may be carried out in 'the relevant part of the river', which is shown hatched on the Access, Rights of Way and Public Rights of Navigation Plans (application reference 2.6), and is within the limits of deviation for the works that have a marine element.
- 8.9 It follows other examples such as paragraph 10 of Schedule 2 to the Crossrail Act 2008. It must be limited in time and area as much as possible, by virtue of paragraph (4), and paragraph (5) provides that compensation is payable for any loss. While the closure is in effect, the PLA's rights and obligations are suspended by virtue of paragraph (3) and it may not carry out activities or grant a works licence over the area by virtue of paragraph (5).

Article 40 (Temporary Closure of, and works in, the river Ebbsfleet)

- 8.10 This article governs the temporary closure of, and works in, the river Ebbsfleet that will be necessary to construct the authorised development. The works may be carried out in 'the relevant part of the river'.

- 8.11 It follows other examples such as paragraph 10 of Schedule 2 to the Crossrail Act 2008. It must be limited in time and area as much as possible, by virtue of paragraph (4), and paragraph (5) provides that compensation is payable for any loss.

Article 41 (Felling or lopping trees)

- 8.12 This article allows any tree, shrub or hedgerow that is near the authorised development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 8.13 The article is identical to the general model provisions article except that reference to 'passengers' has been deleted from model provision 39(1)(b) as it is not relevant to the development authorised by the Order.
- 8.14 The article makes clear that the provisions do not apply to any tree identified as retained under the landscaping scheme without the agreement of the Local Planning Authority.

Article 42 (Trees subject to tree preservation orders)

- 8.15 This article permits the felling or lopping of trees subject to tree preservation orders (TPOs) that are specified in Schedule 12. In fact there is only one such TPO, which overlaps part of Work No. 4.
- 8.16 Paragraph (2) covers any new TPOs created within the Order Limits between this application for a DCO being made and the order coming into force.
- 8.17 Paragraph (3) provides that the obligation to replace the tree in the same place is removed, since this will not be possible if the works are to be built at that spot.

Article 43 (Application of landlord and tenant law)

- 8.18 This article governs the leasing of land by LRCH to any other person.
- 8.19 It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.
- 8.20 The article is identical to the general model provisions article.

Article 44 (Defence to proceedings in respect of statutory nuisance)

- 8.21 Section 158 of the Act confers statutory authority for carrying out the Project for the purposes of a defence in statutory nuisance generally, subject to any contrary provision made by a particular DCO. This article is such a contrary provision, amending the terms of the defence.
- 8.22 This article amends the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by section 158).
- 8.23 The defence is available if the nuisance relates to:
- 8.23.1 the construction or maintenance of the Project, and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974, or cannot reasonably be avoided; or
 - 8.23.2 The use of the Project and cannot reasonably be avoided.

- 8.24 Paragraph (2) confirms that compliance with the controls and measures described in the Construction Environmental Management Plan approved under paragraph 5 of Schedule 2 will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided. This is an article that has precedent in recent DCOs, for example article 38 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 (and paragraph (2) is based on article 41(2) of the Southampton to London Development

Consent Order 2020) and is necessary to clarify the scope of the defence of statutory authority arising from the grant of the Order..

Article 45 (Certification of plans, etc.)

- 8.25 This article provides for various plans and other documents to be certified by the Secretary of State as true copies of those documents referred to in the Order. The documents in question (with their reference and revision numbers) are listed in Schedule 15. A form of this article is included in the Model Provisions and in the majority of DCOs made to date.

Article 46 (Service of notices)

- 8.26 This article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.
- 8.27 It is common to have such an article in an order authorising development such as this. The article has precedent in a number of DCOs including the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (see article 42) and the Southampton to London Pipeline Development Consent Order 2020 (see article 46).
- 8.28 The provision is useful because it provides clarity on the issue. It is noted that the service of notice provisions under sections 229 and 230 of the 2008 Act apply to notices served under that Act rather than notices served under a DCO made under that Act.

Article 47 (Arbitration)

- 8.29 This article governs what happens when two parties disagree over the implementation of any provision of the Order. The matter is to be settled by arbitration, and if the parties cannot agree on whom the arbitrator should be, this is decided by the Secretary of State.
- 8.30 The article is based on the general model provision with the insertion of the Secretary of State as the appropriate body to reflect the agreed position in recently made DCOs.

