

A14
**Cambridge to Huntingdon
improvement scheme**
Development Consent Order Application

HE/A14/EX/257

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Revised Explanatory Memorandum to the draft DCO (Rev 6)

November 2015

INFRASTRUCTURE PLANNING

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING
(APPLICATIONS: PRESCRIBED FORMS AND
PROCEDURE) REGULATIONS 2009**

**THE A14 CAMBRIDGE TO HUNTINGDON
IMPROVEMENT SCHEME DEVELOPMENT
CONSENT ORDER**

EXPLANATORY MEMORANDUM

**(Updated to accompany Revision 6 of the draft
Development Consent Order submitted to the
examination on 11 November 2015)**

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1. SUMMARY

- 1.1 This memorandum explains the purpose and effect of each article of, and Schedules to, the draft A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order (“the Order”), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹.

2. PURPOSE OF ORDER

Nationally Significant Infrastructure Project – construction, improvement and alteration of a highway

- 2.1 Highways England is applying to the Secretary of State for Transport for an Order to authorise improvements to the A14 between Cambridge and Huntingdon. The development comprises:

- 2.1.1 widening of the A1 between Brampton and Alconbury over a length of approximately 5.6 km (3.5 miles) from the existing two lane dual carriageway to a three lane dual carriageway. Between Alconbury and Brampton Hut this would generally be achieved by widening on the east side of the existing road; between Brampton and Brampton Hut a new road would be constructed to the west of the existing A1 which would become the new A1. This would enable the existing carriageway over this length to form part of the new A14 Huntingdon southern bypass. A local access road approximately 2.5 km (1.6 miles) long would link the Ellington junction with Woolley Road;
- 2.1.2 a new Huntingdon southern bypass of approximately 20 km (12.5 miles) in length, which would provide a two lane dual carriageway between Ellington and the A1 at Brampton and a three lane dual carriageway between Brampton and Swavesey. The new bypass would cross over the river Great Ouse and the East Coast mainline railway, and would include junctions with the A1 at Brampton and with the A1198 at Godmanchester;
- 2.1.3 downgrading the existing A14 trunk road (by de-trunking to county road status, with ownership transferred to local government) over approximately 21 km (13 miles) between Brampton Hut and Swavesey, as well as between Alconbury and Spittals interchange;
- 2.1.4 Huntingdon town centre improvements, including the closure and demolition of the A14 viaduct over the East Coast mainline railway and Brampton Road in Huntingdon. A new link road would be constructed to improve accessibility into Huntingdon from the south and east by connecting the old A14 directly with Huntingdon ring road near the bus station, and by constructing

¹ S.I. 2009/2264

a new link road from Brampton Road to connect with the A14 to the west. As such, a through route for light vehicles would be maintained;

- 2.1.5 widening of the existing A14 over approximately 7.9 km (5 miles) to provide three lanes in each direction between Swavesey and Bar Hill, and four lanes in each direction between Bar Hill and Girton;
 - 2.1.6 widening of a 2.5 km (1.5 mile) section of the Cambridge northern bypass between Histon and Milton;
 - 2.1.7 improving existing A14 junctions at Swavesey, Bar Hill and Girton in order to increase the road's capacity, ensure compatibility with adjacent proposed developments such as Northstowe, and provide improved connections for non-motorised users; and
 - 2.1.8 a new local access road following the route of the A14 over a distance of approximately 8 km (5 miles), including construction of a dual carriageway link between the existing A14 near Fen Drayton and Swavesey junction and a single carriageway between Swavesey and Girton. The road would provide a route for local traffic between Cambridge and Huntingdon as well as providing access to properties and businesses along the corridor.
- 2.2 The main benefits of the proposed development are to(i) relieve congestion on a strategic link; (ii) unlock regional growth potential; and (iii) encourage heavy through traffic away from urban centres and village roads.
- 2.3 The proposed development lies wholly within England and includes the construction, improvement and alteration of a highway for which the Secretary of State is the highway authority. The highway to be constructed and altered will have a speed limit of 50 miles per hour or greater and the areas of development for construction and alteration are each greater than 12.5 hectares; also the improvement of the highway is likely to have a significant effect on the environment (which is considered in detail in the Environmental Statement accompanying the application). As a result the overall proposed construction, alteration and improvement development is a nationally significant infrastructure project ("NSIP") for the purposes of sections 14(1)(h) and 22 of the Planning Act 2008² ("the Act").
- 2.4 As the proposed development is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate ("PINS"), under section 37 of the Act.

