

# A47 Blofield to North Burlingham Dualling

**Scheme Number: TR010040**

## **Volume 3** **3.2 Explanatory Memorandum**

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

A47 Blofield to North Burlingham  
Development Consent Order 202[X]

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**Explanatory Memorandum**

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## 1. SUMMARY

1.1 This memorandum explains the purpose and effect of each article of, and the requirements of, the draft A47 Blofield to North Burlingham Development Consent Order (the "**Order**"), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

## 2. PURPOSE OF THE ORDER

2.1 Highways England Company Limited ("**Highways England**") is applying to the Secretary of State for a development consent order to carry out the scheme to alter the A47 between Blofield and North Burlingham to the east of Norwich in Norfolk (the "**Scheme**").

2.2 Highways England is the strategic highway company responsible for operating, maintaining and improving the Strategic Road Network ('SRN') in England. Highways England became a Government owned company in April 2015, succeeding to the functions of the Highways Agency.

2.3 The SRN is made up of the motorway and major A roads network. The A47 is part of the SRN.

2.4 In summary the Scheme consists of alterations by way of a new length of dual carriageway (approximately 2.6 km) on the A47 from a point to the east of the village of Blofield to a point east of the village of North Burlingham. The Scheme will link two existing sections of dual carriageway of the A47 and replace the current single carriageway section between the two villages. The existing A47 will be "de-trunked" and become part of the local highway network maintained by Norfolk County Council. The route will be built within 70 metres of the existing carriageway and will pass predominantly through open farm land.

2.5 The Scheme comprises:

- 2.6km of dual carriageway on the A47;
- de-trunking of the existing A47 between Blofield and North Burlingham;
- improvements at Yarmouth Road Junction, including closure of the central reserve, closure of High Noon Lane direct access, merge lane, realignment of Waterlow, and local access improvements at the Sparrow Hall properties;
- introduction of a compact grade separated junction at B1140 Junction, including the B1140 Overbridge;
- a new overbridge at Blofield traversing the proposed A47 dual carriageway, connecting Yarmouth Road with the existing A47;
- provision of new drainage systems including an infiltration basin and retention of existing drainage systems where possible;
- a retaining wall in the western extents;
- introduction of lighting at the Yarmouth Road Junction and new lighting layout at the B1140 Junction;
- closure of an existing layby and provision of a new layby;
- walking and cycling routes connecting Blofield and North Burlingham via the Blofield Overbridge to the west and the B1140 Overbridge to the east;
- provision of North Burlingham Access;
- an agricultural access track;

- fencing, safety barriers and signage;
  - environmental mitigation;
  - diversions of a medium pressure gas main and other utilities.
- 2.6 A detailed description of the Scheme is included in Chapter 2 of the Environmental Statement TR010040/APP/6.1).
- 2.7 The objectives of the Scheme are:
- (a) Economic growth: The Scheme aims to reduce congestion related delay, improve journey time reliability and increase the overall capacity of the A47. This will help contribute to sustainable economic growth by supporting employment and residential development opportunities
  - (b) Making a safer network: Improving road safety for all road users by designing to modern highway standards appropriate for a major A road.
  - (c) A more free flowing network: Increasing the resilience of the network in coping with incidents such as collisions, breakdowns, maintenance and extreme weather. The improved A47 Blofield to North Burlingham will be more reliable, reducing journey times and providing capacity for future traffic growth.
  - (d) Environment: minimising adverse impacts and where possible, improving the environmental effects of transport on those living along the route of the new and existing road by reducing the impact on the natural and built environment by the new road and any associated works.
  - (e) Accessible and integrated network: to consider local communities and access to the road network, providing a safer route between communities for cyclists, pedestrians, equestrians and vulnerable users where a need is identified.
  - (f) Value for money: To ensure that the scheme is affordable and delivers good value for money.

### **Nationally Significant Infrastructure Project — construction of a highway**

- 2.8 The Scheme is a nationally significant infrastructure project ("**NSIP**") within sections 14(1)(h) and 22(1) of the Planning Act 2008 (the "**2008 Act**"). Under section 22 an NSIP must fall within one of the three categories specified, which are expressly stated to be alternatives. This Scheme is the "alteration" of a highway within the meaning of section 22(1)(b).
- 2.9 The Scheme satisfies section 22(3) in that:
- 2.9.1 the highway is wholly in England;
  - 2.9.2 Highways England as strategic highways company will be the highway authority for the highway; and
  - 2.9.3 the area of the land on which the part of the highway to be altered is situated and any adjoining land expected to be used in connection with its alteration is greater than the relevant limit set out in subsection (4), which in this case is 12.5 hectares, as speed limits on the Scheme will be in excess of 50mph.
- 2.10 As the Scheme 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 2008 Act.

- 2.11 Schedule 1 (authorised development) to the Order contains a list of numbered works comprising the Scheme.

### **Associated development**

- 2.12 The draft Order specifically authorises development which is associated with the NSIP. The Secretary of State may, under the provisions of section 115 of the 2008 Act, grant consent for development that is associated with the NSIP ("**associated development**").
- 2.13 Guidance on associated development has been issued by the Secretary of State for Communities and Local Government<sup>(2)</sup>. 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*" (paragraph 6) 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*" (paragraph 5).
- 2.14 The draft Order seeks consent for development for 2.6km of dual carriageway on the A47 which constitutes the NSIP for the purposes of the 2008 Act. In addition consent is sought for works which would constitute associated development. Together the NSIP and associated development form the works described in Schedule 1 to the Order.
- 2.15 In some cases there may be some overlap between associated development and 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 2008 Act, and so can properly be authorised by the Order.

## **3. ANCILLARY MATTERS**

- 3.1 The draft Order also contains several ancillary matters, i.e. provisions not consisting of development.
- 3.2 The draft 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 2008 Act the Order must be made by way of Statutory Instrument. The draft Order is therefore in that form.
- 3.3 Other ancillary matters include the temporary and permanent stopping up of lengths of existing highway and private means of access in the vicinity of the Scheme, the classification of highways, the imposition of traffic regulation measures (including the application of speed limits), the creation of new private means of access, and the application and disapplication of legislation.

## **4. THE 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 2009 (S.I. 2009/2265) has been repealed, the draft Order is based on the model provisions (general and railway), as well as other development consent orders that have been made to date.

### **Part 1 — Preliminary**

#### *Article 1 - Citation and commencement*

- 4.2 Article 1 sets out the name of the Order and the date on which it comes into force.
- 4.3 This article did not appear in the model provisions. However, it is a standard article that is included in all development consent orders.

