



# Gatwick Airport Northern Runway Project

Explanatory Memorandum to the Draft Development  
Consent Order – Clean 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:

"commence"

- 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, 23 and 26 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.
- 3.4.2 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.
- 3.4.3 All pre-commencement activities will be subject to the code of construction practice and its associated management plans (see requirement 7); the written schemes of investigation for Surrey and West Sussex (see requirement 14); the carbon action plan (see requirement 21) and the flood resilience statement (see requirement 24). These control measures ensure that impacts of pre-commencement works will be adequately managed.
- 3.4.4 The activities specified in the definition are all preceded by at least one of the Sizewell C (article 2), Manston Airport (article 2) or M25 J28 (article 2) DCOs or align with emerging drafting submitted in the Luton Airport Expansion application (Schedule 2, Part 1). The only additional provision is sub-paragraph (n) (establishment of temporary haul roads), which has been included as a separate limb for clarity, though the stated activity falls within the scope of other more generally worded exceptions from "commencement" in precedent DCOs (e.g. 'construction of temporary structures').

"maintain"

- 3.4.5 "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);

"substantially in accordance with"



- 3.4.6 "substantially in accordance with", which provides that a plan or detail which is required to be "substantially in accordance with" an outline document must in the main accord with that outline document and where it varies from the outline document should not give rise to any new or any materially different environmental effects in comparison with those reported in the environmental statement;
- Other
- 3.4.7 "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
- 3.4.8 "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 - i.e. works that would have a positive environmental effect that is materially new or different to those reported in the **Environmental Statement** (Doc Ref. 5.1).
- 3.12 The Order provides that:
- 3.12.1 specified types of works constitute "maintaining" the authorised development (Article 2 (Interpretation));
- 3.12.2 Crawley Borough Council or the relevant highway authority may approve works in excess of the limits in Article 6(1)-(5) (Limits of Works);
- 3.12.3 specified types of works constitute "ancillary or related development" (Schedule 1 (Authorised Development)); and



- 3.12.4 discharging authorities may only "otherwise agree" details or actions under Schedule 2 (Requirements),
- in each case provided that they do not give rise to "any materially new or materially different environmental effects" in comparison with those reported in the Environmental Statement (Doc Ref. 5.1).
- 3.13 The wording of "materially new or materially different" is now widely precedented in made DCOs, including the recent HyNet Carbon Dioxide Pipeline Order 2024, National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and A66 Northern Trans-Pennine Development Consent Order 2024. It is further noted that the Secretary of State's Decision Letter for the Great Yarmouth Third River Crossing stated that this wording "*is wording preferred by the Secretary of State*" (para. 82).
- 3.14 Given the use of this phrase in the Order, Article 2(9) is justified because:
- 3.14.1 A contrary application of the phrase "materially new or materially different" would mean that a material or non-material amendment would be required to the DCO to facilitate a work as maintenance or ancillary development or to allow the relevant planning or highway authority to authorise a work in excess of the limits in Article 6 (Limits of Works) where that work gives rise to a materially new or materially different positive environmental effect. This would create significant delay in implementing the Order and would therefore likely disincentivise contractors from pursuing such works and thereby disincentivise the delivery of the authorised development with better environmental outcomes than assessed. This is contrary to the Secretary of State's interest in delivering infrastructure with minimal adverse environmental effects.
- 3.14.2 It may undermine relationships with stakeholders and the local community if the Applicant were required to disregard opportunities that emerge through the detailed design of the Project to carry out works in a manner with fewer adverse effects or with beneficial effects compared to those assessed in the **Environmental Statement** (Doc Ref. 5.1).
- 3.14.3 The Applicant has undertaken an Environmental Impact Assessment that is precautionary, on the basis of the "Rochdale envelope" (see the Planning Inspectorate's Advice Note 9<sup>2</sup>). This approach means that a worst-case scenario is adopted so that adequate mitigation measures for this scenario are incorporated into the Project. However, should a better scenario transpire in delivering the Project, the "Rochdale envelope" approach should not mean that the Applicant is prevented from capitalising on beneficial environmental effects.
- 3.15 Article 2(7) of the A66 Northern Trans-Pennine Development Consent Order 2024 includes wording closely aligned to that proposed in Article 2(9) of the Order and the final drafts for both the London Luton Airport Expansion Development Consent Order (Article 2(9)) and A122 (Lower Thames Crossing) Development Consent Order (Article 2(10)) contain materially the same provision.
- 3.16 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 23 (Protective work to buildings) and 18 (Traffic regulations)).