² c.29

Associated development

- 2.5 The Order also specifically authorises development which is associated with the NSIP. 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 State for Communities and Local Government³. In this guidance, associated development is described as being “*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*” and “*requires a direct relationship between associated development and the principal development. 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 Order seeks consent for development which would constitute associated development. This includes:
- 2.7.1 the construction of various new slip roads for which the Secretary of State will not be the highway authority;
 - 2.7.2 the alteration of the layout of streets for which the Secretary of State is not the highway authority;
 - 2.7.3 works relating to drainage and watercourses;
 - 2.7.4 the construction of attenuation ponds and pollution control facilities;
 - 2.7.5 borrow pits and flood compensation areas;
 - 2.7.6 diversion of utilities apparatus, including gas and water pipelines and electric cables; and
 - 2.7.7 environmental mitigation measures.
- 2.8 In some cases there may be some overlap between associated development and the works which form part of the NSIP. All elements of the proposed development either constitute part of the NSIP or are “associated development” within the meaning of section 115(2) of the Act, and so can properly be authorised by the Order.

3. ANCILLARY MATTERS

- 3.1 The Order also contains several ancillary matters, i.e. provisions not consisting of development.

³ “Guidance on associated development applications for major infrastructure projects” (Department for Communities and Local Government) (April 2013).

3.2 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 is made by Statutory Instrument.

3.3 Other ancillary matters include the diversion and stopping up of lengths of existing highways in the vicinity of the route, the classification and re-classification of highways including the trunking and de-trunking of sections of highway, the application of speed limits, 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 project. A variation of the special road status of a portion of the M11 has also been included in the Order.

4. **DRAFT ORDER**

4.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009⁴ has lapsed, the draft Order is based on those model provisions (general and railway), as well as precedents in development consent orders that have been made to date.

5. **PART 1 – PRELIMINARY**

Article 1 – Citation and commencement

5.1 Article 1 sets out the name of the Order.

Article 2 – Interpretation

5.2 The purpose of article 2(1) is to define terms used in the remainder of the Order.

5.3 The following definitions in particular have been included due to the nature of the scheme:

5.3.1 “the 1984 Act”;

5.3.2 “bridleway”;

5.3.3 “carriageway”;

5.3.4 “cycle track”;

5.3.5 “footway” and “footpath”;

5.3.6 “NMU”;

5.3.7 “special road”; and

⁴ S.I. 2009/2265

- 5.3.8 “trunk road”.
- 5.4 Other definitions to note include:
- 5.4.1 “commence” which makes clear that a number of works that would constitute a "material operation" under the Town and Country Planning Act 1990 do not mean that the authorised development has been "commenced". This enables Highways England to undertake certain preparatory works prior to the submission of relevant details for approval under the requirements, which Highways England considers proportionate considering the nature and scale of the authorised development;
- 5.4.2 “the Order land” refers to land which is to be permanently acquired and land subject to powers of temporary possession; and
- 5.4.3 “the Order limits” references the ‘limits of deviation’ as defining the extent of the area within which the authorised development may be carried out as well as the extent of the Order land.
- 5.5 Article 2(2) expands the definition of rights over land and clarifies the purpose of the power within the Order to impose restrictive covenants.
- 5.6 Article 2(3) defines measurements as approximate. 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. Thus 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 provision in legislation authorising linear infrastructure – see, for example, the M1 Junction 10a (Grade Separation) Order 2013 at article 2(3), the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 at article 2(3) and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 at article 2(3).
- 5.7 Article 2(4) provides that areas given in the book of reference are approximate, since these are not covered by article 2(3). This is intended to clarify the position of the areas in the book of reference, and the purpose and effect is the same as set out in the previous paragraph. The term 'approximately' is used before all plot area measurements in the Book of Reference, as these measurements are given in square metres, and each measurement is rounded up to the nearest whole square metre. Such approximation relates only to land within the limits of land already identified within the Development Consent Order.
- 5.8 Articles 2(5)-(6) tie references to lettered/numbered points and numbered works in the Order to the relevant plans.