#### *Article 2 - Interpretation*

- 4.4 The purpose of article 2(1) is to define terms used in the remainder of the Order. It is a standard article and was included in the model provisions as article 1.
- 4.5 The following definitions in particular have been included due to the nature of the Scheme:
- (a) "the 1984 Act";
  - (b) "bridleway";
  - (c) "carriageway";
  - (d) "cycle track";
  - (e) "footpath" and "footway";
  - (f) "street";
  - (g) "street authority";
  - (h) "traffic authority"; and
  - (i) "trunk road".
- 4.6 Other definitions to note include:
- (a) "commence" which makes it clear that the carrying out of a limited number of works that would constitute a "material operation" under the Town and Country Planning Act 1990 is not to be taken to mean that the development has "commenced". This enables Highways England to undertake certain preparatory works prior to the submission of relevant details for approval under the Requirements. Highways England considers that this approach is reasonable and proportionate. The works that are excluded from the definition have minimal potential for adverse effects, in line with the Inspectorate's Advice Note 15. Further, the surveys and investigations which are excluded from the definition are required as they will inform the plans, schemes and strategies to be submitted for approval under the Requirements. Highways England 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 is a widely precedented approach in other made DCOs (see for example The M42 Junction 6 Order 2020 Development Consent Order 2017 and The Silvertown Tunnel Order 2018).
  - (b) "Maintain" which includes inspect, repair, adjust, alter, remove replace or reconstruct (see paragraph 1 below);
  - (c) "Order land" which includes the words 'or used permanently or temporarily' as this is the usual term for land involved in the Scheme - some of it may only be used temporarily rather than acquired;
  - (d) "Order limits" references the 'limits of deviation' as defining the extent of the area within which the authorised development may be carried out.
- 4.7 Article 2(2) expands the definition of rights over land (which was included in the model provisions as article 1(2)) and clarifies the purpose of the power within the Order to impose restrictive covenants.
- 4.8 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 common practice to include such provision in legislation authorising linear infrastructure - see, for example, the M20 Junction 10a Development

Consent Order 2017 at article 2(3), and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 at article 2(3).

- 4.9 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.
- 4.10 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*

- 4.11 This article provides (in reliance on section 120(5)(a) of the 2008 Act) for the disapplication in relation to the construction of the authorised development of certain requirements which would otherwise apply under general legislation. Section 120(5)(a) 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.
- 4.12 Paragraph (1) of Article 3 disapplies provisions of the Neighbourhood Planning Act 2017 (the "**NPA 2017**"). This disapplication makes it clear that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. Highways England notes that the provisions relating to temporary possession in the NPA 2017 have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made. Due to the uncertainty in relation to the detail around that regime, Highways England has consulted on the long-standing process available under the 2008 Act. Highways England additionally considers that if Parliament wished to apply the NPA 2017 temporary possession regime to DCO projects, it could have done so by effecting amendments to PART VII of the Planning Act 2008. It has not done so, and in the absence of the clarity this would provide, Highways England proposes to proceed under the existing 2008 Act procedure.
- 4.13 Paragraph (3) of Article 3 provides for the disapplication of various consents which would otherwise be required from the Environment Agency, internal drainage boards, lead local flood defence authorities or Natural England under the Environmental Permitting (England and Wales) Regulations 2010/675, the Water Resources Act 1991 or the Land Drainage Act 1991. These are the requirements:
- 4.13.1 for an environmental permit for the carrying on of flood risk or water discharge activities;  
or
- 4.13.2 prohibiting the placing of obstructions in waterways which are not main rivers under the Land Drainage Act 1991.

These are consents for activities which are a necessary part of the Scheme.

- 4.14 These provisions (other than byelaws made under section 66 of the Land Drainage Act 1991 and section 32 of the Land Drainage Act 1991) are prescribed under section 150 of the 2008 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 are being sought. The relevant protective provisions will be discussed with the relevant regulators.
- 4.15 Highways England has produced a Consents and Agreements Position Statement (application document reference TR010040/APP/3.3) as part of this application. This sets out in greater detail Highways England's proposed approach to obtaining the other consents required for the Scheme.

*Article 4- Maintenance of Drainage Works*

- 4.16 The purpose of this article is to make it clear that any realignment of drainage works 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 drainage works, unless this is



agreed between Highways England and the responsible party. Responsibility for maintenance of drainage works may sit with the Environment Agency, a lead local flood authority or a landowner. Precedent exist in article 4 of the A14 Cambridge to Huntingdon Improvement Order 2016 ("**A14 Order**") and article 5 of The A19/A184 Testo's Junction Alteration Order 2018. Highways England considers that it is a sensible inclusion to clarify who has responsibility for drainage works.

## **Part 2 — Principal Powers**

### *Article 5 - Development consent etc. granted by the Order*

- 4.17 Article 5 provides the principal power to construct and operate the authorised development within the Order limits. Schedule 1 describes the authorised development.
- 4.18 Development consent is subject to the provisions of the Order, including the requirements listed in Schedule 2. This is based on article 2 of the model provisions.
- 4.19 Article 5(2) was not included in the model provisions, but has been included in previous orders such as the M20 Order (article 5(2)) and the A14 Order (article 4(2)). It provides that any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of the Order. As the Order amends and disapplied various enactments that apply to and affect the authorised development, or would otherwise do so, this ensures that the legislative position is consistent.

### *Article 6 – Construction and Maintenance of authorised development*

- 4.20 This article sets out the scope within which Highways England may maintain the development. The definition of "maintain" is contained in article 2(1) and matches that which has been approved by the Secretary of State in the making of previous highway development consent orders, for example the M20 Order (article 6). It is therefore considered to be appropriate and acceptable to adopt the same definition for this 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, as the definition in the Highways Act 1980 is limited to "repair".
- 4.21 Article 6 was included in the model provisions as article 3.

### *Article 7 - Planning permission*

- 4.22 This article permits certain development authorised by a planning permission granted under the Town and Country Planning Act 1990 that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This provision is not a model provision, but ensures that Highways England does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission, provided that development is not of itself an NSIP or part of one, or required to complete or enable the use or operation of any part of the authorised development. This article is based on article 7 of The A30 Chiverton to Carland Cross Development Consent Order 2020.

### *Article 8 - Limits of deviation*

- 4.23 Since the authorised development involves linear works, article 8 provides for limits of deviation to allow for a lateral deviation from the lines and situations of the authorised development from a centreline shown on the Works Plans, and vertical deviation subject to a maximum deviation of 1.0 metre upwards or 1.0 metre downwards. All non-linear works are to be constructed within the areas shown on the works plans for that Work.
- 4.24 The ability to deviate within the prescribed limits of deviation is important to ensure that, if the precise 'as built' alignments or elevations are slightly different to those indicatively shown on the application plans, no question arises as to whether the works are permitted by the Order. The

limits of deviation ensure that Highways England and its contractor have sufficient flexibility to design and construct the authorised development post consent.

