



# Gatwick Airport Northern Runway Project

Explanatory Memorandum to the Development Consent  
Order – Tracked Version

## Book 2

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## GATWICK AIRPORT NORTHERN RUNWAY PROJECT

### EXPLANATORY MEMORANDUM TO THE DRAFT DEVELOPMENT CONSENT ORDER

#### 1. INTRODUCTION

- 1.1 Gatwick Airport Limited (the "**undertaker**") has made an application (the "**Application**") to the Secretary of State for a development consent order ("**DCO**") to authorise the Gatwick Airport Northern Runway Project (the "**Project**") (which is described at Schedule 1 (Authorised Development) to the draft DCO which accompanies the Application and is entitled the Gatwick Airport (Northern Runway Project) Order 202[ ] (the "**Order**") (Doc Ref. 2.1).
- 1.2 This memorandum explains the purpose and effect of each Article of, and the Schedules to, the Order, as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. In particular, it sets out (where relevant):
- 1.2.1 the source of the provision (whether it is bespoke or based on a granted DCO); and
- 1.2.2 the reasons why the Article is relevant to the proposed development and considered important/essential to the delivery of the Project.
- 1.3 This document should be read alongside the Order and the various documents submitted in respect of the Application.

#### 2. THE PURPOSE OF THE ORDER

- 2.1 Section 31 of the Planning Act 2008 (the "**2008 Act**") provides that a DCO is required to the extent that a development is, or forms part of, a nationally significant infrastructure project ("**NSIP**").
- 2.2 The Project is an NSIP under sections 22 (highways) and 23 (airports) of the 2008 Act because:
- 2.2.1 it proposes alterations to an existing airport which would increase the passenger throughput capacity at the airport by at least 10 million per annum (section 23(1)(b), and (4) and (5)); and
- 2.2.2 it further proposes the alteration of a highway where the speed limit is 50 mph or over and the works each exceed the 12.5 hectare limit that applies to that category of road (section 22(1)(b), (3) and (4)).
- 2.3 Accordingly, the undertaker has made the Application in order to secure development consent for the Project. The Order is part of the Application.
- 2.4 The Project comprises the following principal elements:
- 2.4.1 works to reposition the existing northern runway 12 metres further north to enable dual runway operations;
- 2.4.2 reconfiguration of taxiways;
- 2.4.3 pier and stand alterations (including a proposed new pier);
- 2.4.4 reconfiguration of other airfield facilities;
- 2.4.5 extensions to the existing airport terminals (north and south);
- 2.4.6 provision of additional hotel and office space;
- 2.4.7 provision of reconfigured car parking, including new car parks;
- 2.4.8 surface access (including highway) improvements including works associated with the south terminal junction improvements, north terminal junction improvements and works associated with the Longbridge roundabout junction;



- 2.4.9 demolition and relocation of Central Area Recycling Enclosure (CARE) facility;
  - 2.4.10 water treatment works;
  - 2.4.11 reconfiguration of existing utilities, including surface water, foul drainage and power;
  - 2.4.12 works associated with the River Mole;
  - 2.4.13 works to create and establish new areas of public open space, including a pedestrian bridge over the River Mole;
  - 2.4.14 works to construct a habitat enhancement area and flood compensation area; and
  - 2.4.15 landscape/ecological planting.
- 2.5 Consent is also sought for 'other associated development' as defined in Schedule 1 of the Order, which is connected with the construction, operation or maintenance of the Works defined in that Schedule.
- 2.6 Section 115(1) of the 2008 Act provides that development consent may be granted for "(a) *development for which development consent is required, or (b) associated development.*"
- 2.7 Guidance on associated development has been issued by the Secretary of State<sup>1</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*" and which "*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.*" (paragraph 5)
- 2.8 All of the Works described in Schedule 1 (Authorised Development) of the Order 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.
- 2.9 Section 120(3) of the 2008 Act provides that an order can make a provision "*relating to, or to matters ancillary to, the development*" and makes it clear (section 120(4)) that such matters 'include', in particular, provision for or relating to any of the matters listed in Part 1 of Schedule 5 of the 2008 Act. Section 120(5) also allows a DCO to apply, modify or exclude a statutory provision as necessary to give effect to the powers in the DCO, include any provision that appears necessary or expedient to giving full effect to any other provision in the DCO, and include any incidental, consequential or transitional provisions or savings.
- 2.10 The main ancillary matter is a power to acquire land or rights over land compulsorily or by agreement, in accordance with section 120(3) of the 2008 Act, required for the authorised development, or to facilitate, or that are incidental to, the authorised development under section 122 of the 2008 Act. A justification for these powers is set out in the **Statement of Reasons** (Doc Ref. 3.2) that accompanies the application.
- 2.11 Further to providing these powers, the Order seeks to apply and modify statutory provisions that relate to the compulsory acquisition of land. Under sections 117 and 120(5) of the 2008 Act, an order containing provisions of this nature must be made by Statutory Instrument. -The Order is therefore presented in that form.
- 2.12 Other ancillary matters include the stopping up of lengths of existing highways and public rights of way and traffic regulation.
3. **PART 1 – PRELIMINARY**
- 3.1 Articles 1 (Citation and commencement) and 2 (Interpretation) of the Order contain preliminary provisions.

**Article 1 (Citation and commencement)**

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<sup>1</sup> "Planning Act 2008: associated development applications for major infrastructure projects" (Department for Levelling Up, Housing and Communities) (April 2013).



- 3.2 Article 1 provides for the citation of the Order and provides the date on which it comes into force.

**Article 2 (Interpretation)**

- 3.3 The purpose of Article 2 is to define various terms used in the Order.

- 3.4 Definitions to note include:

3.4.1 **"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 (the **"1990 Act"**) is not to be taken to mean that the development has "commenced". The term 'commence' is used in the definition of "development" and in Articles 9 (Planning permission) and 21 (Agreements with highway authorities), and in requirements 3, 4, 5, 8, 9, 10, 11, 12, 13, 18 and 23 in Schedule 2 (Requirements), as well as in the Protective Provisions benefitting National Highways (Schedule 9, Part 3). The relevant requirements express themselves as needing to be discharged before development can 'commence'. These types of requirements are sometimes referred to as pre-commencement requirements. The definition of 'commence' excludes certain activities, such that they may be carried out by the undertaker before a pre-commencement requirement is discharged. The undertaker considers that this approach is reasonable and proportionate. The works that are excluded from the definition do not give rise to any materially new or materially different environmental effects to those assessed in the **Environmental Statement** (Doc Ref. 5.1), being either *de minimis* or having minimal potential for adverse effects, in line with the Planning Inspectorate's Advice Note 15. The undertaker 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 M20 Junction 10a Development Consent Order 2017, The Sizewell C (Nuclear Generating Station) Order 2022 and The M25 Junction 28 Development Consent Order 2022);

3.4.2 **"maintain"** which provides a non-exclusive list of those actions, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the **Environmental Statement** (Doc Ref. 5.1), that are considered to be maintenance for the purposes of the Order. -In the context of the airport it is important for the undertaker to be able to undertake all the elements of maintenance that are included within this definition. -This approach has been taken in other made DCOs (see for example The Manston Airport Development Consent Order 2022, The Sizewell C (Nuclear Generating Station) Order 2022 and The M25 Junction 28 Development Consent Order 2022);

3.4.3 "the Order land", which comprises all of the land to be acquired, or over which rights are to be acquired, as shown on the land plans; and

3.4.4 "the Order limits", which references the extent of the area within which the authorised development may be carried out.

- 3.5 Article 2(2) clarifies that references in the Order to rights over land includes the rights to do anything in, on or under the land or in the airspace above and that the imposition of restrictions also includes restrictive covenants over the Order land. This approach has been taken in other made DCOs including The Southampton to London Pipeline Development Consent Order 2020, The A1 Birtley to Coal House Development Consent Order 2021 and The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022.

- 3.6 Article 2(3) provides that measurements within the Order are approximate. The purpose of this is to ensure that if, upon the carrying out of the works, it transpires that the distances, directions and lengths are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. The provision allows for a small tolerance with respect to any distances, directions and lengths within the Order limits.



- 3.7 Article 2(4) provides that references to the acquisition and creation of rights are to include a reference to acquiring rights in favour of third parties directly, and to any statutory undertaker for the purpose of their undertaking. This ensures that those who are intended to benefit from any compulsory acquisition of rights over land (such as statutory undertakers in respect of their apparatus, or landowners who are intended to have the benefit of replacement land or new accesses) are able to benefit from such acquisition directly. This provision is included in Article 2(3) of each of The Great Yarmouth Third River Crossing Development Consent Order 2020, The A57 Link Roads Development Consent Order 2022 and The M25 Junction 28 Development Consent Order 2022.
- 3.8 Article 2(5) provides that areas given in the **Book of Reference** (Doc Ref. 3.3) are approximate as these are not covered by Article 2(3). This is intended to clarify the position of the areas in the **Book of Reference** (Doc Ref. 3.3) and the purpose and effect is the same as set out in relation to that provided for Article 2(3) above.
- 3.9 Articles 2(6) and (7) tie references to lettered/numbered points and numbered works in the Order to their relevant plans and Schedule 1 respectively.
- 3.10 Article 2(8) clarifies that references to statutory bodies include their successors in title.
- 3.11 Article 2(9) defines references to "materially new or materially different environmental effects" by reference to the effects reported in the **Environmental Statement** (Doc Ref. 5.1) and provides that, where this phrase is used in the Order, it must not be interpreted such that the undertaker is prevented from doing something which would avoid, remove or reduce an adverse environmental effect.
- 3.12 Article 2(10) confirms that the expression 'includes' is to be construed without limitation when used in the Order.

#### 4. **PART 2 – PRINCIPAL POWERS**

##### ***Article 3 – (Development consent etc. granted by the Order)***

- 4.1 Article 3(1) grants development consent to the undertaker to construct, operate and use the authorised development, which is described in Schedule 1. The Article makes the consent subject to the requirements which are listed in Schedule 2. -The provision differs from some made DCOs as it does not refer to development consent being granted “within the Order limits”. This is because the Order provides for certain activities to be carried out beyond the Order limits (e.g. Articles ~~232~~ (Protective works to buildings) and ~~Article 18~~ (Traffic regulations)). These Articles are routinely included in DCOs, are necessary to support the delivery of the authorised development and also serve to reduce in scope the amount of land required for temporary powers of possession and/or compulsory acquisition, since the land would otherwise need to be included within the Order limits. The approach therefore reflects the clear intention that such activities should benefit from development consent and should not be subject to a requirement for further planning approval outside the DCO process. The undertaker notes that the Secretary of State has explicitly endorsed the removal of the phrase “within the Order limits” in the A303 Amesbury to Berwick Down Correction Order “in recognition that the Order provides powers to carry out limited activities beyond the Order limits”. This drafting approach does not affect the limits of deviation for the works which are controlled under Article 6 (limits of works).
- 4.2 Article 3(2) states that any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of the Order. This provision has been included and is necessary in order to ensure that there are no acts of a local or other nature that would hinder the construction and operation of the authorised development. It ensures that the modifications made in the Order apply to any enactments that may affect the authorised development and further ensures consistency with legislation more generally. As a result, the construction and operation of the authorised development are not jeopardised by any incompatible statutory provisions which may exist. There is precedent for such a provision, for example in Article 3(2) of The M42 Junction 6 Development Consent Order 2020 and in Article 3(2) of the Manston Airport Development Consent Order 2022.