<sup>2</sup> <https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-advice-note-nine-rochdale-envelope/nationally-significant-infrastructure-projects-advice-note-nine-rochdale-envelope>



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 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. This provision must capture enactments applying to land adjacent to the Order limits as such enactments could otherwise potentially hinder the construction or operation of the authorised development – e.g. by restricting access to the site. The provision is well precedented (including in Article 4(2) of the A66 Northern Trans-Pennine Development Consent Order 2024, 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)**

- 4.7 Article 6(1) and (2), together, apply to all works comprising the authorised development and control the lateral extent of the works by reference to the works plans (being the plans certified as such).
- 4.8 Article 6(2) caveats Article 6(1) as regards the highway works to confirm that elements of Work Nos. 35, 36 and 37 need not be strictly constrained to the areas shown for their individual corresponding numbered areas shown on the works plans and may instead be contained within the aggregate area of those same works numbers taken as a whole. This is necessary because these works are part of a continuum of highway that is to be constructed.



- 4.9 In respect of the following works, Article 6(3) provides that the undertaker may not deviate vertically from the levels shown on the parameter plans (being the plans certified as such) except as approved pursuant to requirement 4:
- 4.9.1 works to construct a new pier (Pier 7) (Work No. 6)
  - 4.9.2 works to construct the replacement Central Area Recycling Enclosure (CARE) (Work No. 9)
  - 4.9.3 works to construct the replacement Motor Transport Facilities (Work No. 10)
  - 4.9.4 works to construct the replacement Grounds Maintenance Facilities (Work No. 11)
  - 4.9.5 works to construct the replacement Airfield Surface Transport Facilities (Work No. 12)
  - 4.9.6 works to construct the replacement Rendezvous Point North (Work No. 13)
  - 4.9.7 works to construct the Satellite Airport Fire Service Facility (Work No. 15)
  - 4.9.8 works to construct a new aircraft 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 north of multi-storey car park 3 (Work No. 26)
  - 4.9.12 works to construct a hotel on the car rental site (Work No. 27)
  - 4.9.13 works associated with the Car Park H Site (Work No. 28)
  - 4.9.14 works to construct Car Park Y (Work No. 30)
  - 4.9.15 works associated with Car Park X (Work No. 31)
  - 4.9.16 works to remove existing car parking at North Terminal Long Stay car park and construct a decked car parking structure (Work No. 32)
  - 4.9.17 works to construct water treatment works (Work No. 43)
- 4.10 The above works are subject to vertical parameters because they involve the construction of new structures whose detailed design will be subject to refinement during implementation. To balance ensuring necessary flexibility for the final detailed design of the authorised development with ensuring a robust Environmental Impact Assessment, maximum parameters for height have been defined and secured for such works.
- 4.11 Article 6(4) provides that in constructing the surface access works (Work Nos. 35, 36 and 37) the undertaker may deviate from the levels shown on the surface access engineering structure section drawings (being the drawings certified as such) to a maximum of 1.5m upwards and 2m downwards, and may deviate laterally within the 'Surface Access Works Lateral Limits' shown on the works plans.
- 4.12 Article 6(4)(a) is required to reflect the design uncertainty that is inherent in a third-party infrastructure scheme that remains subject to the approval of the relevant highway authorities. The surface access engineering structure section drawings show the provisional levels for the highway works, but the final detailed design remains subject to finalisation through further discussion with National Highways and the local highway authorities. It is therefore necessary for a degree of vertical deviation to be permitted in respect of these works by reference to the provisional design shown on the surface access engineering structure section drawings.
- 4.13 Article 6(5) provides that in constructing the exit/entrance taxiways (Work Nos. 4(b) and 4(e)) the undertaker may deviate laterally to the extent shown on the parameter plans, but where an area is specified in square metres on the parameter plans for a component of these works the undertaker must not construct that component exceeding that area.
- 4.14 Article 6(6) provides that the limits relating to Work Nos. 6, 9, 10, 11, 12, 13, 15, 16, 22, 23, 26, 27, 28, 30, 31, 32, 43 and 4(b) and 4(e) do not apply where it is demonstrated by the undertaker to Crawley Borough Council ("**CBC**")'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).