Article 3 – Disapplication of legislative provisions

- 5.9 This article provides (in reliance on section 120(5)(a) of the Planning Act (what may be included in order granting development consent)) for the disapplication in relation to the construction of the authorised development of certain requirements which would otherwise apply under public general legislation, as well local legislation. That subsection 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.
- 5.10 Article 3(1) provides for the disapplication of various additional consents which would otherwise be required from the Environment Agency, internal drainage boards, lead local flood defence authorities or Natural England under the Water Resources Act 1991, the Land Drainage Act 1991 or the Wildlife and Countryside Act 1981⁵. These are the requirements for consents to place structures on or over rivers or other watercourses under the Water Resources Act, the requirements for approval under flood defence and land drainage byelaws made or deemed to have been made under the Water Resources Act, the prohibition on placing obstructions in waterways which are not main rivers under the Land Drainage Act, the requirement for Secretary of State consent to vary an award which affects the drainage of land, byelaws made under the Land Drainage Act regulating the use and obstruction of watercourses and duties in relation to sites of special scientific interest under the Wildlife and Countryside Act. These are consents for activities which may be a necessary part of the project. In order to provide certainty that the project can proceed, the Order disapplies the requirement for in-principle consent, but instead provisions for the approval of detailed plans are included in the Order's protective provisions for the Environment Agency and the relevant drainage authorities in Schedule 8.
- 5.11 As these provisions (other than byelaws made under section 66 of the Land Drainage Act, section 32 of the Land Drainage Act 1991 and section 28E of the Wildlife and Countryside Act) are prescribed under section 150 of the Planning Act, the consent of the Environment Agency and the relevant drainage authorities to the inclusion of these provisions in the Order will be needed and these consents have been sought. The relevant protective provisions are still being discussed with the relevant regulators, but are, in the main, agreed.
- 5.12 Highways England has produced a Consents and Agreements Position Statement as part of this application which has been updated during the examination (**Applicant reference HE/A14/EX/105; PINS reference REP7-040**) which sets out in greater detail its proposed approach to obtaining the consents required for the proposed development.

⁵ 1991 c.57, 1991 c.59, 1991 c.56 and 1981 c.69

- 5.13 Article 3(2) provides for the disapplication of certain provisions of the Anglian Authority Water Act 1977 which have the potential to affect the construction of the authorised development. This has been agreed with the Environment Agency.

Article 4 – Maintenance of drainage works

- 5.14 The proposed development involves the realignment of a number of 'Award Drains', namely drains the maintenance of which was 'awarded' under the Inclosure Acts to various bodies, including local authorities. The purpose of article 4 is to make it clear that any realignment of Award Drains or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between Highways England and the responsible party.

6. PART 2 – PRINCIPAL POWERS

Article 5 – Development consent, etc., granted by the Order

- 6.1 Article 5 confers the principal power to construct the proposed development – the development consent. Schedule 1 describes the proposed development.
- 6.2 Article 5 grants development consent to Highways England to carry out any of the works.
- 6.3 Development consent is subject in particular to the requirements listed in Schedule 2.

Article 6 – Maintenance of authorised development

- 6.4 This article sets out the scope within which Highways England may maintain the development. In doing so, it supplements the standard maintenance powers under the Highways Act 1980 and ensures that Highways England has the necessary powers to allow the scheme to be maintained.
- 6.5 The definition of “maintain” is contained in article 2(1) and reflects that which was approved by the Secretary of State in the M1 Junction 10a (Grade Separation) Order 2013, 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. It is therefore considered to be appropriate and acceptable to adopt the same definition for this highway scheme. The various elements of the definition (“inspect, repair, adjust, alter, remove or reconstruct”) would bear their common sense meanings and would allow Highways England to undertake all types of works reasonably associated with maintenance.
- 6.6 It should be noted that powers of maintenance are subject to other provisions in the Order, in particular article 11, which makes provision in

relation to maintenance by highway authorities. Further, paragraph (2) does not allow maintenance works which would give rise to any materially new or materially worse environmental effect from those assessed in the environmental statement.

Article 7 - Limits of deviation

6.7 Since the authorised development involves linear works, article 7 provides for limits of deviation to allow for a lateral deviation from the lines and situations of the authorised development within the limits of deviation shown on the works plans, and vertical deviation of the works subject to: (a) a maximum deviation of 0.5 metres upwards or downwards; or (b) in respect of excavation of the borrow pits or the flood compensation areas, a maximum deviation of 0.5 metres downwards, but any deviation up to ground level (to reflect the fact these may be dug out to shallower levels than shown on the relevant plans). The vertical limits can be exceeded where it is demonstrated to the Secretary of State's satisfaction (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 worse adverse environment effects from those assessed in the environmental statement.

6.8 The purpose of this provision is to provide Highways England with a necessary but proportionate degree of flexibility when constructing the scheme, reducing the risk that the scheme as approved cannot later be implemented for unforeseen reasons but at the same time ensuring that any flexibility will not give rise to any materially new or materially worse adverse environmental effects.

Article 8 – Benefit of order

6.9 Article 8 overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the Order to Highways England rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to apply.

6.10 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others, e.g. rights for statutory undertakers, and mitigation works outlined in the Schedule 1 description of the works. Without this provision, there would be a contradiction since strictly speaking only Highways England could benefit from these works.

Article 9 – Consent to transfer benefit of Order

6.11 This article allows powers under the Order to be transferred to others by Highways England with the consent of the Secretary of State.