##### ***Article 4 (–Maintenance of authorised development)***



4.3 This Article enables the undertaker to maintain the authorised development, subject to the other provisions of the Order. "Maintain" is defined in Article 2(1), with its scope and purpose described earlier in this Memorandum.

4.4 This Article follows the approach taken in Article 4 of The Manston Airport Development Consent Order 2022 and Article 6 of The Sizewell C (Nuclear Generating Station) Order 2022.

**Article 5 (–Maintenance of drainage works)**

4.5 The purpose of this Article is to make it clear that any realignment of award drains or other works to them that are carried out as part of the Project do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between the undertaker and the responsible party.

4.6 The provision gives certainty to both the undertaker and to those that possess that responsibility. It also enables agreement on reallocation of responsibilities to be reached where it is appropriate. The provision is well precedented (see for example Article 4 of The A14 Cambridge to Huntingdon Improvement Order 2016, Article 5 of The Manston Airport Development Consent Order 2022 and Article 6 of The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022).

**Article 6 (–Limits of works deviation)**

4.7 Article 6 provides for limits of deviation to allow for construction of each work of the authorised development within the work limits shown on the works plans.

4.8 The vertical and lateral limits within which the authorised development may be constructed are also specified in this Article.

4.9 In respect of the following works, the undertaker may not deviate vertically from the levels shown on the 'approved plans' (being the plans certified as such) except as approved pursuant to the requirements:

4.9.1 works to convert three existing stands to remote stands and taxiways west of Pier 3 (Work No. 3)

4.9.2 works to construct Pier 7 (Work No. 6)

4.9.3 works to construct the replacement Central Area Recycling Enclosure (CARE) (Work No. 9)

4.9.4 works to construct the replacement Motor Transport Facilities (Work No. 10)

4.9.5 works to construct the replacement Grounds Maintenance Facilities (Work No. 11)

4.9.6 works to construct the replacement Airfield Surface Transport Facility (Work No. 12)

4.9.7 works to construct the Satellite Airport Fire Service Facility (Work No. 15)

4.9.8 works to construct a new hangar (Work No. 16)

4.9.9 works associated with the North Terminal Building (Work No. 22)

4.9.10 works associated with the South Terminal Building (Work No. 23)

4.9.11 works to construct a hotel (Work No. 26)

4.9.12 works to construct a hotel (Work No. 27)

4.9.13 works associated with the Car Park H Site (Work No. 28)

4.9.14 works to convert the existing Destination Place office into a hotel (Work No. 29)

4.9.15 works to construct Car Park Y (Work No. 30)

4.9.16 works associated with Car Park X (Work No. 31)

4.10 In constructing the surface access works (Work Nos. 35, 36 and 37) the undertaker may deviate from the levels shown on the approved plans to a maximum of 1.5m upwards and 2m downwards, and may deviate laterally to the extent shown on the approved plans or



otherwise approved pursuant to the requirements. These limits do not apply where it is demonstrated by the undertaker to the relevant highway authority's satisfaction that works in excess of these limits would not give rise to materially new or materially different environmental effects to those assessed in the **Environmental Statement** (Doc Ref. 5.1).

- 4.11 Unless otherwise approved pursuant to the requirements (Schedule 2), in constructing the runway exits (Work Nos. 4(b) and 4(e)) the undertaker may deviate laterally to the extent shown on the approved plans, but where an area is specified in square metres on the approved plans for a component of these works the undertaker must not construct that component exceeding that area.
- 4.12 The limits relating to Work Nos. 3, 6, 9, 10, 11, 12, 15, 16, 22, 23, 26, 27, 28, 29, 30 and 31 and 4(b) and 4(e) do not apply where it is demonstrated by the undertaker to the relevant planning authority's satisfaction that works in excess of these limits would not give rise to materially new or materially different environmental effects to those assessed in the **Environmental Statement** (Doc Ref. 5.1).
- 4.13 The purpose of this provision is to provide the undertaker with a 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 different environmental effects.
- 4.14 Whilst the drafting of this Article is bespoke to the Project's requirements, similar flexibility has been included in other DCOs, including Article 4 of The Sizewell C (Nuclear Generating Station) Order 2022, Article 6 of The Southampton to London Pipeline Development Consent Order 2020, Article 7 of The M25 Junction 28 Development Consent Order 2022 and Article 7 of The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022.

#### **Article 7 –(Benefit of Order)**

- 4.15 The "undertaker" is defined in Article 2 as Gatwick Airport Limited or any person who has the benefit of this Order in accordance with Articles 7 and 8.
- 4.16 This Article overrides section 156(1) of the 2008 Act (as permitted by section 156(2)) to give the benefit of the Order to the undertaker, rather than anyone with an interest in the land (as is appropriate considering the nature of the authorised development).
- 4.17 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others. Absent this provision, there would be a contradiction since only the undertaker could benefit from these works.
- 4.18 The wording for this Article has widespread precedent, including Article 7 of The Manston Airport Development Consent Order 2022, Article 8 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 8 of The M25 Junction 28 Development Consent Order 2022.

#### **Article 8 (Consent to transfer benefit of Order)**

- 4.19 This Article anticipates that there may be circumstances where the undertaker seeks to transfer its rights to another party. This Article enables the rights and powers under the Order to be transferred to another body with the written consent of the Secretary of State.
- 4.20 The exercise of any transferred benefits or rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were executed by the **Applicant**undertaker. The consent of the Secretary of State is required for a transfer or grant, except where it is made:
- 4.20.1 in relation to a transfer or a grant of any works within a highway, to the relevant highway authority; or
- 4.20.2 in relation to a transfer or a grant relating to any part of Work Nos. 10(g), 11(d) (office areas), 16 (new hangar), 26, 27, 28 or 29 (hotels), to any registered company.
- 4.21 The removal of the need for later consent by the Secretary of State under paragraph (4) is justified by the fact that such consent is sought for the purposes of this application for development consent; thus interested parties, the Examining Authority and ultimately the



Secretary of State will have an opportunity to consider the appropriateness of this power as part of this application.

- 4.22 Like Article 7, this Article overrides section 156(1) of the 2008 Act (as permitted by 156(2) of the 2008 Act) which limits the benefit of the Order to anyone with an interest in the land. Due to the nature of the authorised development, it is entirely appropriate that the powers under the Order should be transferable in certain limited circumstances and, where appropriate, subject to the Secretary of State's consent.
- 4.23 The wording of this Article largely reflects the approach taken in Article 9 of The Riverside Energy Park Order 2020, Article 7 of The Immingham Open Cycle Gas Turbine Order 2020, Article 5 of The Hornsea Three Offshore Wind Farm Order 2020 and Article 9 of The Sizewell C (Nuclear Generating Station) Order 2022.

**Article 9 (~~–~~Planning permission)**

- 4.24 This Article clarifies the relationship between the application of planning permissions granted under the 1990 Act (or permitted development rights deemed to be granted under it) and the development powers granted by the Order. With the exception of paragraph (1), the drafting of this Article is bespoke to the Order. It addresses any potential uncertainty that may result from the Supreme Court's recent decision in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30. That judgment relates to planning permissions granted under the 1990 Act. It holds that, unless there is an express provision otherwise, where development has taken place under one permission, whether another planning permission may lawfully be implemented (or continue to be implemented) depends upon whether it remains physically possible to carry out the development authorised by the second permission in light of what has already been done under the first permission.
- 4.25 Article 9(2) provides that the works authorised by ~~the DCO~~ Schedule 1 (~~authorised~~ Authorised Development) may be carried out or may continue to be carried out notwithstanding the initiation (as defined by reference to section 56 of the 1990 Act) of any development pursuant to a planning permission granted or deemed to be granted pursuant to the 1990 Act which may be physically incompatible with the authorised development.
- 4.26 Article 9(3) makes similar provision with regard to any planning permissions initiated before the commencement of the authorised development.
- 4.27 Article 9(4) provides that any conditions of any planning permission granted prior to the date of the Order that are incompatible with the requirements of the Order or the authorised development shall cease to have effect from the date the authorised development is commenced. This provision also includes use of any permitted development rights.
- 4.28 Article 9(5) makes clear that nothing in the Order restricts the future grant of planning permissions under the 1990 Act for works within the Order limits, or exercise of permitted development rights. This provision is necessary to ensure that the airport operator can continue, in particular, to rely on its extant permitted development rights to facilitate the on-going operation of the airport and to allow for minor works to be separately consented without needing to rely on an amendment to the ~~DCO~~ Order which would be disproportionate and impractical in the circumstances.

**5. PART 3 – STREETS**

**Article 10 (~~–~~Application of the ~~New Roads and Street Works Act 1991~~ Act)**

- 5.1 This Article modifies the application of the New Roads and Street Works Act 1991 (the "**1991 Act**") to works carried out under the powers of the Order. This is required because street works will be carried out under Order powers subject to the provisions and requirements of the ~~DCO~~ Order and not, for instance, under Highways Act 1980 powers.
- 5.2 Paragraph (1) provides that works carried out under the powers of the Order which match the description of "major highway works" in the 1991 Act will be treated as major highway works for the purposes of the 1991 Act. The effect of this is to clarify that the provisions for sharing the burden of dealing with apparatus in the street (under sections 84 and 85 of the 1991 Act), which would normally apply only to major works carried out by the highway





authority, will apply in respect of the works authorised by the Order irrespective of who in fact carries them out.