- 4.15 Article 6(7) provides that the limits relating to Work Nos. 35, 36 and 37 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).
- 4.16 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.
- 4.17 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)**

- 4.18 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.
- 4.19 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).
- 4.20 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.
- 4.21 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)**

- 4.22 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.
- 4.23 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 undertaker. The consent of the Secretary of State is required for a transfer or grant, except where it is made:
- 4.23.1 in relation to a transfer or a grant of any works within a highway, to the relevant highway authority; or
- 4.23.2 in relation to a transfer or a grant relating to any part of Work Nos. 10(h), 11(d) (office and welfare facilities), 16 (new aircraft hangar), 26, 27, 28 or 29 (hotels), to any registered company.
- 4.24 Article 8(4) is justified because the Secretary of State will be able to consider the justification for such transfers through the examination and post-examination process, in the same manner as if they were considering a request for consent subsequently.
- 4.25 The ability to transfer the benefit of the Order as regards highway works to a relevant highway authority in article 8(4)(a) is well precedented and is justified on the basis that such authorities will be heavily involved in the carrying out of the highway works forming part of the authorised development and will likely be best-placed to exercise the Order powers themselves rather than that requiring the undertaker to do so.
- 4.26 The ability to transfer the limited identified works in article 8(4)(b) to a registered company reflects that companies other than the instant undertaker will likely operate these facilities in due course (as is the case for the equivalent facilities on the airport prior to the Project)



and will require the benefit of the Order in this regard. The specified works are not mitigation measures for the wider Project and do not have correlative material commitments and thus there is no risk in a third party company exercising the benefit of the Order in respect thereof. It would therefore be unnecessary and disproportionate to require the undertaker to seek further consent from the Secretary of State to such transfers post-grant of the Order.

- 4.27 Planning permission under the Town and Country Planning Act 1990 is not personal and runs with the land over which it is granted. Given that the works identified in Article 8(4)(b) could have been consented under the 1990 Act (or, for some, pursuant to the Applicant's permitted development rights) if not forming part of the wider Project, the ability to transfer the benefit of the Order in respect of these works without further consent is appropriate.
- 4.28 Paragraph (5) provides for the undertaker to notify National Highways in the event that it exercises the power in paragraph (1) to transfer or grant to a person other than National Highways the benefit of the Order in respect of national highway works.
- 4.29 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.
- 4.30 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)**

- 4.31 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.
- 4.32 Article 9(1), which provides that the development consent granted by the Order is to be treated as specific planning permission for the purpose of section 264(3) of the Town and Country Planning Act 1990, is well precedented, including in Article 9(2) of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, Article 46 of the A66 Northern Trans-Pennine Development Consent Order 2024 and Article 49 of the A12 Chelmsford to A120 Widening Development Consent Order 2024.
- 4.33 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.
- 4.34 Article 9(2) provides that the works authorised by Schedule 1 (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.
- 4.35 Article 9(3) makes similar provision with regard to any planning permissions initiated before the commencement of the authorised development.
- 4.36 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.