7. PART 3 – STREETS

Article 10 – Application of the 1991 Act

- 7.1 Article 10 provides for the application of the New Roads and Street Works Act 1991 (1991 c.22) ("the 1991 Act"). There is precedent for these provisions in respect of other major schemes, e.g. the Nottingham Express Transit System Order 2009 (article 4), the M1 Junction 10a (Grade Separation) Order 2013 and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.
- 7.2 Paragraphs (1) and (2) provide that certain works carried out under the authority of the Order are to be "major highway works" for the purposes of the 1991 Act. The effect of this is to clarify that the cost-sharing provisions relevant to the diversion of utility apparatus (which would apply to such works under the 1991 Act if 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).
- 7.3 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 5 and Schedule 1), and the specific provisions in the Order which would regulate the carrying out of the Order works.
- 7.4 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to streets which are to be temporarily stopped up under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily stopped-up street 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 stopped up and those which are not.
- 7.5 Paragraph (7)(a) provides that nothing in article 11 of the Order (which provides that the streets constructed, altered or diverted under the Order are to be maintained by the highway authority) affects the ability of the local highway authority (under s.87 of the 1991 Act) to apply Part 3 of the 1991 Act to such streets in advance of those streets becoming publicly maintainable. Paragraph (7)(b) limits the operation of article 11 to off-street works.

Article 11 – Construction and maintenance of new, altered or diverted streets and other structures

- 7.6 The purpose and effect of article 11 is as follows:
- 7.6.1 Under the Highways Act 1980 the Secretary of State is highway authority for, and therefore responsible for maintaining, trunk

roads provided by him under the Order. For any other streets, paragraphs (1), (2), (3), (4) and (5) specify the body that will be liable for maintenance. Liability for maintenance would transfer to the local highway authority (for new public highways constructed, altered or diverted) and to the street authority (for all other streets constructed, altered or diverted) on completion of the works. Where a footpath, cycle track or bridleway is altered or diverted along a vehicular private means of access, liability for maintenance lies with the person with the benefit of the vehicular private means of access. In the case of the de-trunked sections of road under the Order, maintenance liability would transfer from the date of de-trunking. Maintenance liability for such de-trunked sections is transferred to the local highway authority and the works must be completed to the local highway authority's reasonable satisfaction. Paragraphs (1), (2), (3), (4) and (5) allow Highways England to make contrary agreements with the local highway (or street) authority concerned.

7.6.2 Paragraphs (1), (2), (3) and (5) are subject to paragraphs (6) to (8), which make specific maintenance provision in relation to new bridges carrying public and private rights of way.

7.6.3 The effect of paragraphs (9) and (10) is that in any action for damages against Highways England alleging failure to maintain a street, Highways England will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street was not dangerous for traffic.

Article 12 – Classification of roads, etc.

7.7 The designation of highways, the specification of the classes of traffic authorised to use a highway and speed limits are ancillary matters which may be included in a development consent order⁶. These and other related matters (e.g. de-trunking, speed limits, weight restrictions and the variation of the special road status of a portion of the M11) are addressed by this article, mainly by reference to Schedule 3, which is integral to the implementation of the proposed development.

7.8 Paragraphs (1) and (2) vary the special road status of a portion of the M11 to make this compatible with the scheme.

7.9 Paragraph (3) provides for the classification of roads described in Part 6 of Schedule 3.

7.10 Paragraphs (4) and (5) provide for the de-trunking of trunk roads specified in Part 3 of Schedule 3.

⁶ Planning Act 2008 section 120(5) and Schedule 5, paragraphs 19 and 20

- 7.11 Paragraph (6) imposes speed limits on roads described in Part 1 of Schedule 3.
- 7.12 Paragraphs (7) and (8) apply traffic regulation restrictions on lengths of road identified in Part 2 of Schedule 3.
- 7.13 Paragraph (9) provides for the variation or revocation of orders applying to lengths of road identified in Parts 4 and 5 of Schedule 3.

Article 13 - Permanent stopping up of streets and private means of access

- 7.14 This article allows streets and private means of access named in Parts 1, 2, 3 and 4 of Schedule 4 to be stopped up (i.e. the legal right of way along them to be extinguished).
- 7.15 For the streets and private means of access to be stopped up as specified in Parts 1 and 3 of the Schedule, a substitute street is to be provided. The existing street or private means of access cannot be stopped up until either the street authority is satisfied that the new street or private means of access is fit for purpose, or a temporary street or private means of access is made available while the existing is stopped up and before the new street or private means of access is ready.
- 7.16 For the streets or private means of access to be stopped up as specified in Parts 2 and 4 of Schedule 4, no substitute street or private means of access is to be provided. Such a street or private means of access may not be stopped up unless the conditions referred to in paragraph (4) of article 13 are met in relation to all the land which abuts either side of the street to be stopped up.