- 5.3 “Major highways works” are defined at section 86 of the 1991 Act. The definition includes, at sub-sections 86(3)(b) and (f), works undertaken under powers conferred by sections 64 and 184 the Highways Act 1980. As that would not be relevant in this context (where the works will be undertaken under the powers of the Order), these sub-sections are omitted from paragraph (1)(a). Works equivalent to works undertaken under those sections of the Highways Act 1980, but carried out under powers conferred by the Order, are included through paragraph 1(b). The effect is that any works which would be “major highway works” under the 1991 Act if carried out by a highway authority in relation to one of its streets are also “major highway works” if carried out under the powers of the Order regardless of who carries them out.
- 5.4 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 provisions in the Order (including the requirements) which would regulate the carrying out of the Order works.
- 5.5 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to any streets which are 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.
- 5.6 Paragraph (7) has been added to make clear that Article 10 does not intend to alter the existing regime for streets within the airport boundary, in respect of which the undertaker has existing statutory powers. Without paragraph (7), there could be uncertainty as to whether the listed provisions of the 1991 Act apply to these streets and its inclusion is therefore necessary and justified.
- 5.7 These modifications reflect those made in other development consent orders affecting highways, for example The A63 (Castle Street Improvement, Hull) Development Consent Order 2020, ~~and~~ The M42 Junction 6 Development Consent Order 2020, The M25 Junction 28 Development Consent Order 2022 and The Sizewell C (Nuclear Generating Station) Order 2022.

**Article 11 (~~–Street works~~)**

- 5.8 This Article allows the undertaker to interfere with and execute works in or under the streets within 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) and 51(1) of the 1991 Act. Certain provisions of the 1991 Act apply to works carried out under this Article, subject to the provisions of Article 10 (Application of the 1991 Act).~~
- 5.9 The Article is based on Article 8 of the model provisions and has precedent in The Thurrock Flexible Generation Plant Development Consent Order 2022. ~~It departs from the model provisions in that it authorises interference with any street within the Order limits, rather than just those specified in a schedule. The application of sections 54 to 106 of the 1991 Act is also expressed to be subject to Article 10, which applies and modifies that Act. The definition of ‘apparatus’ that was included as paragraph (4) in the model provisions is omitted because that term is already defined in Article 2 (Interpretation).~~

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

- 5.10 This Article provides the undertaker, subject to certain restrictions, with the power to alter or carry out works within a street.
- 5.11 Paragraphs (1) and (3) provide the undertaker with powers to enter onto and alter the layout of, or carry out any works (either temporarily or permanently) on, any street within the Order



limits, with the consent of the street authority, for the purposes of constructing, operating and maintaining the authorised development.

- 5.12 Paragraph (1) sets out a broad range of works that the undertaker may undertake on streets within the Order limits including altering the level or increasing the width of any kerb, street, footpath, footway, cycle track or carriageway, making and maintaining passing places, altering existing facilities in streets and undertaking works to manage and protect pedestrians (for example, creating pedestrian crossings), executing any works to widen or alter the alignment of pavements and/or any works of surfacing or re-surfacing of the street.
- 5.13 Paragraph (2) provides that any street altered temporarily under this Article must be restored to the reasonable satisfaction of the street authority.
- 5.14 Paragraph (4) provides that where a street authority fails to respond to an application for consent under Article 12(3) within 56 days of the application being made, it is deemed to have given its consent under Article 12(3). This Article is considered necessary to enable the undertaker to exercise its powers and undertake works in an efficient and expedient manner and to give full effect to the power to carry out the authorised development. It is important to note that the deemed approval provision does not remove the street authority's ability to refuse the application, it simply imposes a deadline by which it must exercise its statutory functions.
- 5.15 The inclusion of deemed approval, which appears in a number of other Articles in the Order, is considered reasonable and aligns with the objectives of the 2008 Act to ensure efficient delivery of nationally significant infrastructure projects. Inclusion of similar timeframes for decisions, and deemed approval, under the Order ensures that the undertaker can deliver the Project in an efficient manner and the intention of the 2008 Act is not undermined.
- 5.16 Paragraph (5) exempts works to streets within the airport boundary from the requirements to seek the consent of the street authority and restore a temporarily altered street to the reasonable satisfaction of the street authority. This bespoke provision aims to ensure that the Order preserves the existing ability of the undertaker to carry out works to streets within the airport in exercise of its own statutory powers. This provision makes clear that the Order does not intend to alter the regime for works for which the undertaker would not currently need any other body's consent, and is therefore necessary.
- 5.17 Similar provisions to Article 12 have been included in other DCOs which also required works within public streets, such as Article 13 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 12 of The National Grid (Hinkley Point C Connection Project) Order 2016.
- 5.18 We note that some DCOs limit the power to alter the layout of streets to certain specified streets listed in a Schedule only. In drafting the Order our approach has instead been to define specifically all of the highway works which we anticipate to be required for the project in Schedule 1. The powers sought in Article 12 are therefore sought only in case any other minor highway works are identified in future by the local highway authority or the undertaker which it is necessary or convenient for the undertaker to carry out within the regime imposed by the Order. While such a power might appear wide, the consent of the street authority is required in order for this power to be exercised, which we consider provides the requisite level of control.

**Article 13 (~~–~~Stopping up of streets)**

- 5.19 This Article makes provision for the stopping up of streets permanently and, where specified, for a substitute to be provided. Part 1 of Schedule 3 to the Order has been completed to identify those streets that are to be permanently stopped up subject to this Article and an alternative street provided.
- 5.20 This Article further makes provision for all rights of way (both public and private) in the stopped ~~–~~up streets to be extinguished and provision is made for the payment of compensation.
- 5.21 This Article is subject to Article 42 (Apparatus and rights of statutory undertakers in stopped up streets) and any relevant protective provisions in Schedule 9 with regard to the carrying out of the highway works.



- 5.22 The drafting of this Article largely reflects that of Article 9 in the model provisions and has widespread precedent, including in Article 11 of the East Midlands Gateway Rail Freight Interchange and Highway Order 2016.

**Article 14 (~~–~~Temporary closure of streets)**

- 5.23 This Article allows for the temporary stopping up, alteration, diversion or restriction of streets for the purposes of the authorised development. It is required because the use of certain streets will become incompatible with the construction of the authorised development at certain stages.
- 5.24 Paragraph (2) confers a power on the undertaker where the use of a street has been temporarily stopped up under this Article to use it as a temporary working site.
- 5.25 Paragraph (3) requires the undertaker to provide reasonable pedestrian access to and from premises abutting a street affected by closure.
- 5.26 Paragraph (4) provides that the undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of any street without the consent of the street authority, which may attach reasonable conditions to any consent but must not be unreasonably withheld or delayed.
- 5.27 Paragraph (5) provides that where the undertaker provides a temporary substitute street, it is not required to provide that substitute to a higher standard than the street that was closed.
- 5.28 Paragraph (6) confirms that where the undertaker temporarily closes any street under this Article, it will be required to reinstate the street to its original condition prior to reopening.
- 5.29 Paragraph (7) authorises persons who suffer loss by the suspension of a private right of way under this Article to claim compensation under the Land Compensation Act 1961.
- 5.30 Paragraph (8) deems consent to be granted by a street authority where they have not notified the undertaker of its decision within 56 days.
- 5.31 Paragraph (9) exempts temporary closure of streets within the airport boundary from the requirements to seek the consent of the street authority and restore a temporarily closed street to the reasonable satisfaction of the street authority, for the reasons discussed above in respect of Article 12.
- 5.32 Precedent for this Article can be found in The Sizewell C (Nuclear Generating Station) Order 2022, The National Grid (Hinkley Point C Connection Project) Order 2016 and various Orders under the Transport and Works Act 1992, as well as Article 17 of The Hinkley Point C (Nuclear Generating Station) Order 2013.

**Article 15 (~~–~~Public rights of way – creation, diversion and stopping up)**

- 5.33 This Article has been included in the Order to allow for the creation, diversion and stopping up of public rights of way affecting land within the Order limits. It is necessary for some public rights of way to be stopped up and diverted in order for the authorised development to be carried out.
- 5.34 Section 136 of the 2008 Act stipulates that the Order may include the stopping up of a public right of way provided that an alternative right of way will be provided, or an alternative is not required. This Article makes provision for alternative public rights of way to be created for the majority of the existing public rights of way that are to be stopped up.
- 5.35 Schedule 4 of the Order identifies the public rights of way that are affected by this Article. Schedule 4 Part 1 specifies the extent of the permanent stopping up, along with the new public rights of way that are to be created and their classification.
- 5.36 Schedule 4 Part 2 identifies the single existing public right of way which will be permanently stopped up for which no substitute is to be provided.
- 5.37 ~~The~~ Schedule 4 fixes terminus points for the new public rights of way to be created. However, the exact alignment of the public right of way between those points is to be agreed by the relevant highway authority and the existing public right of way may not be stopped up until



the substitute public right of way has first been provided to the reasonable satisfaction of the relevant highway authority.

5.38 All diversion routes (whether permanent or temporary) are to be maintained by the undertaker with clear signage of the diverted route.

5.39 Precedent for this Article can be found in Article 28 of The A417 Missing Link Development Consent Order 2022; and Article 12 of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016.

**Article 16 (~~–Access to works~~)**

5.40 This Article allows the undertaker to create new means of access or improve existing accesses where reasonably required for the purposes of carrying out the authorised development. This provides an appropriate degree of flexibility in case the need for an access only becomes apparent at later stage in the implementation of the authorised development.

5.41 It also provides for the specified new means of private access to be created, to replace those authorised to be stopped up, as set out in Schedule 3.

5.42 Precedent for the drafting of this Article can be found in Article 21 of The Sizewell C (Nuclear Generating Station) Order 2022, Article 14 of The Manston Airport Development Consent Order 2022 and Article 12 of The M25 Junction 28 Development Consent Order 2022.

**Article 17 (~~–Classification of roads, etc.~~)**

5.43 This Article and Schedule 5 are included to make provision for the classification of new, and re-classification of existing, highways within the Order limits.

5.44 The drafting of the Article is based on the precedent set out in Article 16 of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016; Article 11 of The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013; Article 13 of The A428 Black Cat to Caxton Gibbet Development Consent Order 2022; and Article 14 of The A417 Missing Link Development Consent Order 2022.

**Article 18~~9~~ (~~–Traffic regulations~~)**

5.45 The purpose of this Article is to provide the undertaker with powers to make traffic regulation orders so that it can implement traffic management measures (e.g. restrictions on the use of roads) necessary to construct the authorised development. The traffic management measures are required to ensure the safe and efficient construction of the authorised development.

5.46 Paragraph (1) provides that from the date determined by the undertaker, the orders specified in column (3) of Part 3 of Schedule 6 (revocations & variations of existing traffic regulation orders) are varied or revoked as specified in the corresponding row of column (4) of that Part of that Schedule in respect of the lengths of roads specified in the corresponding row of column (2) of that Part of that Schedule.

5.47 Paragraph (2) provides that subject to the other provisions of this Article, the undertaker may at any time for the purpose of the authorised development impose the speed restrictions set out in Part 1 of Schedule 6 (speed limits) on the roads correspondingly specified in that Part.