Article 48 (Procedure in relation to approvals, etc., under Schedule 2)

- 8.31 This article contains additional provisions in respect of any approval, consent or agreement which is required to be given under the Order. It provides that any such approval, consent or agreement given by the relevant body must be given in writing.
- 8.32 It also provides that the procedures set out in Schedule 2 (requirements) apply to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 2 and any other consents required under the Order. The article clarifies the procedure which applies in respect of these additional consents.
- 8.33 Part 2 of Schedule 2 (discharge of requirements) sets out the appeal process in relation to such matters and where an appeal can be made to the Secretary of State to discharge matters including the requirements in Schedule 2 (requirements) and other consents or approvals required under the Order.
- 8.34 This article and associated Schedule 2 (requirements) reflect the approach taken in the National Grid (North London Reinforcement Project) Order 2014 (article 45 and Schedule 3).
- 8.35 This appeal process is considered proportionate and justified in light of the size and scale of the authorised development proposed by the Order to ensure the delivery of the authorised development.

Article 49 (Disapplication and modification of legislative provisions)

- 8.36 Section 120(5)(a) of the Act provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.
- 8.37 Paragraph (1) lists the provisions that are disapplied, as follows:
- 8.37.1 The Towns Improvement Clauses Act 1847, which imposes restrictions on urban improvement projects;
 - 8.37.2 Certain provisions of the Port of London Act 1968, which require licensing of activities that this Order would already authorise;
 - 8.37.3 Section 28E of the Wildlife and Countryside Act 1981, which requires permission for works to be carried out in a Site of Special Scientific Interest, where this Order would grant that permission;
 - 8.37.4 Certain provisions of the Water Resources Act 1991, thus disappling byelaws of the Environment Agency;
 - 8.37.5 Certain provisions of the Land Drainage Act 1991, where consents to construct the works that might interfere with land drainage are required, when this Order would allow such works, and byelaws of an internal drainage board;
 - 8.37.6 The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 controlling the display of advertisements; and
 - 8.37.7 The requirement for an environmental permit for a flood risk activity and a waste operation.
- 8.38 Section 23 of the Land Drainage Act 1991, paragraphs 5 and 6 of Schedule 25 to the Water Resources Act 1991, and the requirement for an environmental permit can only be waived with the permission of the body that would have granted those consents. LRCH is seeking to obtain those permissions and will remove these provisions for any it does not obtain.
- 8.39 Paragraph (2) obviates the need for a works licence from the PLA for works authorised by this DCO.
- 8.40 Paragraph (3) disapplies the temporary possession provisions of the Neighbourhood Planning Act 2017, although these are not yet in force.
- 8.41 Paragraph (4) disapplies the need to apply for separate licences under the Licensing Act 2003, Safety of Sports Grounds Act 1975 and the Children and Young Persons Act 1963.
- 8.42 Paragraphs (5) and (6) allow the authorised development to be a location where marriages may be solemnised, without further consent.

Article 50 (Amendment of local legislation)

- 8.43 LRCH has performed a careful search of local legislation that is still in force that may interfere with the ability to build and operate the project as authorised by this DCO and lists 13 provisions that are disapplied, but only to the extent that they are incompatible with the provisions of the DCO:
- 8.43.1 An Act for repairing, widening, and maintaining the Road leading from Dartford to and through Northfleet and Gravesend, and thence to the Stones End, near the Parish Church of Strood, in the County of Kent 1822;
 - 8.43.2 An Act for improving the Dartford and Crayford Creeks in the County of Kent, and for making a Diversion in the Line of the said Dartford Creek, and other Works connected therewith 1840(h);
 - 8.43.3 South Eastern and London Chatham and Dover Railways Act 1901;
 - 8.43.4 Essex County Council Act 1933;

- 8.43.5 Gravesend and Milton Waterworks Act 1936;
 - 8.43.6 British Transport Commission Order Confirmation Act 1953;
 - 8.43.7 Dartford Prevention of Nuisance Byelaws 1977;
 - 8.43.8 Nuisances from Snow Filth Dust Ashes and Rubbish and for Preventing Keeping of Animals so as to be Prejudicial to Health in the Borough of Dartford Byelaws 1979;
 - 8.43.9 County of Kent Act 1981;
 - 8.43.10 Thames Water Authority Land Drainage Byelaws 1981;
 - 8.43.11 Dogs Fouling Footways and Verges and User of Motorcycles and Other Vehicles Byelaws 1988;
 - 8.43.12 Port of London Thames Byelaws 2012; and
 - 8.43.13 The Port of Tilbury (Expansion) Order 2019.
- 8.44 Paragraph (2) particularises what incompatibility means in this article: that it would make it an offence to implement the DCO, a person could take remedial action to undo an activity permitted by the DCO, or a power in local legislation would or might interfere with the implementation of the DCO.