Article 14 – Temporary stopping up or restriction of use of streets

- 7.17 This article allows for the temporary stopping up, alteration, diversion or restriction of streets for the purposes of the proposed development, whilst ensuring that pedestrian access is provided.
- 7.18 Paragraph (2) confers a power on Highways England where the use of a street has been temporarily stopped up under this article to use it as a temporary working site, a provision which has precedent in recent orders made under the Transport and Works Act 1992 and the Act, for example 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.
- 7.19 The consent of the street authority is required where Highways England is not the street authority. Paragraph (6) states that where a street authority fails to notify Highways England of its decision in respect of an application for consent within 28 days of the application being made, it is deemed to have given its consent. Such a time limit for considering consent has been accepted in recent development consent orders, for example the Network Rail (North Doncaster Chord) Order 2012 and the

M1 Junction 10a (Grade Separation) Order 2013, and is considered necessary to remove the possibility for delay and to provide certainty that the proposed development can be delivered by Highways England in a timely fashion.

- 7.20 Similar time limits have been inserted in the approval process in articles 17(8), 19(6) and 45(11).

Article 15 – Access to works

- 7.21 This article allows works accesses to public highways to be created. It would give Highways England a general power to form means of access, the intention being to provide equivalent powers to those available to Highways England for schemes authorised under the Highways Act 1980.

Article 16 – Clearways

- 7.22 This article is necessary to ensure safe and proper operation of the proposed development, and to ensure that the scheme delivers its intended benefits. It is therefore considered appropriate to be included in the Order as an ancillary matter under section 120(3) of the Act.
- 7.23 Article 16(1) prohibits waiting on any part of a road specified as a clearway in Part 2 of Schedule 3 except upon the direction, or with the permission, of a uniformed constable or a uniformed traffic officer. Article 16(2) and (3) sets out the circumstances in which it would be lawful for a vehicle to wait on any part of a road specified in Part 2 of Schedule 3. Article 16(4) provides that the clearway provisions can be varied or revoked without the need to apply under the Act for an amendment to the Order.

8. PART 4 – SUPPLEMENTAL POWERS

Article 17 – Discharge of water

- 8.1 This article sets out the circumstances in which Highways England is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so.
- 8.2 The effect of article 17 is that discharge can only be done with the consent of the owner, but consent cannot be withheld unreasonably.

Article 18 – Protective work to buildings

- 8.3 The purpose of this article is to allow Highways England to undertake protective works such as underpinning to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances.

Article 19 – Authority to survey and investigate land

8.4 This article gives Highways England the power to enter certain land for the purpose of surveying and testing. It provides that Highways England must give 14 days' notice before exercising the powers of entry, and that compensation is payable for any loss or damage caused.

9. **PART 5 – POWERS OF ACQUISITION AND POSSESSION OF LAND**

Article 20 - Compulsory acquisition of land

9.1 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire such land as is required for the project. This is subject to articles 23 (*Compulsory acquisition of rights*) and 30 (*Temporary use of land for carrying out the authorised development*), which are explained below.

9.2 The drafting of this provision follows the approach taken in 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 21 – Compulsory acquisition of land – incorporation of the mineral code

9.3 By incorporating Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981, this article exempts existing rights in minerals from the scope of compulsory acquisition unless they are expressly named and conveyed. It also makes provision for a situation where the owner of mines or minerals wishes to work such mines or minerals.

Article 22 – Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily

9.4 This article gives Highways England five years to issue 'notices to treat' or to execute 'general vesting declarations' 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 compulsorily acquiring land may be undertaken should the Order be made. The article also provides that land subject to the power of temporary possession for the carrying out the authorised development (under article 30 (*Temporary use of land for carrying out the authorised development*)) may not be occupied after the end of that same period unless the land is already being occupied by Highways England in exercise of the powers of the Order.

Article 23 – Compulsory acquisition of rights

9.5 This article allows for rights over land to be acquired as well as the land itself, and also for new rights to be created over land.

9.6 It provides for such rights as may be required to be acquired by Highways England over land which it is authorised to acquire under article 20. The public benefit of this is that it would allow Highways

England, if possible, to reduce the area of outright acquisition and rely on rights instead. A provision of this kind is usual in Transport and Works Act Orders and Hybrid Bills, and has been followed in a number of development consent orders, for example 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.