5.48 In addition to the traffic regulations specified in Schedule 6, this Article would allow the undertaker, insofar as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development, to:

5.48.1 revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the Road Traffic Regulation Act 1984;

5.48.2 permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

5.48.3 authorise the use as a parking place of any road;

5.48.4 make provision as to the direction or priority of vehicular traffic on any road; and

5.48.5 permit or prohibit vehicular access to any road.



- 5.49 Paragraphs (4) and (5) provide a process for consulting, notifying and advertising the exercise of the powers under this Article in advance.
- 5.50 Paragraph (6) provides that any order made under this Article by the undertaker has the same effect as if it were made by the traffic authority or local authority where the road is located. This gives the order the necessary status under the Road Traffic Regulation Act 1984 and provides the undertaker with the statutory power to enforce the order.
- 5.51 Paragraph (10) confirms that where a traffic authority fails to respond to an application for consent under this Article within 56 days of receiving the application, it is deemed to have given its consent. This is to ensure that the undertaker can impose the traffic regulations as quickly as possible in order to control traffic along the specified roads as necessary during construction and operation. As noted earlier, a deemed approval provision is considered necessary to enable the undertaker to exercise its powers in an expedient manner.
- 5.52 Paragraph (11), similarly to the equivalent provisions discussed above, ensures that Article 18 does not alter the existing regime for traffic regulation of roads within the airport boundary, for which the undertaker already has authority pursuant to its extant statutory powers.
- 5.53 This Article is largely based on Article 24 from The Sizewell C (Nuclear Generating Station) Order 2022, Article 61 of The Silvertown Tunnel Order 2018 and Article 18 of The M25 Junction 28 Development Consent Order 2022.

**Article 19 (~~20~~—Clearways, prohibitions and restrictions)**

- 5.54 This Article provides that from the date determined by the undertaker, the restrictions specified in column (4) of Part 2 of Schedule 6 (traffic regulation measures (clearways, height restrictions and prohibitions)) are to apply to those roads specified in columns (1) and (2) of that Part of that Schedule along the lengths and between the points specified in column (3) of that Part of that Schedule, except as provided in paragraph (2) of this Article or upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.
- 5.55 This Article is based on the precedents of Article 18 of the A417 Missing Link Development Consent Order 2022; and Article 19 of The A428 Black Cat to Caxton Gibbet Development Consent Order 2022.

**Article 20 (~~—Construction and maintenance of local highway works~~)**

- 5.56 Paragraph (1) provides that any local highways constructed, altered or diverted under the Order must be completed to the reasonable satisfaction of the relevant highway authority and must, unless otherwise agreed between the undertaker and the relevant highway authority, be maintained by and at the expense of the undertaker for a period of 12 months from the day on which they are first open to through traffic and at the expiry of that period by and at the expense of the relevant highway authority.
- 5.57 Paragraphs (2) and (3) set out the circumstances in which the undertaker will have a defence against any person seeking to take action against the undertaker for loss or damage resulting from its alleged failure to maintain the local highway under this Article.
- 5.58 This Article is based on the precedents of Article 13 of The A417 Missing Link Development Consent Order 2022; and Article 12 of The A428 Black Cat to Caxton Gibbet Development Consent Order 2022.

**Article 21 (~~—Agreements with highway authorities~~)**

- 5.59 Paragraph (1) provides that relevant highway authorities may enter into agreements with the undertaker relating to:



- 5.59.1 the construction of any new highway, including any structure carrying the highway over any part of the authorised development;
  - 5.59.2 the strengthening, improvement, repair or reconstruction of any highway, including any structure carrying the street over any of the authorised development;
  - 5.59.3 the maintenance of the structure of any bridge carrying a highway over or under any part of the authorised development;
  - 5.59.4 any stopping up, alteration or diversion of a highway authorised by this Order;
  - 5.59.5 the carrying out in the highway of any of the works referred to in Article 11 (street works) or Article 12 (power to alter layout, etc., of streets); and
  - 5.59.6 such other works as the parties may agree.
- 5.60 Paragraph (2) provides a non-exclusive list of the matters to which an agreement made under paragraph (1) may relate, including providing that the relevant highway authority may carry out the works, the reasonable time for completion of the works, terms as to payment and any other provisions which might otherwise be addressed in agreements made under sections 278 or 38 of the Highways Act 1980.
- 5.61 Paragraph (3) prevents the undertaker from commencing any local highway work until an agreement pursuant to this Article has been entered into in relation to the specification of that work which will reasonably satisfy the relevant highway authority for the purpose of adoption under Article 20.
- 5.62 The Article is based on similar provision included in Article 23 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 21 of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016.
6. **PART 4 – SUPPLEMENTAL POWERS**
- Article 22 (~~–Discharge of water~~)**
- 6.1 This Article provides that the undertaker can use any existing watercourse, public sewer or drain within or outside the Order limits for the purposes of the authorised development, and may within the Order limits connect into any watercourse, public sewer or drain. Paragraph (3) provides that before the undertaker can discharge any water into any watercourse, public sewer or drain, it must first obtain the consent of the owner, who may impose terms and conditions on the discharge.
- 6.2 Paragraph (5) has been inserted to confirm that if an owner fails to respond to an application for consent to discharge into its watercourse, sewer or drain within 28 days of receiving that application, that owner will be deemed to have given its consent to the discharge. This is considered necessary and appropriate to exercise its powers under the Order.
- 6.3 Paragraph (6) stipulates that the undertaker, in exercising its powers under this Article, may only damage or interfere with the beds and banks of watercourses if such damage or interference is related to the carrying out of the authorised development.
- 6.4 Paragraph (8) confirms that the right to discharge under this Article does not remove the requirement to obtain environmental permits in respect of such activity.
- 6.5 The substance of this Article has been included in many made DCOs including The M42 Junction 6 Development Consent Order 2020, The Southampton to London Pipeline Development Consent Order 2020, The Sizewell C (Nuclear Generating Station) Order 2022 and The Manston Airport Development Consent Order 2022.
- 6.6 Paragraph (10) is included to provide that the Environment Agency is deemed to have granted consent under paragraph (3) where the watercourse, public sewer or drain belongs to the Environment Agency and an environmental permit has been granted for the discharge, rather than having to obtain the additional landowner consent. This has been added to streamline this process where an environmental permit is required.



**Article 23 (~~–~~Protective work to buildings)**

- 6.7 The purpose of this Article is to allow the undertaker to undertake protective works to buildings affected by the authorised development.
- 6.8 The Article is included for the benefit of landowners and ensures that, in the unlikely event that any works to buildings are required to rectify the impact of the authorised development, these can be carried out under the Order powers. The wording has broad precedent (see Article 17 of The Manston Airport Development Consent Order 2022, Article 26 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 21 of The M25 Junction 28 Development Consent Order 2022).

**Article 24 (~~–~~Authority to survey and investigate the land)**

- 6.9 This Article authorises the undertaker to enter onto any land within the Order limits or which may be affected by the authorised development to undertake various survey and investigative works, including making trial holes and boreholes and carrying out ecological or archaeological investigations on such land.
- 6.10 The reason why this power extends beyond the Order limits is that if there is a claim that there has been an impact from the construction works or from the operation of the authorised development, the undertaker needs the ability to investigate such a claim and not be restricted by the extent of the Order limits.
- 6.11 The undertaker must give not less than 14 days' notice to the owners and occupiers of the land of its intention to exercise its powers under this Article. Where notice has been provided, the undertaker (or one of its agents) may enter the land, with such necessary equipment and vehicles, to carry out the survey and investigation or to make trial holes, boreholes or excavations.
- 6.12 If the undertaker proposes to make trial holes, boreholes or excavations within the highway boundary or in a private street, it must obtain the prior consent of the highway or street authority (except for streets within the airport, where such requirement would be superfluous). Paragraph (6) provides for a 'deemed approval' mechanism where such authority fails to respond within 56 days of receiving the application from the undertaker. A deemed approval process is necessary to enable the undertaker to exercise its powers and undertake works in an efficient and expedient manner.
- 6.13 Paragraph (5) makes provision in relation to the payment of compensation in relation to loss or damage caused by the undertaker carrying out the protective works.
- 6.14 Precedent for this Article can be found in other granted DCOs, such as Article 27 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 22 of The M25 Junction 28 Development Consent Order 2022.

**Article 25 (~~–~~Felling or lopping of trees and removal of hedgerows)**

- 6.15 This Article allows any tree or shrub that is within or overhanging land within the Order limits to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using it, or any property within the authorised development. Compensation is payable for any loss or damage caused.
- 6.16 This Article also allows for the removal of hedgerows as per the meaning in the Hedgerow Regulations 1997 (the "**Hedgerow Regulations**"). Paragraph (5) clarifies that, where an undertaker seeks to exercise its powers under paragraph (4), it will not be required to obtain a consent under the Hedgerow Regulations. This power is necessary to enable the undertaker to remove any hedgerows that are obstructing or interfering with the construction, operation or maintenance of the authorised development.
- 6.17 This Article has been inserted into numerous DCOs (see, for example, Article 34 of The Manston Airport Development Consent Order 2022 and Article 81 of The Sizewell C (Nuclear Generating Station) Order 2022).

**Article 26 (~~–~~Removal of human remains)**



- 6.18 This Article requires the undertaker, before it carries out any works which will or may disturb any discovered human remains in the specified land (defined in paragraph (1) as any land within the Order limits), to remove those remains in accordance with the procedure set out in the Article (effectively replacing the licence regime under the Burial Act 1857).
- 6.19 This procedure sets out various notification requirements and the process for removing and interring the remains either at the request of a relative or personal representative of the deceased person, or by the undertaker. This Article includes the provisions as to the identification of human remains, processes for their re-interment, and the requirement for the undertaker to pay reasonable expenses of removing and re-interring or cremating any remains so discovered.
- 6.20 The purpose of this Article is to provide an appropriate procedure to be followed in the event unexpected human remains are found anywhere within the Order limits. This is important because of the effect of section 25 of the Burial Act 1857. Section 25 of the Burial Act 1857 makes it an offence for a body or any human remains that have been interred in a place of burial to be removed unless (a) a Court grants a 'faculty', (b) the body or remains are removed in accordance with the approval of the Care of Cathedrals Measure 2011 (No.1), or (c) the body or remains are removed under a licence of the Secretary of State. This latter licensing function is administered by the Ministry of Justice.
- 6.21 An exemption from the requirements of this Article applies (and no notice is required under paragraph (3) prior to the removal of human remains) where the undertaker is satisfied that the remains were interred more than 100 years ago and that no relative or personal representative of the deceased is likely to object to the removal.
- 6.22 Paragraph (15) disapplies section 25 of the 1857 Act, but replaces it with the procedure set out in this Article. The procedure set out in this Article provides a more streamlined and efficient process for dealing with unexpected human remains than that set out in the Burial Act 1857 and is appropriately applied in this case so that the undertaker can deliver the Project in an efficient manner and the intention of the 2008 Act is not undermined.
- 6.23 This Article has broad precedent from a number of consented DCOs, including Article 78 of The Sizewell C (Nuclear Generating Station) Order 2022, Article 37 of The Manston Airport Development Consent Order 2022 and Article 55 of The Great Yarmouth Third River Crossing Development Consent Order 2020.