#### *Article 9 - Benefit of Order*

- 4.25 This article overrides section 156(1) of the 2008 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.
- 4.26 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others, such as rights for statutory undertakers to undertake works to their own apparatus, 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 10 - Consent to transfer benefit of Order*

- 4.27 This article allows the benefit of the Order to be transferred to others by Highways England. The exercise of any transferred benefit 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 Highways England. The consent of the Secretary of State is required for a transfer or grant, except where it is made to a specified company in respect of a particular work (for example for a particular utility diversion work).
- 4.28 The article includes a procedure to be adopted when making an application to the Secretary of State for consent. The essential elements of this procedure are as follows:
- 4.28.1 before any application is made to the Secretary of State Highways England must consult with the Secretary of State and the Secretary of State will provide a response within four weeks of receipt of the notice;
  - 4.28.2 the Secretary of State must determine an application for consent under this article within 8 weeks commencing on the date the application is received. This period can be extended where agreed in writing with Highways England;
  - 4.28.3 where the Secretary of State is minded to refuse any application or fails to determine an application within 8 weeks of receipt then Highways England may refer the matter for determination under article 52 (*arbitration*); and
  - 4.28.4 prior to any transfer or grant taking effect Highways England is required to notify in writing the SoS and so far as relevant, the relevant planning authorities. Sub paragraphs 8 to 10 of the Article stipulate the notification requirements that apply. In particular the notice must be received by the recipient a minimum of five days prior to the transfer taking effect.
- 4.29 This article is based on article 5 of the model provisions. It differs in that it allows a transfer or grant to a specified company to take place without the Secretary of State's consent, on the basis that it is appropriate for those companies to be able to carry out those works. In setting out a procedure for obtaining the Secretary of State's consent, the drafting follows the approach taken in the Norfolk Vanguard Offshore Wind Farm Order 2020. In the absence of any other statutory procedure, Highways England considers it necessary to provide certainty on the procedure for the Secretary of State's consent.

### **Part 3 — Streets**

#### *Article 11 - Application of 1991 Act*

- 4.30 This article provides for the application of the New Roads and Street Works Act 1991 (the "**1991 Act**"). Although not included in the model provisions, there is precedent for these provisions in

respect of the development consent orders granted for other major highways schemes, for example the M20 Order (article 9(2)), the M4 Order (article 7(2)) and the A14 Order (article 8(2)).

- 4.31 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 carries them out.
- 4.32 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, and the specific provisions in the Order which regulate the carrying out of the Order works.
- 4.33 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to streets which are to be temporarily restricted for use, altered or diverted under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily affected 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.
- 4.34 Paragraph (7)(a) provides that nothing in article 11 of the Order (which provides that any highway other than a special road or a trunk road that is constructed, altered or diverted under the Order must be maintained by the local highway authority) affects the operation of section 87 of the 1991 Act, which allows a local highway authority to declare that a street in its area is likely to become a maintainable highway and consequently that Part 3 of the 1991 Act applies to that street. Highways England will not be under the duties that apply to a street authority under the 1991 Act by virtue of being responsible for the maintenance of a street under article 11.
- 4.35 Paragraph (7)(b) clarifies that the provisions relating to responsibility for maintenance of streets in article 11 do not affect the application of Part 3 of the 1991 Act to maintenance works which are street works for the purposes of the 1991 Act. 'Street works' is defined in section 48(3) of the 1991 Act as including works for the maintenance of apparatus (but excluding works for road purposes) that are executed in pursuance of a statutory right or a street works licence.

*Article 12 - Construction and maintenance of new, altered or diverted streets and other structures*

- 4.36 The purpose and effect of the article are as follows:
- (a) Under the Highways Act 1980 and the Appointment of a Strategic Highways Company Order 2015 Highways England is the highway authority for, and therefore is responsible for maintaining, trunk roads, including those to be provided as part of the Scheme. For any other highways and streets, this article determines the body that will be liable for maintenance. Liability for maintenance would transfer to the local highway authority or to the street authority as appropriate on completion of the works. Paragraphs (1) to (6) allow Highways England to make contrary agreements with the local highway authority concerned.
  - (b) Paragraphs (1) to (3) are subject to paragraph (4), which makes specific maintenance provision in relation to new bridges carrying public rights of way.
  - (c) The effect of paragraphs (7) and (8) 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. This ensures that the provision in section 58 of the Highways Act 1980 applies to Highways England not only in respect of trunk roads for which it is the highway authority but also other roads and is consistent with the approach taken in previous development consent orders.

- 4.37 This article was not drawn from the model provisions, but has been included in all Highways England orders made to date, including most recently the M20 Order (articles 12(6) and (7)), the M4 Order (articles 12(5) and (6)) and the A14 Order (articles 11(9) and (10)).

*Article 13 - Classification of roads, etc.*

- 4.38 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 order(3). These and other related matters are addressed by this article. These matters are integral to the implementation of the Scheme and it is therefore appropriate to include them in the Order as ancillary matters.
- 4.39 Articles 13(1) provide for the roads described in Part 1 of Schedule 3 to become special roads. Under paragraph (1) they will be classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads, and will be provided for the use of traffic of Classes I and II as set out in the Highways Act 1980.
- 4.40 Paragraph (2) provides for the roads described in Part 2 of Schedule 3 to become classified roads from the date that they are complete and open to traffic.
- 4.41 Paragraph (3) provides for the roads described in Part 3 of Schedule 3 to become unclassified roads from the date that they are complete and open to traffic.
- 4.42 Paragraph (4) imposes speed limits on certain sections of the Scheme as described in Part 4 of Schedule 3.
- 4.43 Paragraph (5) confirms that the cycle tracks, footways and bridleways in Part 5 of Schedule 3 will be provided unless otherwise agreed with the relevant planning authority.
- 4.44 Paragraph (6) provides that the orders specified in Part 6 of Schedule 3 are to be varied or revoked as specified in that Part on such day as Highways England may determine. Again, in practice the relevant date(s) will be agreed with or notified to the local highway authority.
- 4.45 Paragraph (7) provides for the trunk roads described in Part 7 of Schedule 3 to cease to be trunk roads on such day as Highways England may determine. In practice this will be a date that has been agreed with or notified to the local highway authority.
- 4.46 The purpose of paragraph (8) is to confirm that the matters covered in paragraphs (1) to (9) could be varied or revoked in the future without the need to apply under the 2008 Act for an amendment to the Order.
- 4.47 Article 13 was not included in the model provisions, but has been included in many Highways England orders made to date.