- 9.7 Paragraph (2) provides that for the land described in Schedule 5, Highways England's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes set out in the Schedule.
- 9.8 The power to impose restrictive covenants will allow for the possibility of reducing the area of outright acquisition and thus enables a more proportionate exercise of compulsory powers. It is therefore in the public interest and has precedent in Transport and Works Act orders⁷.
- 9.9 Paragraph (3) provides that where Highways England needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 9.10 Paragraph (4) applies Schedule 6 for the purpose of imposing 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 code applies equally to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories and is commonplace in Transport and Works Act Orders. 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.

Article 24 – Public rights of way

- 9.11 Article 24(1) provides for the public rights of way shown on the rights of way and access plans to be stopped up. The rights of way are (legally) stopped up following the expiry of a site notice which must be erected at either end of the way to be extinguished. Article 24(2)(b) also requires the prior provision of the alternative public rights of way as also shown on the rights of way and access plans.

Article 25 – Private rights over land

⁷ See the Docklands Light Railway (Stratford International Extension) Order 2006 S.I. 2006/2905.

- 9.12 This article applies to private rights generally and not just to rights of way. It also provides for the extinguishment of private rights on Order land already owned by Highways England, when any activity authorised by the Order interferes with or breaches those rights. This draws on the approach taken in article 17 of the Rookery South (Resource Recovery Facility) Order 2011, article 23 of the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 and article 21 of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.

Article 26 – Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 9.13 This article applies the provisions of the 1981 Act to compulsory acquisition under the Order. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of serving a notice to treat). They allow title in the land concerned to pass to the acquirer more quickly than using the notice to treat method. They also enable several parcels of land to be acquired at the same time and therefore more efficiently than under the notice to treat procedure.

Article 27 – Acquisition of subsoil or airspace only

- 9.14 This article allows Highways England to acquire land below the surface or above the surface, rather than having to acquire all of the land.
- 9.15 The purpose of article 27 is to give Highways England the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners and lower payments of compensation. It is considered to be in the public interest to provide this flexibility at the point at which Highways England begins to acquire the necessary land.

Article 28 – Acquisition of part of certain properties

- 9.16 This article provides for an alternative procedure where Highways England acquires compulsorily part only of certain types of property subject to the right of the owner to require the whole of the property to be acquired if part cannot be taken without material detriment to the remainder. It replaces section 8(1) of the Compulsory Purchase Act 1965 and, unlike that provision, sets out a process and timescales for dealing with claims of material detriment.

Article 29 – Rights under or over streets

- 9.17 The purpose of this article is to allow Highways England to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without 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.

Article 30 – Temporary use of land for carrying out the authorised development

- 9.18 The purpose of this article is to allow the land set out in Schedule 7 to be occupied temporarily while the works are carried out. This is land which is required during construction of the scheme but not required permanently. Article 30 also allows for the temporary occupation of any of the land intended for permanent acquisition but which has not yet been acquired.
- 9.19 The article provides for permanent works mentioned in column (3) of Schedule 7, and any other permanent mitigation works, in particular, to be left on land that has been temporarily occupied. The rationale for this is that it reduces the need for the compulsory acquisition of land. The intended scope of “mitigation works” is any permanent works necessary and appropriate to mitigate the effect of the works (e.g. landscaping and ground strengthening).
- 9.20 The time limits set out in article 22 (*Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily*) apply to this article.

Article 31 – Temporary use of land for maintaining the authorised development

- 9.21 This article provides that Highways England may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose. Owners and occupiers of the land must be given 28 days' notice. They are also entitled to compensation. The power is exercisable within a period of 5 years from the time the particular infrastructure is first opened for use.
- 9.22 This power does not apply with respect to houses, gardens or any other buildings for the time being occupied.

Article 32 – Statutory undertakers

- 9.23 This article allows Highways England to extinguish rights of statutory undertakers (i.e. utilities such as electricity and gas companies), and 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 impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 9.24 As the land where 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.

Article 33 - Apparatus and rights of statutory undertakers in stopped-up streets

- 9.25 This article governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are stopped up by the Order. Without the article, the statutory utility would not have access to the apparatus, since there would no longer be a right of way along the street. Highways England may require such a statutory utility to relocate the apparatus elsewhere, although it will compensate the statutory utility for doing so. Paragraph (6) discounts from this compensation the increase in value to the statutory utility of having new rather than old (i.e. older than 7½ years) apparatus.
- 9.26 Paragraph (7) provides that in certain cases (most notably where an existing highway is crossed by the proposed trunk road) the cost of relocating apparatus will be subject to alternative cost sharing arrangements between Highways England and the statutory utility which are provided for in regulations made under section 85 of the 1991 Act.

Article 34 – Recovery of costs of new connections

- 9.27 This article provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, then their costs in obtaining a new service can be recovered from Highways England.