## 7. PART 5 – POWERS OF ACQUISITION AND POSSESSION

### ***Article 27 (–Compulsory acquisition of land)***

- 7.1 This Article provides the undertaker with the powers to compulsorily acquire any Order land where that land is either directly required for the construction, operation or maintenance of the authorised development, or is required to facilitate or is incidental to those activities, or is required as replacement land for open space land being acquired. This power is necessary to ensure that the undertaker can have exclusive possession and control of land that is required for the authorised development.
- 7.2 This Article is subject to Article 31 (time limit for exercise of authority to acquire land compulsorily), Article 28 (compulsory acquisition of rights and imposition of restrictive covenants), Article 35 (acquisition of subsoil and airspace only), Article 36 (rights under or over streets), Article 44 (crown rights) and Schedule 9 (protective provisions). These Articles all impose restrictions on the exercise of the powers under this Article.
- 7.3 Precedent for this Article can be found in Article 28 of The Sizewell C (Nuclear Generating Station) Order 2022.
- 7.4 The provision is necessary to secure the delivery of the authorised development as explained in more detail in the **Statement of Reasons** (Doc Ref. 3.2) accompanying the Application.

### ***Article 28 (–Compulsory acquisition of rights and imposition of restrictive covenants)***

- 7.5 This Article provides the undertaker with the ability to acquire compulsorily such rights over the Order land or impose restrictive covenants affecting this land as may be required for any





purpose for which land may be acquired under Article 27. Where the undertaker acquires a right over land, it is not required to acquire a greater interest in the land.

- 7.6 The Article includes the powers to impose restrictive covenants over land so that the undertaker can avoid having to acquire an interest in land where a restrictive covenant can provide the necessary protections. This is a more proportionate exercise of compulsory acquisition powers and would be exercised, for example, in instances where the undertaker carries out above-ground mitigation works that cannot later then be changed or removed by the landowner (such as flood mitigation).
- 7.7 Paragraph (2) limits the undertaker's acquisition powers, in respect of certain land, solely to rights or restrictive covenants for specific purposes. This means that the undertaker is only able to acquire a right in the land listed in Schedule 7 and cannot seek to acquire the underlying land itself.
- 7.8 Paragraph (4) introduces Schedule 8 that makes modifications to certain compulsory purchase and compensation enactments to allow landowners to claim compensation where the undertaker has created and acquired new rights over, or imposed restrictions on, land. Without this, the compensation provisions would not apply.
- 7.9 Paragraph (5) provides that where the undertaker acquires a right or imposes a restriction over the apparatus of a statutory undertaker, it may, with the consent of the Secretary of State, transfer that right or benefit to the statutory undertaker. An example of this power would be where the undertaker requires the apparatus to be diverted or relocated for the purposes of the authorised development and acquires rights over the new alignment. Paragraph (6) provides that the exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.
- 7.10 This Article has broad precedent including Article 32 of the Sizewell C (Nuclear Generating Station) Order 2022 and Article 28 of The M25 Junction 28 Development Consent Order 2022.

***Article 29 (–Compulsory acquisition of land – incorporation of the mineral code)***

- 7.11 This Article incorporates Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 (the "1981 Act") to any land acquired by the undertaker that may contain mines or minerals. By incorporating both parts of Schedule 2, this Article prohibits the undertaker from also acquiring rights to any mines underneath the acquired land (unless they are expressly purchased), and provides mine owners with the ability to work the mines and extract minerals, subject to certain restrictions.
- 7.12 Part 3 of the 1981 Act sets out a process relating to the working of any mines or minerals underneath the authorised development. It provides that where an owner seeks to work its mine, it must give notice of its intention to the undertaker who must then decide whether or not the works will damage the authorised development. If the undertaker determines that it will cause damage, this Article provides it with the power to prohibit the owner from commencing such works, provided that it compensates the owner for its loss.
- 7.13 The ability to restrict third parties from working mines and minerals below the authorised development is appropriate as such activities have the potential to impact adversely on the authorised development (for example, by undermining ground stability) as well as the undertaker's ability to carry out the authorised development.
- 7.14 Precedent for this approach is found in other granted DCOs, such as Article 29 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 20 of The Silvertown Tunnel Order 2018.

***Article 30 (–Statutory authority to override easements and other rights)***

- 7.15 This Article provides that the undertaker may interfere with rights or breach restrictive covenants in the course of carrying out or using the authorised development, rather than automatically cleansing the title to land required for the authorised development of all third



party rights. The recourse of an affected landowner in such circumstances is specified in the Article to be section 10 of the Compulsory Purchase Act 1965.

7.16 We consider that this power (in essence the protection for the undertaker of statutory authority in carrying out or using the authorised development) is sufficient and less draconian than provisions in a number of DCOs which expunge all rights from title, regardless of whether interference or breach of covenant is necessary to execute the Project.

7.17 The Article replicates Article 30 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 25 of The Hinkley Point C (Nuclear Generating Station) Order 2013.

***Article 31 (–Time limit for exercise of authority to acquire land compulsorily)***

7.18 This Article provides that the undertaker must exercise its powers to acquire land or interests within ten years beginning on the 'start date', which is defined as the later of the day after (a) the day on which the period for legal challenge of the Order under the 2008 Act has expired; and (b) the final determination of any legal challenge under the 2008 Act. This is necessary following experience of recent legal challenges made to DCOs, which may delay the exercise of compulsory purchase powers and in so doing, reduce the length of time within which those powers may be exercised, if the period relates (as it usually does) to the date on which the Order is made.

7.19 The ten year period is necessary due to the complex nature and scale of the Project. The undertaker requires flexibility so as not to inhibit its ability to implement the Order, and to avoid the need to change or seek further powers at a later date. The undertaker believes it is proportionate and reasonable to extend the period to exercise the powers of compulsory acquisition under this Order.

7.20 Sections 154(3) and (4) of the 2008 Act allow the Order to prescribe a period longer than 5 years for the exercise of such powers and this has been preceded in other development consent orders including The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (ten years – see Article 45) and The National Grid (Hinkley Point C Connection Project) Order 2016 (effectively 8 years – see Article 21).

***Article 32 – (Private rights of way)***

7.21 This Article would extinguish all private rights of way over land subject to compulsory acquisition from the date of acquisition of land or on the date of entry, whichever is earlier. Paragraph (2) provides that private rights of way over any land that is owned by the undertaker within the Order land would be extinguished at the start of any activity authorised by the Order which interferes with or beaches those rights. Paragraph (3) provides that all private rights of way over land that is temporarily possessed by the undertaker would be suspended and unenforceable for as long as the undertaker remains in possession of such land.

7.22 The Article makes provision in relation to the payment of compensation and there is a saving in respect of statutory undertakers. Paragraph (6) provides that the extinguishment will not apply where the undertaker serves notice to this effect prior to acquiring, appropriating, entering or taking temporary possession of the land in question. The provisions will also not apply where an agreement to this effect is made between the undertaker and the owner of the land benefitting from the private of way.

7.23 Precedent is provided for this Article in Article 33 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 28 of The Hinkley Point C (Nuclear Generating Station) Order 2013.

***Article 33 (–Modification of the 1965 Act)***

7.24 The purpose of this Article is to ensure consistency between the standard terms of development consent orders and the Compulsory Purchase Act 1965 (as amended by the Housing and Planning Act 2016) as applied by section 125 of the 2008 Act. These modifications have broad precedent, including Article 25 of The Manston Airport Development Consent Order 2022 and Article 37 of The Sizewell C (Nuclear Generating Station) Order 2022.



**Article 34 (–Application of the 1981 Act and modification of the 2017 Regulations)**

- 7.25 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 1981 Act to compulsory acquisition under the Order so that the undertaker has the option of acquiring Order land that is subject to the powers of compulsory acquisition by vesting declaration.
- 7.26 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 landowner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.
- 7.27 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).
- 7.28 The modifications proposed by this Article ensure consistency with the ten year period sought under the Order for acquisition of land (or rights in land). It further ensures that the appropriate references are made to the 2008 Act.
- 7.29 Paragraphs (16) to (18) modify the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 to ensure that the interests and rights in land which are intended to benefit a third party, such as a statutory undertaker whose apparatus may be re-located in order to construct the authorised development, will vest in that third party instead of the undertaker, which would otherwise be the acquiring authority in respect of those interests and rights.
- 7.30 The modifications are based in large part on previous development consent orders, including Article 26 of The Manston Airport Development Consent Order 2022 and Article 34 of The Sizewell C (Nuclear Generating Station) Order 2022.

**Article 35 (–Acquisition of subsoil or airspace only)**

- 7.31 This Article allows the undertaker to compulsorily acquire so much of, or such rights in, the subsoil of or airspace over any land within the Order limits as may be required for any purpose for which that land may be acquired under the terms of the Order.
- 7.32 This right is necessary as landowners also own the subsoil under and airspace over their land and this right would avoid the need to obtain a separate agreement in the event that the undertaker requires rights over such land (for instance, where the arm of a crane extends into the airspace of neighbouring land).
- 7.33 The Article follows precedent in Article 35 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 32 of The M25 Junction 28 Development Consent Order 2022.

**Article 36 (–Rights under or over streets)**

- 7.34 The purpose of this Article is to allow the undertaker 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.
- 7.35 The Article follows precedent in Article 38 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 33 of The M25 Junction 28 Development Consent Order 2022

**Article 37 (–Temporary use of land for carrying out the authorised development)**

- 7.36 This Article provides the undertaker with the power to enter onto, and temporarily occupy, any Order land for the purposes of carrying out the authorised development, without having to acquire a permanent interest in the land.