Article 51 (Byelaws)

- 8.45 This article allows LRCH to make byelaws in order to regulate the behaviour of the public in the vicinity of the authorised development.
- 8.46 Paragraph (2) sets out the area where the byelaws can apply, which is essentially unpaid area within the Order Limits, since upon payment, visitors will be bound to observe the rules of the resort as a condition of entry. The byelaws set out at Schedule 13 are an initial set that come into force upon the coming into force of the DCO.
- 8.47 Paragraph (3) sets out the purposes for which byelaws can be made.
- 8.48 Paragraph (4) allows fines to be levied and the application of byelaws to vary across the authorised development.

Article 52 (Fixed penalty notices relating to byelaws)

- 8.49 This article sets out the process for penalising those who have breached the byelaws. It is based on article 46 of the Port of Tilbury (Expansion) Order 2019.
- 8.50 It governs the issuing and payment of fixed penalty notices.

Article 53 (Confirmation of byelaws)

- 8.51 This article sets out the process by which byelaws can be made and varied beyond the initial set contained in Schedule 13. It is based on article 47 of the Swansea Bay Tidal Generating Station Order 2015.

Article 54 (No double recovery)

- 8.52 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order. The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than the claimant's loss, is long established and no part of the compensation code conflicts with this principle.
- 8.53 This article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 39), the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 47) and the M42 Junction 6 Development Consent Order 2020 (article 46).

Article 55 (Guarantees in respect of payment of compensation)

- 8.54 This article relates to the funding mechanism for compulsory acquisition. This requires that before the powers of compulsory acquisition are exercised, LRCH must put in place either a guarantee or an alternative form of security. This wording is based on the Wrexham Gas Fired Generating Station Order 2017 and the Riverside Energy Park Order 2020.

Article 56 (Disregard of certain improvements, etc.)

- 8.55 This article provides for the Lands Chamber of the Upper Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.
- 8.56 It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 37), the River Humber Gas Pipeline Replacement Order 2016 (article 29) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (article 38), and orders under the Transport and Works Act 1992 such as the London Underground (Northern Line Extension) Order 2014 (article 32) and the Midland Metro (Wolverhampton City Centre Extension) Order 2016 (article 35).
- 8.57 The wording of this article mirrors section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act"). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and neither the 2008 Act, nor standard Order provisions, apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 57 (Set off for enhancement in value of retained land)

- 8.58
- 8.59 This article provides that, in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.
- 8.60 This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 38) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (article 39), and orders under the Transport and Works Act 1992 such as the London Underground (Northern Line Extension) Order 2014 (article 33) and the Midland Metro (Wolverhampton City Centre Extension) Order 2016 (article 36).
- 8.61 The principle in this article is established in section 7 of the Land Compensation Act 1961 (effect of certain actual or prospective development of adjacent land in same ownership),

which needs to be applied. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 58 (Development Consent Order Obligation)

8.62 This article allows LRCH to enter into a Development Consent Order with the Local Planning Authority and such obligation will be akin to a section 106 agreement under the Town and Country Planning Act 1990.

9. **Schedules**

9.1 **Schedule 1 (Authorised development)** - specifies numbered works comprised in the authorised development (the NSIP) for which development consent is sought and other associated development works. The works should be read alongside the parameter plans and the works plans.

9.2 **Schedule 2 (Requirements)** - contains draft requirements corresponding to conditions which, under section 120(2) of the Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the regime of the Act. The requirements have a similar purpose to planning conditions.

9.3 Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this Part of the Schedule. Paragraphs (2), (3) and (4) replicate model requirements 36 (requirement for written approval) and 37 (amendment to approved details) as they are more akin to an explanation of what is meant by the inclusion of certain terms within the requirements.

9.4 Requirement 2 (Time limits) replicates the model requirement in providing that the authorised development must be commenced within 5 years of the date of the Order.

9.5 Requirement 3 (Detailed Design Approval) provides that the development must be designed in accordance with the design and access statement (application document reference 7.1) and the design code (application document reference 7.2), documents which may be departed from with the agreement of the relevant local planning authority that the departures do not give rise to any new environmental impacts. This allows the necessary but proportionate degree of flexibility in the construction of this important and nationally significant project.