Article 35 – Special category land

- 9.28 Under section 131 of the 2008 Act an order granting development consent is subject to Special Parliamentary Procedure when it authorises compulsory acquisition of land to which section 131 applies (i.e. a common, open space or fuel or field garden allotment). The exception is if the Secretary of State is satisfied that certain tests under section 131(3) are met, including if the Secretary of State is satisfied that the land is less than 200 square metres or is required for the widening or drainage of an existing highway and the giving of exchange land is unnecessary. Highways England submits that this is the case, for the reasons set out in the Statement of Reasons (**Application reference 4.1**).
- 9.29 The land specified in article 35 is therefore proposed to be released from all rights, trusts and incidents to which that land was previously subject without the requirement for Highways England to provide replacement land in accordance with section 131(4) of the 2008 Act.

10. **PART 6 – OPERATIONS**

Article 36 – Felling or lopping of trees and removal of hedgerows

- 10.1 This article allows any tree or shrub that is near the project to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the proposed development or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 10.2 Further, this article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997⁸.

Article 37 – Trees subject to tree preservation orders

- 10.3 This article is on broadly the same terms as article 36 but applies to trees subject to tree preservation orders, which are identified in Schedule 9. The permission granted by this article constitutes a deemed consent given under a tree preservation order.

11. **PART 7 – MISCELLANEOUS AND GENERAL**

Article 38 – Operational land for the purposes of the 1990 Act

- 11.1 This article declares that the land within the Order limits shall be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990.

Article 39- Defence to proceedings in respect of statutory notices

- 11.2 Section 158 of the Planning Act 2008 confers statutory authority in respect of the works and operations authorised by the Order, for the purposes of a defence in statutory nuisance generally. 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).
- 11.3 The defence is available if the noise relates to:
- 11.3.1 the construction or maintenance of the proposed development , 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
 - 11.3.2 the use of the project and cannot reasonably be avoided.

Article 40 – Protective provisions

- 11.4 This article introduces Schedule 9, which contains provisions protecting the interests of third parties.

⁸ S.I. 1997/1160

Article 41 – Certification of plans, etc.

- 11.5 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 numbers) are listed in Schedule 10.

Article 42 – Service of notices

- 11.6 This article governs how any notices that may be served under the Order are 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. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act do not apply to notices served under the Order.
- 11.7 An article governing the service of documents is common in development consent orders and has precedent in, for example, 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 43 – Arbitration*
- 11.8 This article governs what happens when two parties disagree in the implementation of any provision of the Order. A dispute will be settled by arbitration, and if the parties cannot agree on an arbitrator the appointment will be decided by the President of the Institution of Civil Engineers.

Article 44 – Appeals

- 11.9 This article sets out the appeal process in circumstances where a local authority has exercised its functions under section 60 or 61 of the Control of Pollution Act 1974. It reflects provisions in Schedule 17 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and streamlines the appeal process, thus minimising the risk that delivery of the proposed development.

Article 45 – Traffic regulation

- 11.10 The purpose of this article is to provide Highways England with powers to make deemed traffic regulation orders in relation to roads for which it is not the highway authority, so that it can implement traffic management measures (e.g. restrictions on the use of roads) necessary to construct the proposed development.
- 11.11 Implementation is subject to the prior approval of the traffic authority in whose area the roads are situated and consultation with the relevant chief officer of police.

12. REQUIREMENTS

- 12.1 The requirements in Part 1 of Schedule 2 are the equivalent of planning conditions. They reflect the processes and procedures usually employed by Highways England when implementing a scheme such as this.
- 12.2 Most approvals will be sought from the Secretary of State for Transport. In practice this would involve certain internal approvals being obtained from independent teams within Highways England before the details are formally submitted by the project team within Highways England to the Secretary of State for Transport for approval.
- 12.3 Highways England understands that decision-making by the Secretary of State for Transport would follow similar internal processes to those employed in taking other quasi-judicial decisions (for example, in deciding whether to make a DCO or a Transport and Works Act Order), meaning a separation within the Department for Transport's Strategic Roads Division of those involved in discharging requirements from those involved in delivery of the project through their relationships with Highways England.
- 12.4 Turning to the purpose and effect of requirements 1 to 19:
- 12.4.1 Requirement 1 contains a number of definitions used in Part 1 of Schedule 2 and includes the reference numbers of documents that are to be complied with for clarity.
- 12.4.2 Requirement 2 provides that the proposed development must not commence later than 5 years from the date of the Order coming into force.
- 12.4.3 Requirement 3 provides that the proposed development must be carried out in accordance with the scheme design shown on certain plans, unless otherwise agreed by the Secretary of State following consultation with the relevant local planning authority. This means that any variations to the scheme design (which must be within the limits of deviation) are subject to approval. This requirement also requires Highways England to submit design details to the Design Council's Design Review panel and then consider any advice arising from that review. It must also consult with certain parties and bodies (including certain stakeholder panels) in accordance with the code of construction practice. Lastly, details of the external appearance of the Great Ouse viaduct must be submitted to and approved by the Secretary of State, following consultation with the relevant planning authority.
- 12.4.4 Requirement 4 requires the proposed development to be carried out in accordance with the code of construction practice. This is a document that has been submitted with the

environmental statement and updated throughout the examination. It secures the environmental mitigation required for the proposed development.