- 7.37 Before the undertaker can occupy the land, it must provide the landowner and any occupier with not less than 14 days' notice. Following completion of the works, the undertaker may remain on the land for a further period of one year, unless it has agreed to another timeframe with the landowner or it has acquired an interest in the land which allows it to remain for a longer period (i.e. a right of access). Before it gives up its occupation of the land, the undertaker must reinstate the land to the satisfaction of the landowner; except that there is a range of works that the undertaker is not required to undertake as part of its reinstatement obligations.
- 7.38 Paragraph (1)(a) allows the undertaker to occupy any Order land provided that the compulsory acquisition process has not begun in relation to such land (i.e. service of notices). All such land is land in respect of which powers of compulsory purchase would otherwise apply under this Order in any event. This is to provide some flexibility in being able to use any additional land necessary during the course of construction.
- 7.39 The list of works that the undertaker can undertake on any occupied land is set out in paragraph (1)(b) to (e) and includes removal of buildings, vegetation, electric lines and plants, structures and apparatus, construction of temporary, permanent or mitigation works and any works described in Schedule 1.
- 7.40 Paragraph (5) provides for the undertaker to pay compensation to the owners and occupiers of land of which temporary possession is taken under this Article for any loss or damage arising from possession.
- 7.41 Paragraph (11) confirms that the undertaker can take temporary possession of such land more than once.
- 7.42 There is precedent for similar drafting in a number of DCOs, including Article 39 of The Sizewell C (Nuclear Generating Station) Order 2022, Article 33 of The Lake Lothing (Lowestoft) Third Crossing Order 2020 and Article 34 of The M25 Junction 28 Development Consent Order 2022.

***Article 38 (—Time limit for exercise of authority to temporarily use land for carrying out the authorised development)***

- 7.43 This Article provides that the undertaker may not enter land pursuant to the power of temporary possession in Article 37 at any time after ten years from the 'start date', which is defined as the later of the day after (a) the day on which the period for legal challenge of the Order under the 2008 Act has expired; and (b) the final determination of any legal challenge under the 2008 Act. However, where temporary possession is taken during this period, the undertaker may retain possession after the expiry of this period. The ten year period is necessary due to the complex nature and scale of the Project. The undertaker requires flexibility so as not to inhibit its ability to implement the Order, and to avoid the need to change or seek further powers at a later date. The undertaker believes it is proportionate and reasonable to extend the period to exercise the powers of compulsory acquisition under this Order.
- 7.44 This Article is similar in effect to a number of granted DCOs and has precedent, although for a lesser period, in Article 40 of The Sizewell C (Nuclear Generating Station) Order 2022 (as with that DCO, this time limit is provided as a standalone Article, separate from the Article relating to the time limits for exercising powers of compulsory acquisition).

***Article 39 (—Temporary use of land for maintaining the authorised development)***

- 7.45 This Article provides that the undertaker may enter onto and temporarily occupy any Order land that is reasonably required to maintain the authorised development during the maintenance period and to construct such temporary works and buildings on the land, without having to acquire a permanent interest. This Article does not apply to any house, garden (belonging to a house) or any other occupied building.
- 7.46 The undertaker considers the power contained in this Article is more appropriate than seeking to obtain permanent interests in land given the temporary nature of these rights and the potential that the undertaker may not need to access any identified land for many years.



- 7.47 The "maintenance period" is defined in this Article as, in relation to any part of the authorised development, the period of 5 years beginning with the date on which that part of the authorised development is first opened for public use (where relevant) or (in all other cases) first brought into operational use.
- 7.48 Under this Article, the undertaker is entitled to occupy the land for as long as necessary to carry out the relevant maintenance works. The undertaker must give the landowner and any occupier at least 14 days' notice and on completion of the maintenance works must remove all temporary works and restore the land to the satisfaction of the landowner.
- 7.49 Paragraph (4) provides an exception to the notification process in paragraph (3) so that the undertaker is not required to serve notice where it has identified that the safety of the authorised development, the public and/or the surrounding environment is at risk. This will enable the undertaker to undertake maintenance works as quickly as possible in order to safeguard against such risks.
- 7.50 Articles of this type are standard in many granted DCOs, including Article 41 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 34 of the Hinkley Point C (Nuclear Generating Station) Order 2013.
- Article 40 (–Special category land)**
- 7.51 This Article deals with the replacement of special category land that is required for the authorised development.
- 7.52 Under section 131 of the 2008 Act an order granting development consent is subject to special parliamentary procedure when it authorises the 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 conditions under section 131(3) are met, including if the Secretary of State is satisfied that replacement land has been or will be given in exchange for the Order land, and the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the Order land. This is the case, for the reasons set out in the **Statement of Reasons** (Doc Ref. 3.2).
- 7.53 Under section 132 of the 2008 Act an order granting development consent is subject to special parliamentary procedure when it authorises the compulsory acquisition of a right over land to which section 132 applies (i.e. a common, open space or fuel or field garden allotments). The exception is if the Secretary of State is satisfied that certain conditions under section 132(2) are met. Two such exceptions are (i) if the order land, when burdened with the order right, will be no less advantageous than it was before to persons in whom it is vested, other persons entitled to rights of common or other rights and the public and (ii) the order land over which rights are being acquired is open space land and is being acquired for a temporary (albeit possibly long-lived) purpose. This is the case, for the reasons set out in the **Statement of Reasons** (Doc Ref. 3.2).
- 7.54 This Article and Schedule 10 deal with the replacement of special category land that is required for the authorised development.
- 7.55 Paragraph (1) provides that the special category land identified in Part 1 of Schedule 10 will not vest in the undertaker until the undertaker has acquired the replacement land (to the extent not already in its ownership) and an open space management plan has been submitted to, and approved in writing by, the relevant planning authority. The open space management plan submitted under paragraph (1) must be in general accordance with the outline landscape and ecology management plan. Upon satisfaction of the requirements of paragraph (1), the special category land vests in the undertaker and is discharged of all encumbrances.
- 7.56 The undertaker must implement the approved open space management plan. On the date on which the replacement land is laid out and provided in accordance with this plan, the replacement land will vest in the person in whom the relevant special category land was previously vested and will be subject to the same rights, trusts and incidents as attached to that special category land.



- 7.57 Similar provision can be found in other consented DCOs including Article 38 of The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 and Article 38 of The A30 Chiverton to Carland Cross Development Consent Order 2020.

**Article 41 (–Statutory undertakers)**

- 7.58 This Article allows the undertaker to acquire land or rights in land owned by statutory undertakers (such as telecommunications and electricity suppliers) or to interfere with their apparatus by removing or repositioning the apparatus within the Order land.
- 7.59 The general powers in this Article are subject to Schedule 9 (protective provisions) of the Order which sets out controls and processes around the interference, removal, relocation and/or alteration of a statutory undertaker's apparatus.
- 7.60 The scope of the undertaker's powers under this Article include the ability to create and acquire new rights and impose restrictive covenants over the statutory undertaker's land, and extinguish or suspend the rights to alter, renew, or relocate any apparatus (rather than just remove or reposition these). These powers are consistent with the undertaker's ability to acquire existing rights, and create and acquire new rights, and impose restrictive covenants under Article 28.
- 7.61 Similar provision can be found in other consented DCOs including Article 42 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 34 of The Southampton to London Pipeline Development Consent Order 2020.

**Article 42 (–Apparatus and rights of statutory undertakers in stopped-up streets)**

- 7.62 This Article protects the powers and rights of any statutory undertaker whose apparatus is located under, in, on, along or across any street which has been stopped up under Article 13. It also provides that upon the undertaker's reasonable request, the statutory undertaker must remove or alter the position of existing apparatus or provide other apparatus in substitution.
- 7.63 Where a statutory undertaker relocates, removes or substitutes its apparatus in response to a request from the undertaker, the undertaker must reimburse the statutory undertaker's costs of doing so (subject to the exceptions specified in paragraph (4)).
- 7.64 Paragraph (7) provides that where statutory undertakers are affected by a stopping up in relation to those parts of the project that constitute "major bridge works", "major transport works" or "major highways works", as defined in the 1991 Act, the cost sharing provisions under that Act will apply instead of the compensation provision in this Article.
- 7.65 Precedent for this Article can be found in other granted DCOs, including Article 43 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 32 of The Silvertown Tunnel Order 2018.

**Article 43 (–Recovery of costs of new connections)**

- 7.66 This Article provides that, if any statutory undertaker's apparatus is removed and this cuts a service to anyone, then the cost of establishing a new service can be claimed from the undertaker.
- 7.67 Paragraph (3) clarifies that this Article does not apply to apparatus to which Article 42 or Part 3 of the 1991 Act applies as separate compensation provisions are already provided for under those provisions.
- 7.68 Precedent for this drafting can be found in other granted DCOs, such as Article 45 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 33 of The Manston Airport Development Consent Order 2022.

**Article 44 (–Crown rights)**

- 7.69 This Article contains a saving for Crown rights. It protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions and ensures that written consent from the Crown is required where any land, hereditaments or rights are to be taken, used, entered or interfered with as a result of granting the Order.



- 7.70 The Article is standard across DCOs, including Article 87 of the Sizewell C (Nuclear Generating Station) Order 2022, Article 40 of the Manston Airport Development Consent Order 2022 and Article 36 of The M25 Junction 28 Development Consent Order 2022.

***Article 45 (–Use of airspace within the Order land)***

- 7.71 This Article allows the undertaker to enter into and use as much of the airspace over any land within the Order land as is required for the construction, operation and maintenance of the authorised development or any other ancillary purpose. This right is necessary as landowners also own airspace above their land and this right would avoid the need to obtain an airspace or over-sailing licence in the event that the undertaker occupies airspace above the Order limits that it does not own, or have an interest in.
- 7.72 This Article has precedent in Article 48 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 25 of the North London Heat and Power Generating Station Order 2017.

**8. PART 6 – MISCELLANEOUS AND GENERAL**

***Article 46 (–Disapplication of legislative provisions)***

- 8.1 This Article provides (in reliance on section 120(5)(a) of the 2008 Act) for the disapplication in relation to the construction or maintenance 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.
- 8.2 The Article provides for the disapplication of the provisions of sections 23 (prohibition of obstructions etc. in watercourses), 30 (authorisation of drainage works in connection with a ditch) and 32 (variation of award) of the Land Drainage Act 1991, and any byelaws made under the Land Drainage Act 1991 regulating the use and obstruction of watercourses. These are consents for activities which may be a necessary part of the authorised development.
- 8.3 Section 23 of the Land Drainage Act 1991 is a prescribed consent under section 150 of the 2008 Act, meaning that the consent of the relevant drainage board to the inclusion of this provision in the Order will be needed and this is being sought.
- 8.4 In common with other recent ~~development consent orders~~ DCOs, the Order disappplies the provisions relating to the temporary possession of land conferred by the Neighbourhood Planning Act 2017, which have not yet been commenced, as the subsidiary regulations to that Act have not yet been made and there is therefore no certainty as to the requirements of the new temporary possession regime. This is to ensure consistency and certainty that the temporary possession regime which will apply to the Order is that contained within Articles 37, 38 and 39, and not the regime provided for under the Neighbourhood Planning Act 2017, the date of commencement of which is uncertain. This approach reflects the approach taken by the Secretary of State in DCOs following the enactment of the Neighbourhood Planning Act 2017, such as Article 2(7) of The A19/A184 Testo's Junction Alteration Development Consent Order 2018, Article 49 of The M42 Junction 6 Development Consent Order 2020 and Article 47 of The M25 Junction 28 Development Consent Order 2022.
- 8.5 The undertaker considers that, in the context of the Project being of national significance, the Order should be the predominant authorising instrument for the works. The purpose of the regime created by the 2008 Act is to ensure that DCOs provide a unified consent for NSIPs and the Applicant considers that disapplying and amending certain legislative provisions, as set out in the Order, is proportionate in this context.