- 4.37 The Applicant has not identified extensive precedent drafting in made DCOs that addresses *Hillside* uncertainty, though it does note that Article 8(2) of the Slough Multifuel Extension Order 2023 provides that "*Anything done by the undertaker in accordance with this Order does not constitute a breach of any planning permission issued pursuant to the 1990 Act*", though this appears targeted at potential breaches of an existing permission rather than incompatibility and resulting inability to continue building out a permission.
- 4.38 However, emerging drafting in the draft orders for the Lower Thames Crossing (Article 56) and London Luton Airport Expansion (Article 45) projects seeks to tackle *Hillside* uncertainty and has informed the drafting of this Article 9.
- 4.39 The bespoke drafting in Article 9, which pursues generally the same aims as that in the Lower Thames Crossing and London Luton Airport Expansion draft orders, is important to remove uncertainty and risk regarding the interaction between the Order and other planning permissions (either existing or in the future).
- 4.40
- 4.41 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 Order which would be disproportionate and impractical in the circumstances.
- 4.42 Article 9(5), whilst bespoke, is preceded to a degree by Article 6(2) of the A66 Northern Trans-Pennine Development Consent Order 2024 and Article 37 of the M20 Junction 10a Development Consent Order 2017.

## 5. PART 3 – STREETS

### ***Article 10 (Application of the 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 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 highways 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 DCOs affecting highways, for example The A63 (Castle Street Improvement, Hull) Development Consent Order 2020, 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).
- 5.10 While some precedent orders reference a schedule setting out a list of streets subject to this power, this is not considered necessary for the Project. There are a small number of streets within the Order limits and, due to the nature of the Project site, the vast majority are either airport roads (as defined in the Order) or are the subject of the highway works comprised in the authorised development. Through the examination and by reference to plans including the **Land Plans [AS-015]**, stakeholders are able to examine the extent of the Order limits and therefore the extent of streets over which the Article 11 power may be exercised.
- 5.11 This approach to Article 11 is precedented in several recent roads DCOs but also in article 11 of the Thurrock Flexible Generation Plant Development Consent Order 2022. Such wording is also present in the final draft for the London Luton Airport Expansion Development Consent Order, the examination of which has concluded.

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

- 5.12 This Article provides the undertaker, subject to certain restrictions, with the power to alter or carry out works within a street.
- 5.13 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.
- 5.14 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.

- 5.15 Paragraph (2) provides that any street altered temporarily under this Article must be restored to the reasonable satisfaction of the street authority.
- 5.16 Paragraph (4) provides for deemed consent by reference to Article 56 (Deemed consent) where a street authority fails to respond to an application for consent under Article 12(3) within 56 days. See paragraphs 8.28 to 8.30 below in this regard.
- 5.17 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.
- 5.18 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. Deeming provisions are included in equivalent articles e.g. Article 12 of the Boston Alternative Energy Facility Order 2023 and Article 15 of the A12 Chelmsford to A120 Widening Development Consent Order 2024.
- 5.19 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)***

- 5.20 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.
- 5.21 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.
- 5.22 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.
- 5.23 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)***

- 5.24 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.
- 5.25 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.



- 5.26 Paragraph (3) requires the undertaker to provide reasonable pedestrian access to and from premises abutting a street affected by closure.
- 5.27 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.
- 5.28 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.
- 5.29 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.
- 5.30 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.
- 5.31 Paragraph (8) deems consent to be granted by a street authority by reference to Article 56 (Deemed consent) where they have not notified the undertaker of its decision within 56 days. See paragraphs 8.28 to 8.30 below in this regard.
- 5.32 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.

This Article is preceded in materially the same form in DCOs including Article 14 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, Article 13 of the Boston Alternative Energy Facility Order 2023 and Article 13 of the Southampton to London Pipeline Development Consent Order 2020. **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 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, with the consent of the street authority (in consultation with the relevant



planning authority). This provides an appropriate degree of flexibility in case the need for an access only becomes apparent at a later stage in the implementation of the authorised development. For the reasons discussed above in respect of Article 12, the consent of the street authority is not required in respect of roads within the airport.