9.6 Requirement 4 (Pre-commencement Works) sets out that no pre-commencement works can be commenced until certain controls are in place. The exact nature of these controls are under discussion with the local planning authority.

9.7 Requirement 5 (Phases of development) provides for the production of a phasing plan, setting out details of earthworks, ecological mitigation etc., to be approved by the relevant local planning authority for the authorised development before development can commence. It also contains provision for a monitor and manage plan to be put in place.

9.8 Requirement 6 (*Maintenance and Replacement of the authorised development*) provides some limitations on the replacement of certain rides and buildings forming part of the authorised development. The exact details of this requirement are under discussion with the local planning authority.

9.9 Requirement 7 (Construction environmental management plan) requires a CEMP to be approved that is substantially in accordance with the outline CEMP that is submitted with the application (document reference 6.2.3.2). It must cover the listed topics as set out in the article.

9.10 Once construction is complete, the CEMP must be converted into a 'handover EMP' to govern the operation of the project (sometimes called an OEMP).

- 9.11 Requirement 8 (Landscaping) requires a landscape management plan to be developed that is in accordance with the outline plan submitted with the application (document reference 6.2.11.8) and also a more detailed landscape scheme to be submitted to the relevant planning authority and approved once the details of landscaping are developed.
- 9.12 Requirement 9 (Fencing and other means of enclosure) governs the approval of external means of enclosure for the phases of the project, given their visibility from outside the development.
- 9.13 Requirement 10 (Lighting details) requires lighting details to be submitted, approved and complied with before development of a phase can commence.
- 9.14 Requirement 11 (Flood risk and surface water discharge) provides for certain flood defence works to be in place for any part of the development which encroaches upon the floodplain that the works would protect. The mitigation proposed in the Flood Risk Assessment (application document reference 6.2.17.1) must be implemented. The requirement also makes provision for a surface water drainage scheme to be submitted and approved.
- 9.15 Requirement 10 (Contaminated land and groundwater) provides that no stage of the authorised development may commence until a contaminated land management strategy, substantially in the form of the draft strategy submitted with the application (document reference 6.2.18.9) has been approved by the relevant planning authority following consultation with the Environment Agency. The requirement also deals with previously unidentified contaminated land being found during construction; it must be reported to the relevant planning authority and the Environment Agency, and if remediation is necessary, a scheme for this must be drawn up, approved and implemented.
- 9.16 Requirement 12 (*Contaminated land and groundwater*) sets out that a contaminated land managed strategy substantially in the same form as the draft must be approved in writing by the local planning authority in consultation with Natural England prior to commencement of the authorised development. The authorised development must proceed in compliance with this strategy.
- 9.17 Requirement 13 (Waste) provides that the construction and operation of the project cannot take place until a construction waste management plan and an operational waste management strategy respectively, which accord with their outlines submitted with the application (document references 6.2.19.2 and respectively), have been submitted and approved.
- 9.18 Requirement 14 (Protected species) provides for pre-construction survey work to be done before commencement of each phase of the authorised development to establish whether any protected species are present and, if necessary, establish a scheme of protection and mitigation.
- 9.19 Requirement 15 (Ecological mitigation and management) provides that an ecological mitigation and management framework be approved by Natural England before development can commence, which must be substantially in the form of the draft framework submitted with the application (document reference 6.2.13.3).
- 9.20 Requirement 16 (Biosecurity) which principally concerns escapes of pollutants and non-native species into watercourses, provides that a biosecurity plan be submitted, approved and implemented, and it must accord with the outline biosecurity plan submitted with the application (document reference 6.2.13.9).
- 9.21 Requirement 17 (Historic environment) requires a historic environmental framework and mitigation strategy to be submitted, approved by Kent County Council and implemented, which must be substantially in the form of the draft framework submitted with the application (document reference 6.2.14.9).
- 9.19 Requirement 18 (Construction traffic management plan) requires a construction traffic management plan, substantially in accordance with the draft CTMP submitted with the application (document reference 6.2.9.2), to be submitted to and approved by the relevant highway authority, and implemented.