***Article 47 (–Application of landlord and tenant law)***

- 8.6 This Article overrides any statutory provisions relating to landlord and tenant law in so far as they may prejudice the operation of any agreement for leasing the whole or part of the authorised development or any agreement for the construction, maintenance or operation of the authorised development or any part of it entered into by the undertaker.



8.7 The purpose of this Article is to safeguard any agreement entered into by the undertaker pursuant to its rights under Article 8 (consent to transfer benefit of ~~the~~ Order) so that no other enactment or rule of law may modify or frustrate the rights and obligations of the parties under any such lease or agreement.

8.8 This is a common provision across a number of consented DCOs and precedent can be found in Article 79 of The Sizewell C (Nuclear Generating Station) Order 2022 and Article 36 of The Manston Airport Development Consent Order 2022.

**Article 48 (~~–~~Defence to proceedings in respect of statutory nuisance)**

8.9 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in statutory nuisance generally, subject to any contrary provision made by a particular DCO. This Article is such a contrary provision, providing a defence if the undertaker (being the defendant in proceedings under section 82 of the Environmental Protection Act 1990) can show that the nuisance:

8.9.1 relates to the carrying out of the authorised development in accordance with a notice under section 60 [of the](#) Control of Pollution Act 1974 or consent given under section 61 of that Act; or

8.9.2 is a consequence of the construction, maintenance or operation of the authorised development and that it cannot reasonably be avoided.

8.10 Paragraph (2) provides that compliance with the controls and measures described in the code of construction practice will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably have been avoided.

8.11 Paragraph (3) confirms that section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

8.12 This is an Article which has precedent in recent ~~development consent orders~~ [DCOs](#) – in particular The Sizewell C (Nuclear Generating Station) Order 2022.

**Article 49 (~~–~~No double recovery)**

8.13 This Article provides that compensation will not be paid under both the Order and other compensation regimes in respect of 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.

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

8.15 This Article is based on and follows precedent in Article 46 of The Sizewell C (Nuclear Generating Station) Order 2022, Article 39 of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and Article 49 of The M25 Junction 28 Development Consent Order 2022.

**Article 50 (~~–~~Protection of interests)**

8.16 This Article gives effect to the protective provisions in Schedule 9, which protect the interests of third parties (gas, water, sewage, electricity, and electronic communications undertakers and National Highways) in the construction, operation and maintenance of the authorised development. This schedule is based on the standard protective provisions approved by the Secretary of State in The M42 Junction 6 Development Consent Order 2020, The M25 Junction 28 Development Consent Order 2022 and The Sizewell C (Nuclear Generating Station) Order 2022.

8.17 The undertaker will provide an update of the status of the negotiations of these protective provisions during the examination, and any others which interested parties may request following further engagement. In particular, we will be engaging with Network Rail in relation to protective provisions, which we expect to add to the draft Order in due course.

**Article 51 (~~–~~Certification of documents, etc.)**





- 8.18 This Article provides for various plans and other documents listed in Schedule 12 to the Order to be certified by the Secretary of State.

***Article 52 (–Service of notices)***

- 8.19 This Article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular, it allows service by email with the consent of the recipient and deals with the situation of service on an unknown landowner.

- 8.20 This drafting has widespread precedent, including Article 42 of The Manston Airport Development Consent Order 2022 and Article 83 of The Sizewell C (Nuclear Generating Station) Order 2022.

***Article 53 (–Arbitration)***

- 8.21 This Article governs what happens when two 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.

- 8.22 The drafting is common across consented DCOs, including Article 43 of The Manston Airport Development Consent Order 2022 and Article 48 of The Southampton to London Pipeline Development Consent Order 2020.

***Article 54 (–Procedure in relation to certain approvals etc.)***

- 8.23 This Article gives effect to Schedule 11 (Procedure for approvals, consents and appeals) to the Order which sets out the procedure to be followed in relation to applications made to a discharging authority for any approval or agreement required by a requirement in the Order.

- 8.24 The Article has precedent from Article 85 of the Sizewell C (Nuclear Generating Station) Order 2022.

**9. SCHEDULES**

- 9.1 Schedules 1 to ~~12~~<sup>3</sup> are summarised below.

***Schedule 1 (–Authorised development)***

- 9.2 Schedule 1 specifies numbered works which comprise the authorised development and other associated development works. For a summary of these works see section ~~2.42.4~~ of this ~~Explanatory~~ Memorandum.

- 9.3 The numbered works should be read alongside the **Works Plans** (Doc Ref. 4.5). All of the authorised development falls within the definition of development for which development consent is required under the 2008 Act or development which may be lawfully authorised as part of the Order on the basis that it meets the definition of "associated development" under the 2008 Act and related guidance.

***Schedule 2 (–Requirements)***

- 9.4 Schedule 2 sets out the requirements which are proposed to control the construction, operation and maintenance of the authorised development. The requirements closely relate to the mitigation set out in the **Environmental Statement** (Doc Ref. 5.1) and ensure that the mitigation relied upon for the conclusions of the Environmental Impact Assessment is secured.

- 9.5 Paragraph (1) of the Schedule sets out relevant defined terms used in the requirements. Paragraph (2) provides that any steps taken before the Order comes into force that were intended to be steps towards compliance with the requirements must be taken into account for determining compliance with that provision as if they had been taken after the Order came into force. The purpose of this provisions is to enable the undertaker to be able to consult local authorities on draft control documents prior to the Order being made. This has precedence in The Southampton to London Pipeline Development Consent Order 2020, The Thurrock Flexible Generation Plant Development Consent Order 2022 and The M25 Junction 28 Development Consent Order 2022.



9.6 The requirements themselves are numbered from 3 to 23 and are summarised below:

***Requirement 3 – Time limits and notification***

9.7 Provides that the authorised development must commence within five years of the 'start date' which is defined as the later of the day after (a) the day on which the period for legal challenge of the Order under the 2008 Act has expired; and (b) the final determination of any legal challenge under the 2008 Act. The relevant planning authority must be given 14 days' notice of commencement of the each part of the authorised development.

***Requirement 4 – Detailed design***

9.8 Provides for the approval of detailed design (layout, siting, scale and external appearance) by the relevant planning authority. The details to be submitted for approval must accord with the **Design and Access Statement** (Doc Ref. 7.3) and engineering drawings and sections. The approval of highway work design is excluded from this requirement, as this is provided for in requirement 5 (in respect of local highways) and requirement 6 and the protective provisions for National Highways in Part 3 of Schedule 9 (in respect of national highways).

9.9 Works defined as 'excepted development' are outside the scope of this requirement. Such works are defined as 'any part of the authorised development which falls within Schedule 2, Part 8, Class F of the 2015 Regulations and does not fall within the description of development in F1 of those Regulations.' These are the provisions of the Town and Country Planning (General Permitted Development) Order 2015 which give deemed planning permission to airport operators for certain development within airports. On the basis that such works would not require approval of details by the relevant planning authority under the 2015 Regulations, it is considered appropriate to similarly exclude the need for such approval in the context of this Order. This requirement instead mirrors the provisions of the 2015 Regulations in requiring the undertaker to consult the relevant planning authority on the proposed development.

***Requirement 5 – Local highway works – detailed design***

9.10 Provides for the approval of detailed design of local highway works (layout, siting, scale and external appearance) by the relevant highway authority. The details to be submitted for approval must accord with the **Design and Access Statement** (Doc Ref. 7.3) and engineering drawings and sections.

***Requirement 6 – National highway works***

9.11 Provides that the national highway works must be carried out in accordance with Part 3 of Schedule 9 (protective provisions), and that the undertaker must use reasonable endeavours to obtain a provisional certificate from National Highways pursuant to paragraph 8 of Part 3 of Schedule 9 in respect of these works by the third anniversary of the commencement of dual runway operations unless otherwise agreed with National Highways.

***Requirement 7 – Code of construction practice***

9.12 Provides that construction of the authorised development must be carried out substantially in accordance with **ES Appendix 5.3.2: Code of Construction Practice** (Doc Ref. 5.3) unless otherwise agreed with the relevant planning authority.

***Requirement 8 – Landscape and ecology management plan***

9.13 Provides that a landscape and ecology management plan must be approved by the relevant planning authority prior to commencement of any part of the authorised development. Where the landscape and ecology management plan relates to highway works, the relevant planning authority must approve it in consultation with the relevant highway authority. A landscape and ecology management plan submitted for approval must be in general accordance with the **ES Appendix 8.8.1: Outline Landscape and Ecology Management Plan** (Doc Ref. 5.3).



**Requirement 9 – Contaminated land and groundwater**

- 9.14 Provides, where relevant, a regime for investigating and remediating contamination on a basis agreed with the relevant planning authority in consultation with the Environment Agency.

**Requirement 10 – Surface and foul water drainage**

- 9.15 Provides that no part of the authorised development (except for the highway works and 'excepted development') may commence until written details of the surface and foul water drainage for that part have been approved by the lead local flood authority, following consultation with the Environment Agency. The drainage details must be in general accordance with the drainage design principles in **Appendix 1 of the Design and Access Statement** (Doc Ref. 7.3).
- 9.16 Highway works are excepted from this requirement on the basis that they are dealt with in requirement 11 (in respect of local highway works) and the protective provisions for National Highways in Part 3 of Schedule 9 (in respect of national highway works). Excepted development is also excepted on the basis detailed above, but is again subject to consultation with the relevant planning authority on the proposed development.

**Requirement 11 – Local highway surface water drainage**

- 9.17 Provides that no part of the local highway works may be commenced until details of the surface water drainage for that part have been approved by the relevant highway authority following consultation with the Environment Agency and lead local flood authority. The drainage details approved must be in general accordance with the surface access drainage strategy (**ES Appendix 11.9.6: Flood Risk Assessment – Annexes 1-2** (Doc Ref. 5.3)).

**Requirement 12 – Construction traffic management plan**

- 9.18 Requires that no part of the authorised development may commence until a construction traffic management plan has been approved by the relevant highway authority, following consultation with the relevant planning authority. The plan must be substantially in accordance with **ES Appendix 5.3.2: CoCP Annex 3 – Outline Construction Traffic Management Plan** (Doc Ref. 5.3).