- 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 Paragraph (4) provides for deemed consent by reference to Article 56 (Deemed consent) where a street authority fails to respond to an application for consent under Article 12(3) within 56 days. See paragraphs 8.28 to 8.30 below in this regard.
- 5.43 Precedent for the drafting of this Article can be found in Article 16 of the recently made HyNet Carbon Dioxide Pipeline Order 2024 as well as 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.)**

- 5.44 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.
- 5.45 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 (Traffic regulations)**

- 5.46 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.
- 5.47 Paragraph (1) provides that, subject to the other provisions of the Article, 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.
- 5.48 Paragraph (2) provides that, subject to the other provisions of the 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.
- 5.49 In addition to the traffic regulations specified in Schedule 6, paragraph (3) 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:
  - 5.49.1 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;
  - 5.49.2 permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
  - 5.49.3 authorise the use as a parking place of any road;
  - 5.49.4 make provision as to the direction or priority of vehicular traffic on any road; and
  - 5.49.5 permit or prohibit vehicular access to any road.



- 5.50 Paragraph (4) specifies a process for notifying and advertising the exercise of the powers in paragraphs (1), (2) or (3) in advance.

In respect of the exercise of the power in paragraph (3), the undertaker must first consult the entities specified in paragraph (5) and must obtain the consent of the traffic authority under paragraph (6). These processes are only applicable to exercise of the power in paragraph (3) because these traffic measures are not specified in a Schedule to the Order which has been scrutinised during the examination.

- 5.51 Paragraph (7) 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.
- 5.52 Paragraph (11) provides for deemed consent by reference to Article 56 (Deemed consent) where a traffic authority fails to respond to an application for consent under this Article within 56 days. 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. See paragraphs 8.28 to 8.30 below as regards deemed consent.
- 5.53 Paragraph (12), 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.
- 5.54 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 (Clearways, prohibitions and restrictions)***

- 5.55 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.
- 5.56 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)***

- 5.57 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.
- 5.58 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.
- 5.59 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)***

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





- 5.60.1 the construction of any new highway, including any structure carrying the highway over any part of the authorised development;
  - 5.60.2 the strengthening, improvement, repair or reconstruction of any highway, including any structure carrying the street over any of the authorised development;
  - 5.60.3 the maintenance of the structure of any bridge carrying a highway over or under any part of the authorised development;
  - 5.60.4 any stopping up, alteration or diversion of a highway authorised by this Order;
  - 5.60.5 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
  - 5.60.6 such other works as the parties may agree.
- 5.61 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.
- 5.62 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.
- 5.63 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) provides for deemed consent by reference to Article 56 (Deemed consent) if an owner fails to respond to an application for consent to discharge into its watercourse, sewer or drain within 56 days. This is considered necessary and appropriate to exercise its powers under the Order. See paragraphs 8.28 to 8.30 below in this regard.
- 6.3 Deeming provisions in respect of applications for consent to discharge water into a watercourse is well precedented in made DCOs including Article 20(9) of the HyNet Carbon Dioxide Pipeline Order 2024, Article 24(6) of the A12 Chelmsford to A120 Widening Development Consent Order 2024 and Article 20(6) of the A38 Derby Junctions Development Consent Order 2023.
- 6.4 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.
- 6.5 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.
- 6.6 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.



6.7 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. It is understood that the Environment Agency does not own any watercourses, public sewers or drains within the Order limits. However, paragraph (10) is included to cater for any eventuality where the Environment Agency subsequently acquires such a watercourse, public sewer or drain.

6.8 Paragraph (11) is included to likewise provide that a sewerage undertaker is deemed to have granted consent under paragraph (3) where the discharge is of trade effluent into a public sewer owned by the sewerage undertaker and consent has been granted under section 118 of the Water Industry Act 1991. This is to reduce duplication between the DCO and other regulatory regimes.

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

6.9 The purpose of this Article is to allow the undertaker to undertake protective works to buildings affected by the authorised development.