*Article 14 - Power to alter layout etc. of streets*

- 4.48 This Article allows Highways England to alter the layout of existing streets within the Order limits for the purpose of constructing and maintaining the authorised development. This is subject to the consent of the street authority who must be given the specified period of notice in advance of exercising the powers. This consent is deemed given if the street authority does not respond to Highways England's consent request within 28 days.
- 4.49 Paragraph (2) requires Highways England to restore any street that has been temporarily altered to the reasonable satisfaction of the street authority.
- 4.50 Paragraph (5) provides that paragraphs (2), (3) and (4) do not apply where Highways England is the street authority for the street in which the works are being carried out.
- 4.51 It is considered appropriate to provide a power for Highways England as a Strategic Highways Company to enter and carry out works to side roads that would otherwise be within the purview

of the local highway authorities. It is unnecessary to list the affected roads, since their location and extent is self-evident from the works, land and rights of way plans.

4.52 This Article is necessary under section 120(5)(c) of the 2008 Act to give full effect to Articles 5 (Development consent etc granted by the Order) and 6 (Construction and Maintenance of authorised development).

4.53 Article 14 is not included in the model provisions but is based on Article 11 of the National Grid (North London Reinforcement Project) Order 2014 and Article 11 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, amongst others.

#### *Article 15 - Street Works*

4.54 Article 15 allows Highways England to break up or open, tunnel or bore under, remove or use earth and materials in or under and place and maintain apparatus in or under the streets in the Order Limits for the purposes of the authorised development. The authority given by this article is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991.

4.55 This article is based on article 8 of the model provisions and article 11 of the M4 Order.

#### *Article 16 – Temporary alteration, diversion and restriction of use of streets*

4.56 This article allows for the temporary alteration, diversion or restriction of streets for the purposes of the Scheme, whilst ensuring that essential pedestrian access to and from premises along that street is maintained if necessary (paragraph (3)).

4.57 Paragraph (2) confers a power on Highways England, where a street has been temporarily restricted for use under this article to use it as a temporary working site.

4.58 Under paragraph (4) the consent of the street authority is required where Highways England is not the street authority. The street authority may attach reasonable conditions to any consent, but must not unreasonably withhold or delay consent.

4.59 Paragraph (5) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article.

4.60 This provision has been included in previous development consent orders for highway schemes, for example on the M20 Order (article 14(6)) and the A14 Order (article 14(6)).

#### *Article 17 - Permanent stopping up and restriction of use of streets and private means of access*

4.61 This article allows the streets and private means of access identified in Schedule 4 to be stopped up (i.e. the legal right of way along them to be extinguished). Since the definition of a 'street' in section 48 of the New Roads and Street Works Act 1991 includes highways and footways such ways can be stopped up under this Article as well as vehicular accesses.

4.62 Paragraph (2) relates to the highways and private means of access to be stopped up as specified in Parts 2 and 3 of Schedule 4, for which a substitute is to be provided. It requires the substitute to be completed and open for use, or a temporary alternative route to be available, before the highway or private means of access in question is stopped up.

4.63 For the streets and private means of access to be stopped up as specified in Parts 1 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 17 are met.

4.64 Paragraph (5) relates to private means of access to be altered as specified in Part 5 of Schedule 4. The change to the private means of access is shown on the Rights of Way and Access Plans.

4.65 Paragraph (7) provides a right to compensation for any person suffering loss due to the suspension or extinguishment of a private right of way under this article.

4.66 This article was included in the model provisions as article 9.

#### *Article 18 - Access to works*

4.67 This article allows works accesses to be created within the Order limits. This article departs from the model provisions (article 12) to provide Highways England with a general power to provide means of access, the intention being to provide similar powers to those available under the Highways Act 1980.

#### *Article 19 - Clearways, prohibitions and restrictions*

4.68 This article is necessary to ensure safe and proper operation of the authorised development, and to ensure that the Scheme delivers its intended benefits. It is therefore appropriate to include it in the Order as an ancillary matter under section 120(3) of the 2008 Act.

4.69 Paragraph (1) prohibits waiting on any part of a road specified as a clearway in Part 6 of Schedule 3 except upon the direction of or with a permission of a uniformed constable or traffic officer.

4.70 Paragraph 2 set out a list of circumstances in which it would be lawful for a vehicle to contravene the restrictions and prohibitions set out in paragraph (1).

4.71 Paragraph (3) imposes a prohibition on waiting on any part of the highway to be constructed for the purposes of selling or dispensing goods from a vehicle. This provision is intended to prevent unauthorised trading on the highway, particularly in the laybys which are not designed to accommodate such a use.

4.72 Paragraph (5) confirms that the provisions of this article can be varied or revoked in the future without the need to apply under the 2008 Act for an amendment to the Order.

4.73 This article was not included in the model provisions but has been included in many Highways England orders made to date.

### **Part 4 — Supplemental powers**

#### *Article 20 - Discharge of water*

4.74 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.

4.75 The effect of paragraph (3) is that this can only be done with the consent of the owner. Consent can be given subject to reasonable terms and conditions, but cannot be unreasonably withheld.

4.76 Paragraph (5) requires Highways England to take reasonably practicable steps to ensure that any water that is discharged is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

4.77 This provision has been included in previous Highways England orders, for example the M20 Order (article 18(7)) and the A14 Order (article 17(8)).

#### *Article 21 - Protective work to buildings*

4.78 The purpose of this article is to allow Highways England to undertake protective works to buildings affected by the authorised development. It was included in the model provisions as article 15 and has broad precedent, for example article 16 of the A19/A1058 Coast Road (Junction Improvement) Order 2016 and article 18 of the A14 Order.

*Article 22 - Authority to survey and investigate the land*

- 4.79 This article gives Highways England the power to enter certain land for the purpose of surveying and investigating. It provides that Highways England must give 14 days' notice before exercising the powers of entry. Compensation is payable for any loss or damage caused. Paragraphs (1) to (5) were included in the model provisions as article 16, save for the modification that notice served under article 22(2) must in addition specify the nature of the survey or investigation that is proposed by Highways England.

**Part 5 — Powers of Acquisition**

*Article 23 -Compulsory acquisition of land*

- 4.80 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire the land that is required for the Scheme. This is subject to articles 26 (compulsory acquisition of rights and restrictive covenants) and 33 (temporary use of land for carrying out the authorised development), which are explained below. This article is based on article 18 of the model provisions.