**Requirement 13 – Construction workforce travel plan**

- 9.19 Requires that no part of the authorised development may commence until a construction workforce travel plan has been approved by the relevant highway authority, following consultation with the relevant planning authority. The plan must be substantially in accordance with **ES Appendix 5.3.2: CoCP Annex 2 – Outline Construction Workforce Travel Plan** (Doc Ref. 5.3).

**Requirement 14 – Archaeological remains**

- 9.20 Provides that Work No. 34(b) (Car Park B North) must be carried out in accordance with **ES Appendix 7.8.1: Written Scheme of Investigation for post-consent archaeological Investigations – Surrey** (Doc Ref. 5.3) and that all other parts of the authorised development must be carried out in accordance with **ES Appendix 7.8.2: Written Scheme of Investigation for post-consent Archaeological Investigations and Historic Building Recording – West Sussex** (Doc Ref. 5.3) unless otherwise agreed with those Councils. The requirement sets out a regime for pausing construction and reporting any archaeological remains if found, followed by further investigation if required by the relevant planning authority.

**Requirement 15 – Air noise envelope**

- 9.21 Provides that the undertaker must submit annual monitoring and forecasting reports and, if necessary, noise action plans to the independent air noise reviewer in accordance with the requirements contained at section 7 of **ES Appendix 14.9.7: The Noise Envelope** (Doc Ref. 5.3). The undertaker is required to comply with each noise action plan which is approved



following scrutiny and verification by the independent air noise reviewer or the Secretary of State. The undertaker may not declare any further air transport movement capacity where:

9.21.1 two consecutive annual monitoring and forecasting reports identify that the same noise envelope limit has been exceeded during the previous 24 months of the operation of the airport; or

9.21.2 an annual monitoring and forecasting report identifies that a noise envelope limit is forecast to be exceeded,

until an annual monitoring and forecasting report confirms compliance with the noise envelope limit which was identified to have not been complied with during the previous 24 months of the operation of the airport or was forecast to not be complied with.

**Requirement 16 – Air noise envelope reviews**

9.22 Provides that the undertaker must submit noise envelopment review documents to the independent air noise reviewer in accordance with the requirements contained at section 8 of **ES Appendix 14.9.7: The Noise Envelope** (Doc Ref. 5.3), and that the noise envelope limits contained within any noise envelope review document must not be greater than:

$L_{eq\ 16\ hour\ day}\ 51\ dB\ 146.7\ km^2$

$L_{eq\ 8\ hour\ night}\ 45\ dB\ 157.4\ km^2$

9.23 Provides that at any point following the commencement of dual runway operations the undertaker may submit to the Secretary of State an extraordinary noise envelope review document for approval. This document will take account of the consequences of airspace change proposals or the incorporation of aircraft into the fleet operating from the airport which provide carbon savings in line with government policy. Provision is also made for force majeure circumstances which significantly reduce or otherwise affect operations at the airport and which have a knock-on effect on the rate of airline fleet transition. In such circumstances, the undertaker may request that the Secretary of State amends the points in time at which noise envelope review documents are required to be submitted and approved.

**Requirement 17 – Verification of air noise monitoring equipment**

9.24 Provides that within six months following the end of the period of 12 months beginning with the commencement of dual runway operations and at 5 yearly intervals thereafter the undertaker must submit to the independent air noise reviewer a noise model verification report and the undertaker must publish on a website (including a page on a website) hosted by the undertaker for that purpose each noise model verification report submitted to the independent air noise reviewer within not more than 45 days of the date of its submission.

**Requirement 18 – Noise insulation scheme**

9.25 Requires the undertaker to implement noise insulation schemes benefitting properties within the defined 'noise insulation scheme inner zone' and the 'noise insulation scheme outer zone.' Properties within these zones must be notified by the undertaker of their eligibility for the schemes within set periods following the commencement of airfield works (i.e. Work Nos. 1 – 7). The undertaker must also where reasonably requested by any owner of a residential property not within the noise insulation scheme inner zone, following the commencement of dual runway operations, take appropriate steps to measure the levels of ground noise associated with aircraft operating from the airport to identify whether the residential property experiences noise levels from aircraft which exceed  $L_{eq\ 16hr\ daytime}\ 63dB$  contour or  $L_{eq\ 8\ hr\ night}\ 55dB$  contour. If so, that property owner will be eligible for the noise insulation scheme.

9.26 Within 6 months of the commencement of the airfield works (Work Nos. 1 – 7) the undertaker must also take appropriate steps to notify all schools predicted to be within  $L_{eq\ 16hr\ daytime}\ 51dB$  contour 3 years following the commencement of dual runway operations of their eligibility for the noise insulation scheme.



- 9.27 In addition, the undertaker must notify each owner of a residential property who is identified within an annual monitoring and forecasting report to be within the  $L_{eq\ 16\ hr}$  66dB standard mode noise contour (as modelled based on actual operations of the previous summer) of their eligibility for home relocation assistance in accordance with section 6 of **ES Appendix 14.9.10: Noise Insulation Scheme** (Doc Ref. 5.3).

***Requirement 19 – Airport operations***

- 9.28 Provides that the undertaker must serve notice on the relevant planning authority no later than 7 days after the commencement of dual runway operations informing of the same, to ensure that the relevant planning authority is aware when this milestone (which is of relevance to other control mechanisms) has been reached.
- 9.29 Provides that from the date of the commencement of dual runway operations, the airport may not be used for more than 386,000 commercial air transport movements per annum.
- 9.30 Provides that the northern runway (Work No. 1) must not be routinely used between the hours of 23:00 - 06:00 but may be used between these hours where the southern runway (being the airport's main runway at the date this Order is made) is not available for use for any reason.

***Requirement 20 – Surface access***

- 9.31 Provides that from the date of the commencement of dual runway operations the operation of the authorised development must be carried out in accordance with **ES Appendix 5.4.1: Surface Access Commitments** (Doc Ref. 5.3) unless otherwise agreed with the relevant planning authority.

***Requirement 21 – Carbon action plan***

- 9.32 Provides that the authorised development must be carried out in general accordance with **ES Appendix 5.4.2: Carbon Action Plan** (Doc Ref. 5.3) unless otherwise agreed with the relevant planning authority.

***Requirement 22 – Public rights of way***

- 9.33 Provides that no development of any new or diverted public right of way listed in Part 3 of Schedule 4 may be carried out until a public rights of way implementation plan for that public right of way has been submitted to and approved by the relevant planning authority.
- 9.34 Each public rights of way implementation plan submitted pursuant to sub-paragraph (1) must be in general accordance with **ES Appendix 19.8.12: Public Rights of Way Management Strategy** (Doc Ref. 5.3) and in accordance with the rights of way and access plans.
- 9.35 The development of any new or diverted public right of way listed in Part 3 of Schedule 4 must be carried out substantially in accordance with the relevant public rights of way implementation plan approved pursuant to sub-paragraph (1).

***Requirement 23 – Flood compensation areas***

- 9.36 Provides that prior to the commencement of the first of Work Nos. 4(a), 4(b), 4(f), 4(g), 4(h), 4(i), 4(j), 14, 23(a), 25, 36(a), 36(b) or 37(a), a flood compensation delivery plan setting out the timeframe for delivering Work No. 31(b) (constructing a flood compensation area at Car Park X) and Work No. 38(a) (constructing a flood compensation area at Museum Field) must be submitted to and approved by the relevant planning authority in consultation with the Environment Agency.



***Schedule 3 (—Permanent stopping up of highways and private means of access and provision of new highways and private means of access)***

- 9.37 Schedule 3 sets out the highways and private means of access which are to be stopped up pursuant to the Order in accordance with Articles 13 and 16 and any replacements to be provided.

***Schedule 4 (—Public rights of way, footways and cycle tracks to be stopped up)***

- 9.38 Schedule 4 sets out the public rights of way, footways and cycle tracks which are to be stopped up pursuant to the Order in accordance with Articles 15 and 22 and any replacements to be provided.

***Schedule 5 (—Classification of roads)***

- 9.39 Schedule 5 sets out the classification of new and realigned roads, and those to be detrunked, as provided for by Article 17 of the Order.

***Schedule 6 (—Traffic regulations)***

- 9.40 Schedule 6 sets out the speed limits, clearways, height restrictions and prohibitions to be imposed pursuant to Articles 18 and 19 of the Order, and the revocations and variations of existing traffic regulation orders.

***Schedule 7 (—Land in which only new rights etc. may be acquired)***

- 9.41 Schedule 7 identifies the parcels of land (by reference to the corresponding plot number in the **Book of Reference** (Doc Ref. 3.3)) in respect of which the undertaker's compulsory acquisition powers are limited to the compulsory acquisition of rights, in accordance with Article 28.

***Schedule 8 (—Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)***

- 9.42 Schedule 8 sets out various amendments to legislation pertaining to compulsory purchase and compensation for the purposes of the Order.

***Schedule 9 (—Protective provisions)***

- 9.43 Schedule 9 contains provisions for the benefit of different types of statutory undertakers. Part 1 contains protective provisions for the benefit of electricity, gas, water and sewerage undertakers. Part 2 contains protective provisions for the benefit of operators of electronic communications code networks. Part 3 contains protective provisions for the benefit of National Highways.

***Schedule 10 (—Special category land)***

- 9.44 Schedule 10 sets out by reference to the plot numbers in the **Book of Reference** (Doc Ref. 3.3), the special category land to be permanently acquired for which replacement land is provided (Part 1) the replacement land to be provided (Part 2), and the special category land to be temporarily used and over which rights will be permanently acquired but for which no replacement land is required (Part 3).

***Schedule 11 (—Procedure for approvals, consents and appeals)***

- 9.45 Part 1 of Schedule 11 sets out the procedures that apply to any approvals, consents and appeals under the requirements in Schedule 2 (save for those relating to noise) and other approvals and consents under the Order. This schedule relates to Article 54 and has been based on the approval and appeal procedures set out in the Sizewell C (Nuclear Generating Station) Order 2022 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. It will provide for the payment of fees in respect of the discharge of requirements on a basis to be set out in this Schedule.



- 9.46 Part 2 of Schedule 11 sets out the approval and appeal process under the requirements in Schedule 2 relating to annual monitoring and forecasting reports, noise action plans and noise envelope review documents (together known as "noise plans") and the extraordinary noise envelope review documents.

**Schedule 12 (~~—Documents to be certified~~)**

- 9.47 Schedule 12 identifies the plans and other documents by application document reference number and revision which are to be certified by the Secretary of State in accordance with Article 51.