- 12.4.5 Requirement 5 requires pre-construction surveys to be carried out before the proposed development is commenced to establish whether any protected species are present on the land affected by the authorised development. Where such species are identified, protection measures must be submitted and approved (including design and management details). These, unless otherwise approved, must be in accordance with the Design Manual for Roads and Bridges.
- 12.4.6 Requirement 6 makes provision for dealing with any contaminated land and groundwater discovered during construction of the works, in consultation with the local planning authority and the Environment Agency.
- 12.4.7 Requirement 7 requires the preparation and implementation of a landscaping scheme (consistent with a planting strategy which Highways England will produce) covering all hard and soft landscaping works including those listed in sub-paragraph (3). Provision is also made in sub-paragraph (5) for replacing trees and shrubs which become diseased or damaged.
- 12.4.8 Requirement 8 deals with any archaeological remains affected by the works. A written scheme of archaeological investigation (in accordance with the 'outline' written scheme of investigation) must be approved before any works can commence.
- 12.4.9 Requirement 9 requires that a construction traffic management plan must be prepared (prior to the commencement of the authorised development), approved and implemented.
- 12.4.10 Requirement 10 requires that details of the surface water drainage system, reflecting the mitigation measures in the environmental statement, must be prepared (prior to commencement of the proposed development), approved and implemented.
- 12.4.11 Requirement 11 requires that the restoration and aftercare of the borrow pits must be carried out in accordance with the borrow pits restoration and aftercare strategy. This document has been consulted upon with relevant key stakeholders and is defined in Requirement 1 and will be certified upon the Secretary of State making the Order.
- 12.4.12 Requirement 12 requires the preparation and implementation (following approval) of written details of proposed noise mitigation, including noise barriers. The written details must reflect the mitigation measures in the environmental statement,

or, if not, provide evidence that the mitigation proposed would not give rise to any materially new or materially worse adverse environmental effects than those reported in the environmental statement.

- 12.4.13 Requirement 13 states that certain parts of the authorised development that may affect Brampton Meadows Site of Special Scientific Interest cannot be commenced until details of the establishment and management of the mitigation areas for it have been approved. The approved details must be complied with.
- 12.4.14 Requirement 14 requires the preparation and implementation (following approval) of a written scheme of proposed highway lighting for the proposed development. The standard of the highway lighting must reflect the mitigation measures in the environmental statement, or, if not, provide evidence that the mitigation proposed would not give rise to any materially new or materially worse adverse environmental effects than those reported in the environmental statement.
- 12.4.15 Requirement 15 requires that (i) the proposed development must be carried out in accordance with the flood risk assessment (including the mitigation measures detailed within it); or (ii) where Highways England seeks to otherwise carry out the authorised development, it must demonstrate to the Environment Agency that either there is no material exceedance to the flood levels in the flood risk assessment or that the affected landowners have accepted the change in flood levels from those shown reported in the flood risk assessment. The flood risk assessment will be a certified document.
- 12.4.16 Requirement 16 requires Highways England to carry out specified air quality monitoring for set periods, share data with the local authorities and, if it appears that the proposed development has materially worsened air quality, discuss a scheme of mitigation with the local authority, which must be submitted to and approved by the Secretary of State following consultation with the relevant planning authority.
- 12.4.17 Requirement 17 makes clear that where the proposed development must be carried out in accordance with approved details, those details include any subsequent approved amendments in writing.
- 12.4.18 Requirement 18 makes clear that, in the cases where Highways England must submit details to the Secretary of State for approval under the requirements, it must include with those details information on any consultation carried out with third parties and Highways England's response to such consultation.

- 12.5 Part 2 of Schedule 2 provides a clear procedure for the discharge of requirements by the Secretary of State. It sets out clear time limits for decisions to be made and makes provision for circumstances where the Secretary of State requires further information to be provided in relation to an application for the discharge of a requirement. This also includes an obligation on Highways England to publish a register of requirements, which would track where each requirement is in the process. Any steps Highways England takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.