*Article 24 - Compulsory acquisition of land -incorporation of the mineral code*

- 4.81 This article incorporates Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981, exempting existing rights in minerals from the cope 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 and minerals. This means that where Highways England acquires land under the powers of the Order, it will not acquire any mineral deposits present in the land (other than those necessarily extracted or used in constructing the authorised development) unless they are expressly included in the conveyance. The article is based on article 19 of the Model Provisions.

*Article 25 - Time limit for exercise of authority to acquire land compulsorily*

- 4.82 This article gives Highways England five years to issue notices to treat or to execute a general vesting declaration to acquire the land that may be compulsorily acquired under the Order. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made.
- 4.83 The article also sets a 5 year time limit on the power of Highways England to take temporary possession of land under article 33, although it does not prevent Highways England from remaining in possession of land after than time if it took possession within the 5 year limit (this has consistently been approved by the Secretary of State, see for example article 22 of the A14 Order).
- 4.84 This article was included in the model provisions as article 20.

*Article 26 - Compulsory acquisition of rights and restrictive covenants*

- 4.85 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. This includes the power to impose restrictive covenants.
- 4.86 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 23 (compulsory acquisition of land). 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.
- 4.87 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 that Schedule.

- 4.88 The power to impose restrictive covenants will allow for the possibility of reducing the area of outright acquisition and thus enable a more proportionate exercise of compulsory powers. It is therefore in the public interest and has precedent in other highway development consent orders, such as article 23 of the A14 Order. It is required specifically to protect the diverted apparatus of statutory utilities
- 4.89 Paragraph (3) provides that the power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.
- 4.90 Paragraph (4) provides that where Highways England only needs to acquire rights over land, it is not obliged to acquire any greater interest in that land.
- 4.91 Paragraph (5) applies Schedule 6, which imposes 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 to the additional categories of acquisition covered by the Order and 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 (done to allow lesser land interests to be acquired).
- 4.92 For the purpose of section 126(2) of the 2008 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.
- 4.93 The article is based on article 21 of the model provisions and follows the M20 Order (article 24) and the M4 Order (article 22).
- Article 27 - Public rights of way*
- 4.94 Article 27(1) provides for the public rights of way specified in Parts 1 and 2 of Schedule 4 and shown on the Rights of Way and Access Plans to be extinguished. The rights of way are extinguished following the expiry of a site notice which must be erected at either end of the way to be extinguished no less than 28 days prior to the extinguishment.
- 4.95 The article is based on article 10 of the model provisions and follows the M20 Order (article 25) and the A14 Order (article 24).
- Article 28 - Private rights over land*
- 4.96 This article provides for the extinguishment of private rights over land that is subject to compulsory acquisition under the Order. In so far as Highways England acquires land or creates new rights over land under the Order, where the continuance of private rights over that land would be inconsistent with the exercise of the right being acquired or created then the private rights in question will be extinguished.
- 4.97 Paragraph (3) provides that rights over Order land that is already owned by Highways England are extinguished on commencement of any activity authorised by the Order which interferes with or breaches those rights.
- 4.98 Paragraph (4) provides that all private rights over land which Highways England takes temporary possession of under the Order will be suspended and unenforceable for as long as Highways England remains in lawful possession of the land.
- 4.99 Paragraphs (5) to (8) make provision for compensation and for circumstances where rights are preserved. Paragraph (5) provides that any right holders who suffer loss caused by the extinguishment or suspension of rights will be entitled to compensation.
- 4.100 Paragraph (9) sets out a list of matters deemed to be private rights.
- 4.101 Paragraph (10) provides that the owners and occupiers of the land to be accessed over new private means of access which require taking access along the tracks to be formed on the Order



Land are granted private rights to use these tracks. This provides certainty to the owners and occupiers of the affected landholdings as to how their access will be secured.

- 4.102 Other than paragraph (10) which has been drafted for this Scheme, article 28 is based on article 22 of the model provisions and previous Highways England orders such as the M20 Order (article 26) and the A14 Order (article 25).

*Article 29 - Modification of Part 1 of the 1965 Act*

- 4.103 The purpose of this article is to ensure consistency between the terms of the Order and the Compulsory Purchase Act 1965 (as amended by the Housing and Planning Act 2016) as applied by section 125 of the Act. It has precedent in the M20 Order (article 27).

*Article 30 - Application of the 1981 Act*

- 4.104 This article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a development consent order) the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to compulsory acquisition under the Order so that Highways England has the option to acquire land via the vesting declarations procedure.
- 4.105 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.
- 4.106 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 acquirer 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).
- 4.107 The modifications ensure consistency with the standard five year period sought under the Order for acquisition rights. It further ensures that the appropriate references are made to the Act. The article is based on article 23 of the model provisions, and previous Highways England orders such as the M20 Order (article 28) and the M4 Order (article 24).

*Article 31 - Acquisition of subsoil or air-space only*

- 4.108 This article allows Highways England to acquire, or acquire or create rights in, land below the surface or above the surface, rather than having to acquire all of the land.
- 4.109 The purpose of this article 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 affected landowners and lower payments of compensation, both of which are in the public interest. Any subsoil or airspace acquired under this provision can only be used for the same purposes for which Highways England could have acquired all of the land. This provision allows acquisition of the minimum interest needed to deliver the scheme.
- 4.110 This article is based on article 24 of the model provisions, which related to subsoil only, and previous Highways England orders such as the M20 Order (article 29) and the M4 Order (article 25).

*Article 32 - Rights under or over streets*

- 4.111 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 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. The article was included in the model provisions as article 27.