6.10 Article 23 applies in respect of buildings "*which may be affected by the authorised development*" as these are the buildings which may otherwise suffer impacts from the authorised development if the undertaker cannot exercise its power under Article 23 to carry out protective works. Delineating the scope of Article 23 in another manner would be imprecise – for example, limiting Article 23 to only buildings within the Order limits would prevent the undertaker from carrying out protective works to buildings immediately adjacent to, but outside, the Order limits which may be affected by works being carried out within the Order limits. This would prevent the undertaker from potentially mitigating adverse effects on such buildings.

6.11 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 25 of the A12 Chelmsford to A120 Widening Development Consent Order 2024, Article 21 of the A38 Derby Junctions Development Consent Order 2023, 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)**

6.12 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.

6.13 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.

6.14 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.

6.15 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.

- 6.16 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.
- 6.17 Paragraph (6) provides for deemed consent by reference to Article 56 (Deemed consent) where a highway authority or street authority fails to respond to an application for consent under paragraph (4) within 56 days. See paragraphs 8.28 to 8.30 below in this regard.
- 6.18 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)***

- 6.19 This Article allows any tree or shrub that is within or overhanging land within the Order limits to be felled, lopped or removed, 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.
- 6.20 This Article also allows for the removal of hedgerows as per the meaning in the Hedgerow Regulations 1997 (the "**Hedgerow Regulations**"). Paragraph (4) clarifies that, where an undertaker seeks to exercise its powers under paragraph (1) in respect of hedgerows, it will not be required to obtain a separate 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.
- 6.21 Compensation is payable for any loss or damage caused (paragraph (3)) and exercise of this power is subject to the requirements to do no unnecessary damage to any tree, shrub or hedgerow and act, insofar as relevant, in accordance with British Standard 3998:2010 (paragraph (2)).
- 6.22 Articles of materially the same effect as this Article have been inserted into numerous DCOs (see, for example, Article 17 of the A66 Northern Trans-Pennine Development Consent Order 2024, Article 34 of The Manston Airport Development Consent Order 2022 and Article 81 of The Sizewell C (Nuclear Generating Station) Order 2022).
- 6.23 The Applicant is aware that some precedents authorise the removal of hedgerows by reference to a schedule listing the relevant hedgerows or require subsequent local planning authority consent to such removal. However, the Applicant considers that the weight of precedent in made DCOs is for articles that authorise the removal of hedgerows within the Order limits without subsequent local authority consent. For example, Article 17(6) of the A66 Northern Trans-Pennine Development Consent Order 2024, Article 31(4) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 and Article 34(4) of the Manston Airport Development Consent Order 2022 all authorise the removal of any hedgerow within the Order limits. None of these precedents refer to a plan specifically identifying hedgerows to be removed.
- 6.24 Article 25 of the Order offers greater protection than the above precedents in that it provides that the undertaker may only fell, lop or remove a hedgerow if it reasonably believes it to be necessary to prevent the hedgerow from obstructing or interfering with the construction, maintenance or operation of the authorised development or related apparatus, rather than the broader precedented wording that the removal is "required". Article 25 also offers the largely unprecedented protection that works must be carried out in accordance with BS 3998:2010.

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

- 6.25 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).



- 6.26 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.
- 6.27 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, which 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.
- 6.28 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. In respect of such remains, paragraph (13) requires the undertaker to apply for a direction from the Secretary of State as to their subsequent treatment after having been removed.
- 6.29 Paragraph (16) 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.
- 6.30 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. **ES Appendix 5.3.3: Indicative Construction Sequencing [REP2-016]** sets out that the highway works components of the Project are anticipated to be completed in 2032, with other works not completed until 2035. Allowing a ten year period within which to exercise compulsory acquisition powers ensures that the Applicant is able to exercise powers proportionately as and when parcels of land are needed for particular works or the operation of the authorised development, rather than having to acquire land earlier on a conservative basis in anticipation of said land being necessary for works later in the construction sequencing or for future operation.