- 9.22 Requirement 19 (*Operational transport management plan*) requires an operational transport management plan to be submitted and approved including the details set out in the Requirement.
- 9.23 Requirement 20 (Employment and skills) requires an employment and skills strategy, substantially in the form of the outline strategy submitted with the application (document reference 6.2.7.7) to be submitted to and approved by Kent County Council, and implemented.
- 9.24 Requirement 21 (Energy) requires an energy strategy, substantially in the form of the draft energy strategy submitted with the application (document reference 6.2.20.3) to be submitted to and approved by the relevant planning authority, and implemented.
- 9.25 Requirement 22 (Navigational risk) requires a navigational risk assessment, substantially in the form of the draft navigation risk assessment submitted with the application (document 6.2.10.1) to be submitted to and approved by the Port of London Authority, and implemented.
- 9.26 Requirement 23 (*Offsite landscape and biodiversity mitigation*) requires that an offsite landscape and biodiversity mitigation establishment and management plan must be submitted and approved by the relevant local planning authority and must include the details listed in the Requirement. The management plan must then be implemented in full.
- 9.27 Requirement 24 (Amendments to approved details) provides that LRCH may submit to the relevant planning authority for approval any amendments to the approved plans, parameters, details or schemes.
- 9.28 Such amendments are only permissible where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved.
- 9.29 Requirement 25 (*Section 106 agreement*) sets out that no part of the authorised development can commence until a section 106 agreement has been entered into.
- 9.30 Part 2 of Schedule 2 (Discharge of requirements) applies to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Part 1 of Schedule 2 or under any other provision of the Order. It clarifies the procedure which applies in respect of these additional consents.
- 9.31 **Schedule 3 (Streets subject to street works)** sets out the streets referred to in article 10 subject to street works.
- 9.32 **Schedule 4 (Streets subject to permanent alteration of layout)** sets out the streets, referred to in article 12, the layouts of which are subject to permanent or temporary alterations.
- 9.33 **Schedule 5 (Permanent stopping up of streets, public rights of way and private means of access)** sets out the streets, footpaths and means of access which are subject to stopping up under article 13. Part 7 of the Schedule creates two new public rights of way without any corresponding stopping up.
- 9.34 **Schedule 6 (Streets or Rights of Access to be temporarily closed, altered, diverted or restricted for which a diversion is to be provided)** sets out the streets and public rights of way (in fact only one such) which are subject to temporary closure under article 14.
- 9.35 **Schedule 7 (Land in which new rights may be acquired)** sets out the land which is subject to the compulsory purchase powers in article 24.
- 9.36 **Schedule 8 (Restriction of Power of Compulsory Acquisition of Land under the surface and airspace over the land)** limits the power in article 21 to the subsoil or airspace of the plots which are to be set out in this schedule.

- 9.37 **Schedule 9 (Modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants)** pursuant to articles 24 and 46 sets out the modifications to the statutory provisions applicable to compensation and compulsory purchase under the Order where new rights are to be acquired.
- 9.38 **Schedule 10 (Land of which temporary possession may be taken)** sets out the land referred to in article 31 which LRCH may temporarily occupy and the purpose for which that temporary occupation may be taken. Land in this schedule may only be temporarily occupied unless it is also listed in Schedule 7.
- 9.39 **Schedule 11 (Protective provisions)** sets out the provisions for the protection of statutory undertakers affected by the authorised development. Part 1 provides protection for the electricity, gas, water and sewerage undertakers.
- 9.40 Part 2 provides protection for operators of electronic communications code networks. Part 3 provides protection for drainage authorities.
- 9.41 The protective provisions provided for so far are based on similar protective provisions found in the National Grid's (King's Lynn B Power Station Connection) 2013 and the National Grid's (North London Reinforcement Project) Order 2014.
- 9.42 These are default provisions and subject to additional bespoke provisions.
- 9.43 Part 4 provides protection for Network Rail and the operational railway, Part 5 provides protection for National Grid Electricity Transmission Plc, Part 6 provides protection for Southern Gas Networks Plc and Part 7 provides protection for National Highways.
- 9.44 **Schedule 12 (Deemed marine licence)** sets out the terms of the deemed marine licence.
- 9.45 **Schedule 13 (Trees subject to tree preservation orders)** sets out the trees subject to TPOs that may be affected by the works pursuant to the provisions of article 41.
- 9.46 **Schedule 14 (London Resort Byelaws)** sets out an initial set of byelaws that will apply to the unpaid area within the Order Limits.
- 9.47 **Schedule 15 (Traffic regulation)** sets out the traffic regulation measures that will apply to the project pursuant to the powers of article 17.
- 9.48 **Schedule 16 (Documents to be certified)** lists the documents and plans to be submitted with the application and to be certified by the Secretary of State, listed in application document reference order.

The Planning Act 2008

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

Regulation 5(2)(c)

The Proposed London Resort Development Consent Order

Draft Explanatory Memorandum