*Article 33 - Temporary use of land for carrying out the authorised development*

- 4.112 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 which is not required permanently. The authorisation of temporary possession prevents Highways England having to permanently acquire land which is required to construct the Scheme but which is not needed permanently and therefore assists in minimising the interference with landowners' rights.
- 4.113 This Article also allows for the temporary occupation of any of the Land intended for permanent acquisition that has not yet been acquired.
- 4.114 The article is based on article 28 of the model provisions, with a number of changes:
- (a) First, the ability to occupy land temporarily that is subject to powers of permanent acquisition but that has not yet been acquired (paragraph (1)(a)(ii)) has been added. This allows Highways England to occupy land without having to acquire it immediately. There is a consequential amendment to paragraph (3) to cater for the two types of land.
  - (b) Secondly, paragraph (1)(d) has been added so that permanent works specified in column (3) of Schedule 7, and any other permanent mitigation works in connection with the authorised development, may be left on land that has been temporarily occupied, rather than having to acquire such land for this purpose. The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. The intended scope of 'mitigation works' is any permanent works necessary and appropriate to mitigate the impacts of the Scheme (e.g. landscaping or ecological mitigation works).
  - (c) There has been a minor amendment to paragraph (2) to require the notice of intended entry to specify the purpose for which entry is to be taken where land is being entered under paragraph (1)(a)(ii).
  - (d) There are amendments to the requirements for restoring the land before returning it to reflect the changes in respect of permanent works, which have been added as paragraph (4)(b). Paragraph (4)(d) is also added in respect of protective works for statutory undertaker apparatus. Paragraph (4)(e) is also included in respect of installed apparatus of statutory undertakers.
  - (e) There is a minor amendment to paragraph (5) where 'any power conferred by' has been omitted, since the provisions are of the article, not of the powers.
  - (f) Paragraph (8) also amends the provisions of article 28 of the model provisions, by making it clear in paragraph (a) that, where plots are included in both Schedule 5 (land in which only new rights etc. may be acquired) and Schedule 7, both temporary possession, and compulsory acquisition of new rights may occur.
  - (g) Finally, paragraph (11) has been added to ensure clarity about the extent of the land Highways England may take temporary possession of.

- 4.115 The amended article in part reflects the wording of recent Highways England orders such as the M20 Order (article 31) and the M4 Order (article 28).

*Article 34 - Temporary use of land for maintaining the authorised development*

- 4.116 This article provides that Highways England may take temporary possession of land within the Order limits, as required for the purpose of maintaining the authorised development, at any time within a period of five years from the date on which that part of the authorised development is first opened for use.

- 4.117 Paragraph (1)(c) authorises the construction of such temporary works and buildings on the land as may be reasonably necessary for that purpose. Under paragraph (5) all temporary works must be removed before Highways England gives up possession under this article and the land must be restored to the reasonable satisfaction of the owners.
- 4.118 This power does not apply in relation to houses, gardens or any other buildings for the time being occupied (paragraph (2)).
- 4.119 Paragraph (3) requires at least 28 days' notice of intended entry to be served on the owners and occupiers of the land in question.
- 4.120 Paragraphs (6) to (8) provide for compensation to be paid to owners and occupiers of land of which temporary possession is taken under this article.
- 4.121 This article was included in the model provisions as article 29.

*Article 35 - Statutory undertakers*

- 4.122 This article allows Highways England to extinguish rights of statutory undertakers 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 impractical 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.
- 4.123 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.
- 4.124 Paragraph (2) restricts Highways England's power to extinguish rights or remove or reposition apparatus by excluding apparatus in streets. If the streets in question are to be stopped up as part of the authorised development then the provisions of article 36 will apply.
- 4.125 This article is based on article 31 of the model provisions and previous Highways England orders such as the M20 Order (article 33) and the M4 Order (article 30).

*Article 36 - Apparatus and rights of statutory undertakers in stopped up streets*

- 4.126 This article governs what happens to statutory undertakers' apparatus (pipes, cables etc.) under streets that are stopped up by the Order. Without the article, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street.
- 4.127 Under paragraph (2), Highways England may require a statutory undertaker to remove and relocate the apparatus (or apparatus provided in substitution) elsewhere. Paragraph (3) requires Highways England to compensate the statutory undertaker for the reasonable costs it incurs in doing so.
- 4.128 Paragraph (4) provides for a reduction to the amount payable to the statutory undertaker in certain circumstances, including where replacement apparatus is provided that is of a better type, of greater capacity or of greater dimensions and those improvements or increases are not necessary. Paragraph (5) clarifies that the placing of apparatus of a greater length does not count for the purposes of paragraph (4), since it is likely that for most diversions apparatus of greater length will need to be installed. Similarly, joints in apparatus may be necessary and if so that will not lead to a reduction of the amount payable.
- 4.129 Paragraph (6) discounts from the amount payment to the statutory undertaker in compensation any financial benefit to the statutory undertaker that arises as a result of having new rather than old (i.e. older than 7.5 years) apparatus due to the deferment of the timetable for renewal of the apparatus.

4.130 Paragraph (7) provides that for those parts of the project that involve major highways works, major bridge works or major transport works (which are defined in Part 3 of the New Roads and Street Works Act 1991 and do not include the construction of a new highway), the compensation provisions under that Act will apply instead.

4.131 This article was included in the model provisions as article 32.

*Article 37 - Recovery of costs of new connections*

4.132 This article provides that if any statutory undertaker's apparatus is removed and this interrupts the a supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from Highways England.

4.133 This article was included in the model provisions as article 33.

**Part 6 - Operations**

*Article 38 - Felling or lopping of trees and removal of hedgerows*

4.134 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 Scheme or endanger anyone using it. Compensation is payable for any loss or damage caused.

4.135 Further, this article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997. This article is based on article 39 of the model provisions and recent Highways England orders such as the M20 Order (article 38), the M4 Order (article 35) and the A14 Order (article 36).

**Part 7 - Miscellaneous and General**

*Article 39 - Application of landlord and tenant law*

4.136 This article governs the leasing of land by Highways England to any other person. Essentially it allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.

4.137 This was included in the model provisions as article 35.

*Article 40 - Operational land for purposes of the 1990 Act*

4.138 The effect of this article is that the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990.

4.139 This article was included in the model provisions as article 36.

*Article 41 - Defence to proceedings in respect of statutory nuisance*

4.140 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in civil or criminal proceedings for nuisance. This article provides a defence to proceedings brought in a magistrates' court under s.82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in paragraph 79(1) of that Act.

4.141 The defence is available if the noise relates to:

- (a) the use of premises by Highways England for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with a notice served, or consent given, under the Control of Pollution Act 1974; or

(b) the construction, maintenance or use of the Scheme and cannot reasonably be avoided.

4.142 This article provides a defence to those nuisances which may be of relevance to the authorised development, as set out in the Statement Related to Statutory Nuisances (TR010040/APP/6.7) accompanying the application.

4.143 This article is based on article 7 of the model provisions and recent Highways England orders such as the M20 Order (article 42) and the M4 Order (article 38).

*Article 42 – No double recovery*

4.144 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.

4.145 The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle.

4.146 This article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, the National Grid (Richborough Connection Project) Development Consent Order 2017 and the North London Heat and Power Generating Station Order 2017.

*Article 43 – Disregard of certain interests and improvements*

4.147 This article provides for the 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.

4.148 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 and the River Humber Gas Pipeline Replacement Order 2016, and TWAOs such as the London Underground (Northern Line Extension) Order 2014 and the Midland Metro (Wolverhampton City Centre Extension) Order 2016.