7.20 Where feasible, the Applicant intends to carry out construction pursuant to temporary possession powers, only vesting permanent interests or rights where necessary for construction and otherwise upon works completion, allowing for a more precise scope of land or rights to be permanently acquired. This approach is only feasible if the undertaker retains its compulsory acquisition powers at the time of completion of works, otherwise it will need to pre-emptively acquire rights and land.

7.21 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 DCOs 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)**

7.22 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.

7.23 Paragraph (3) is necessary to ensure that the undertaker can temporarily possess land unencumbered, removing impediments to the delivery of the Project that may result from the preservation of persons' rights of way over land that is temporarily possessed pursuant to the Order. The rights affected by the provision are only temporarily suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and resume once the undertaker has vacated.



- 7.24 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.
- 7.25 There is precedent for this Article in article 23 of the A66 Northern Trans-Pennine Development Consent Order 2024, article 28 of the A38 Derby Junctions Development Consent Order 2023 and article 24 of the Manston Airport Development Consent Order 2022. The bulk of precedent extends to disapplying "all private rights over land" whereas the Applicant has consciously adopted the more precise formulation of "private rights of way".
- Article 33 (Modification of the 1965 Act)**
- 7.26 The purpose of this Article is to ensure consistency between the standard terms of DCOs 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)**
- 7.27 This Article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a DCO) the provisions of the 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.
- 7.28 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.
- 7.29 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).
- 7.30 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.
- 7.31 Paragraph (6) amends section 5 of the Compulsory Purchase (Vesting Declarations) Act 1981 (the "**1981 Act**") to omit language that is not applicable where the 'compulsory purchase order' is a DCO, which is necessary given that Article 34(1) applies the 1981 Act as if the Order were a compulsory purchase order. Paragraph (6) is well precedented, including in Article 20(3) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023 and Article 21(3) of the Network Rail (Cambridge South Infrastructure Enhancements) Order 2022.
- 7.32 The Applicant's intention in including paragraphs (5) and (16) – (19) is to amend the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 to facilitate the compulsory acquisition of land and rights in favour of a third-party statutory undertaker ("**SU**"). This would allow for acquired land/rights to vest directly in the SU, without the need for the undertaker to acquire the land/rights in its own name and then separately transfer such land/rights to the relevant SU.
- 7.33 The need for this approach arises from the fact that the Project encompasses a significant component of surface access works, which will be carried out to a large extent by the relevant highway authorities, including National Highways. Those SUs will need to hold the interests or rights in land required to carry out those elements of the Project. Additionally,



utility diversions will be required to facilitate works both on- and off-airport, with a need for utility SUs to hold the necessary land and rights for the utility works and the resulting diverted apparatus.

- 7.34 Without provisions that allow for direct vesting of compulsorily acquired land or rights in the SUs, the undertaker (i.e. the Applicant or a successor) would need to acquire the land/rights, register them at HM Land Registry in its own name and then arrange a subsequent transfer to the SUs and a further registration at HM Land Registry in their name. The present significant backlogs at HM Land Registry and the additional procedure involved in the above two-stage process could lead to unintended and undesirable consequences for the construction timetable.
- 7.35 These provisions do not provide any additional powers of acquisition that could not otherwise be exercised by the undertaker. They simply streamline the administrative process of land ownership or rights holding and registration in a case where land/rights are required to be acquired for works being carried out by third-party SUs.
- 7.36 Article 34 as a whole is based in large part on previous DCOs, 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)***

- 7.37 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.
- 7.38 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).
- 7.39 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)***

- 7.40 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.
- 7.41 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)***

- 7.42 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.
- 7.43 Before the undertaker can occupy the land, it must provide the landowner and any occupier with not less than 14 days' notice and explain the purpose for which entry is taken. 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.
- 7.44 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.

- 7.45 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.
- 7.46 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.
- 7.47 Paragraph (11) confirms that the undertaker can take temporary possession of such land more than once.
- 7.48 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)***

- 7.49 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.
- 7.50 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)***

- 7.51 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.
- 7.52 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.
- 7.53 The "maintenance period" is defined in this Article as, in relation to any part of the authorised development, the period of five 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. A five-year time period from that point in this context strikes a fair balance between affording the undertaker sufficient time to carry out necessary maintenance to parts of the authorised development in the years immediately following their completion and not unduly burdening the Order land.
- 7.54 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 28 days' notice and on completion of the maintenance works must remove all temporary works and restore the land to the satisfaction of the landowner.