4.149 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 the 2008 Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

*Article 44 – Set-off for enhancement in value of retained land*

4.150 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.

4.151 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 and TWAOs such as the London Underground (Northern Line Extension) Order 2014 and the Midland Metro (Wolverhampton City Centre Extension) Order 2016.

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

*Article 45 - Appeals relating to the Control of Pollution Act 1974*

- 4.153 This article establishes an appeal process in circumstances where a local authority issues a notice under section 60, or does not grant consent or grants conditional consent under section 61, of the Control of Pollution Act 1974. Its aim is to streamline the appeal process, thereby minimising the potential for unnecessary delay to the scheme.

*Article 46 - Traffic regulation*

- 4.154 The purpose of this article is to provide Highways England with powers to make 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 authorised development.
- 4.155 This article would, at any time up to 12 months from the opening of the authorised development for public use, allow Highways England, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the authorised development, to:
- (a) revoke, amend or suspend in whole or in part any order made under the Road Traffic Regulation Act 1984;
  - (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
  - (c) authorise the use as a parking place of any road;
  - (d) make provision as to the direction or priority of vehicular traffic; and
  - (e) permit or prohibit vehicular access to any road.
- 4.156 Under paragraph (3) any restriction etc. made before the end of the 12 month period may continue to have effect after that period has expired.
- 4.157 Implementation of any of the measures is subject to the prior approval of the traffic authority in whose area the roads are situated. Requirement is made in paragraphs (4) and (5) for the chief officer of police and the relevant traffic authority to be consulted and notified in advance. The notification period varies depending on what is being proposed.
- 4.158 Any restrictions etc. may be suspended, varied or revoked by Highways England within a period of 24 months from the opening of the authorised development (paragraph (7)).
- 4.159 This article was not included in the model provisions but has been included in all previous Highways England orders (for example article 47 of the M20 order, article 43 of the M4 Order and article 45 of the A14 Order). It is anticipated that this article will be used inter alia to allow Highways England to amend the speed limits on small sections of the public highways adjacent to and connecting to the Order Land for which the County Council is the Highway Authority and traffic authority. These amendments are required to align the existing speed limits with those to be imposed on the altered stretches of highway within the Scheme to which they connect.

*Article 47 – Protection of interests*

- 4.160 This article gives effect to Schedule 9, which contains provisions protecting the interests of third parties. It was not included in the model provisions, but is a standard article in development consent orders that include protective provisions.

- 4.161 Highways England 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. Highways England will provide a full update of the status of the negotiations throughout the examination.

*Article 48 - Certification of documents.*

- 4.162 This article provides for various application plans and other documents to be certified by the Secretary of State as true copies of those documents referred to in the Order. This was included in the model provisions as article 41. Schedule 10 (Documents, etc. to be certified) provides a list of the documents to be certified.

*Article 49 - Service of notices*

- 4.163 This article governs the proper service of notices required to be given under the Order. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.
- 4.164 This article was not included in the model provisions but is a sensible addition that has been included in previous orders, such as article 45 of the M20 Order, article 41 of the M4 Order and article 42 of the A14 Order.

*Article 50 - Arbitration*

- 4.165 This article governs what happens when two or more parties disagree in the implementation of any provision of the Order. The matter is to be settled by arbitration and if the parties cannot agree on who the arbitrator should be, this is decided by the President of the Institution of Civil Engineers.

*Article 51 - Crown rights*

- 4.166 This article prevents Highways England from acquiring any Crown land, or from otherwise interfering with it, without the written consent of the relevant Crown authority. The Crown's consent may be given unconditionally or subject to terms and conditions.
- 4.167 This article reflects the provisions of section 135 of the 2008 Act. It was not included in the model provisions but was included in the A19/A1058 Coast Road (Junction Improvement) Order 2016 as article 37.

## **5. REQUIREMENTS**

- 5.1 The requirements in Part 1 of Schedule 2 are the equivalent of planning conditions. They apply to the carrying out and operation of the authorised development and reflect the processes and procedures usually employed by Highways England when implementing a scheme such as this.
- 5.2 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.
- 5.3 Highways England understands that decision-making by the Secretary of State 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 Scheme through their relationships with Highways England.
- 5.4 The requirements provide that the various schemes, details and plans to be approved must, where appropriate, reflect the mitigation measures included in the Environmental Statement. This is the mechanism to ensure that environmental mitigation is secured by the Order, and the

approach here is consistent with other DCOs which have been made. The requirements provide that the approved schemes, details and plans must be implemented as approved, unless further amendments to them are approved. A general provision to this effect is provided at requirement 13.

5.5 Turning to the purpose and effect of the requirements:

- (a) Requirement 1 (*Interpretation*) contains a number of definitions used in Part 1 of Schedule 2. This was included in the model provisions as requirement 1.
- (b) Requirement 2 (*time limits*) provides that the authorised development must not commence later than 5 years from the date of the Order coming into force. This was based on the model provisions as requirement 2.
- (c) Requirement 3 (*Detailed Design*) provides that the authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the Engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation with the relevant planning authority. The ability for the Secretary of State to allow for variations to the detail in the Engineering drawings is qualified by having to be within the parameters of what has been assessed in the Environmental Statement. This means that an appropriate balance is achieved between flexibility in detailed design and clarity of what is to be constructed.
- (d) Requirement 4 (*environmental management plan*) requires the preparation of the second iteration of an environmental management plan ("EMP") in consultation with the relevant planning and highway authorities and for its approval by the Secretary of State before a part of the authorised development commences (sub-paragraph (1)). The EMP (Second Iteration) must be based substantially on the EMP (First Iteration) prepared as part of the application and certified by the Secretary of State. The EMP (Second Iteration) will fulfil the construction-related objectives and measures as outlined in the REAC that are contained in the EMP (First Iteration) at Table 3.1 and must be written in accordance with ISO14001 and the content of the Environmental Statement.
- (e) The EMP (First Iteration) also lists (at paragraph 1.1.4 two outline management plans that will need to be developed prior to construction, but are provided as appendices to the EMP (First Iteration). These are the Outline Site Waste Management Plan and the Traffic Management Plan.

Paragraph 1.1.5 of the EMP (First Iteration) lists further plans that will be provided with the EMP (Second Iteration), being:

- Materials Management Plan
- Soil Handling Management Plan
- Construction noise and dust management plan
- Construction Communications Strategy
- Landscape and ecology management plan
- Biosecurity management plan
- Water monitoring and management plan

Following the construction of the authorised development, the EMP (Second Iteration) for a part of the authorised development will be replaced by an EMP (Third Iteration) for that part which will address the matters that are relevant to the operation and maintenance of the authorised development.

Requirement 4 is in part based on requirement 19 of the model provisions, which referred instead to a code of construction practice. It is however substantially modified to reflect the latest provisions of the Design Manual for Roads and Bridges.



- (f) Requirement 5 (*Landscaping*) provides for the preparation of a landscaping scheme covering all hard and soft landscaping works for approval by the Secretary of State, following consultation with the relevant planning authority. There is a requirement that the proposed landscaping scheme must reflect the relevant mitigation measures in the REAC and must be substantially in accordance with the masterplan (document reference TR010040/APP/6.8) and the EMP (First Iteration) (document reference TR010040/APP/7.7). Further details of what must be contained in the landscaping scheme are set out in sub-paragraph (3). Requirement 5 is based on requirement 7 of the model provisions and recent Highways England orders.
- (g) Requirement 6 (*Contaminated land and groundwater*) provides that no part of the authorised development is to commence until for that part a contamination risk assessment has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency and the relevant planning authority. The assessment must include a number of measures as set out in sub-paragraph (2). The requirement also makes provision for dealing with any contaminated land discovered during construction of the works, in consultation with the relevant planning authority and the Environment Agency. This requirement is based on requirement 15 of the model provisions and recent Highways England orders such as requirement 8 of the M20 Order and requirement 12 of the M4 Order.
- (h) Requirement 7 (*Protected species*) provides that no part of the authorised development is to commence until for that part, final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected. Provision is made for the submission of a scheme of protection and mitigation measures to be approved by the Secretary of State, where protected species are shown to be present and the application of relevant assessment methods used in the ES show that a significant effect is likely to occur which was not previously identified in the ES. This requirement is based on requirement 34 of the model provisions and recent Highways England orders such as requirement 10 of the M20 Order and requirement 13 of the M4 Order.
- (i) Requirement 8 (*Surface and foul water drainage*) provides that no part of the authorised development is to commence until written details of a surface and foul water drainage system, reflecting the mitigation measures in the REAC and including means of pollution control, have been prepared in consultation with the relevant planning authority and approved in writing by the Secretary of State. This requirement is based on requirement 14 of the model provisions.
- (j) 7.11 Requirement 9 (*Archaeology*) provides that no part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures included in the ES and REAC, has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and the County Archaeologist. The requirement places further limitations on construction activity within 10 metres of any archaeological remains which were not previously identified but are revealed when carrying out the authorised development. This requirement is based on requirement 16 of the model provisions and recent Highways England orders such as requirement 9 of the M20 Order and requirement 15 of the M4 Order.
- (k) Requirement 10 (*Traffic management*) provides that no authorised development is to commence until a traffic management plan has been prepared and approved by the Secretary of State following consultation with the relevant highway authority. This requirement consolidates various requirements of the model provisions (such as 22 and 33) and is based on Highways England orders such as requirement 11 of the M20 Order and requirement 18 of the M4 Order.
- (l) Requirement 11 (*Fencing*) provides that permanent and temporary fencing must be constructed and installed in accordance with Highways England's Manual of Contract Documents for Highway Works except where agreed otherwise by the Secretary of State.

(m) Requirement 12 (*Approvals and amendments to approved details*) provides that with respect to any requirement that stipulates the authorised development must be carried out in accordance with the approved details, the approved details are taken to include any amendments that may subsequently be approved or otherwise agreed in writing by the Secretary of State. This is based on requirement 37 of the model provisions.

5.6 Part 2 of Schedule 2 (Requirements 13-17) provides a procedure for the discharge of requirements by the Secretary of State. It sets out 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 and includes provision for the maintenance of a register of requirements, to aid members' of the public understanding of the progress made by Highways England towards discharging requirements.

5.7 Paragraph 16 of Schedule 2 provides that any anticipatory steps which 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.

5.8 Paragraph 17 sets out what is required of Highways England where consultation with a third party is to be undertaken prior to the submission of details to the Secretary of State for approval under the requirements. It confirms that Highways England must give the third party in question 10 business days to respond to such consultation and must submit a report to the Secretary of State setting out the consultation undertaken (and Highways England's response to it) to inform the details submitted to the Secretary of State for approval.

#### **6. SCHEDULE 3: ARTICLE 13 - CLASSIFICATIONS OF ROADS, ETC.**

This schedule sets out the classification of streets, other classified roads and other public rights of way following completion of the works.

#### **7. SCHEDULE 4: ARTICLE 17 - PERMANENT STOPPING UP AND RESTRICTION OF USE OF STREETS AND PRIVATE MEANS OF ACCESS**

This schedule sets out those streets that are to be permanently stopped up pursuant to Article 17 (Permanent stopping up and restriction of use of streets and private means of access).

#### **8. SCHEDULE 5: ARTICLE 26 - LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED**

This schedule sets out land in which new rights may be required pursuant to article **Error! Reference source not found.** (compulsory acquisition of rights and imposition of restrictive covenants).

#### **9. SCHEDULE 6: ARTICLE 29 - MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**

This schedule sets out the modification of legislation on compensation and compulsory purchase for the purpose of creating new rights and imposing restrictive covenants.

#### **10. SCHEDULE 7: ARTICLE 33 - LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN**

This schedule sets out the land of which temporary possession may be taken pursuant to Article 33 (Temporary possession of land for carrying out the authorised development).

The Schedule includes the plots shown on the land plans and listed in Schedule 5 (Land in which only new rights may be acquired) for which only new rights may be acquired rather than freehold acquisition. This is to ensure that the Undertaker may benefit from the provisions of Article 33 when the required apparatus for the exercise of the new rights.

**11. SCHEDULE 8: ARTICLE 38 – REMOVAL OF HEDGEROWS**

Schedule 8 (removal of hedgerows) sets out the hedgerows in respect of which the undertaker may exercise powers pursuant to Article 38 (Felling or lopping of trees and removal of hedgerows).

**12. SCHEDULE 9: ARTICLE 47 - PROTECTIVE PROVISIONS**

This schedule sets out any protective provisions for the benefit of Electricity, Gas, Water and Sewerage Undertakers; and the Operators of Electronic Communications Code Networks.

Specific protections are included in Part 3 for the benefit of Anglian Water.

None of the protective provisions are yet agreed with the benefiting undertakers, but discussions have commenced with the relevant undertakers.

**13. SCHEDULE 10: ARTICLE 48 – DOCUMENTS, ETC. TO BE CERTIFIED**

This schedule sets out the list of documents to be certified by the Secretary of State in terms of Article 46 (Certification of documents, etc.).