- 7.55 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.
- 7.56 Article 39 is well precedented, including in Article 30 of the A66 Northern Trans-Pennine Development Consent Order 2024, Article 30 of the A303 (Amesbury to Berwick Down) Development Consent Order 2023 and Article 30 of the Manston Airport Development Consent Order 2022.
- Article 40 (Special category land)**
- 7.57 This Article and Schedule 10 deal with the replacement of special category land that is required for the authorised development.
- 7.58 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. Two such exceptions are (i) 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; and (ii) if the Order land is required for the widening or drainage of an existing highway and the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public. This is the case, for the reasons set out in the **Statement of Reasons** (Doc Ref. 3.2).
- 7.59 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).
- 7.60 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 delivery plan has been submitted to, and approved in writing by, CBC (in consultation with Reigate and Banstead Borough Council ("**RBBC**") and Mole Valley District Council ("**MVDC**")). The open space delivery plan submitted under paragraph (1) must include a timetable for the (a) submission of a landscape and ecology management plan for the replacement land under requirement 8 (landscape and ecology management plan) and (b) the laying out of the replacement land as open space. Upon satisfaction of the requirements of paragraph (1), the special category land vests in the undertaker and is discharged of all encumbrances.
- 7.61 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 RBBC and will be subject to the same rights, trusts and incidents as attached to the special category land previously in the ownership of RBBC.
- 7.62 Article 40 is precedented in several recently made DCOs. Article 45 of the Chelmsford to A120 Widening Development Consent Order 2024, Article 38 of the A38 Derby Junctions Development Consent Order 2023 and Article 34 of the A303 (Amesbury to Berwick Down) Development Consent Order 2023 all allow the acquisition of special category land once the Secretary of State (in consultation with the relevant planning authority) has certified that a scheme for the provision of the replacement land as open space and a timetable for the



implementation of the scheme has been received from the undertaker. In each case the scheme need not have been laid out prior to acquisition of the special category land.

- 7.63 Paragraph (5) applies Article 55 (procedure in relation to certain approvals etc.) and Schedule 11 (procedure for approvals, consents and appeals) to the approval by CBC of the open space delivery plan under paragraph (1) as those provisions otherwise only apply to "discharging authorities" under "requirements" in Schedule 2. However, the approval in Article 40 should be subject to the procedure in those provisions given that it involves the submission of a document to CBC for approval, in consultation with other entities, and specifies requirements with which the document must adhere.

**Article 41 (Statutory undertakers)**

- 7.64 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.
- 7.65 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.
- 7.66 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.
- 7.67 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)**

- 7.68 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.
- 7.69 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)).
- 7.70 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.
- 7.71 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)**

- 7.72 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.
- 7.73 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.
- 7.74 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)**

- 7.75 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.
- 7.76 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)**

- 7.77 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.
- 7.78 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.

**Article 46 (Disregard of certain improvements, etc.)**

- 7.79 This Article provides for the tribunal to disregard certain interests in and enhancements to the value of land in assessing compensation arising out of that land's compulsory acquisition where the creation of the interest or the making of the enhancement was undertaken with a view to obtaining compensation or increased compensation.
- 7.80 The wording of this Article mirrors section 4 of the Acquisition of Land Act 1981 (the "**1981 Act**"). It is necessary to replicate the wording of that section in the Order because section 4 of the 1981 Act only applies to a compulsory purchase where another statutory instrument has applied its provisions. The 2008 Act does not do so, so section 4 of the 1981 Act would not apply to compulsory acquisition authorised by a DCO in the absence of wording such as in this Article. Sections 120(3), 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.
- 7.81 This Article complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation.
- 7.82 This Article has precedent in Article 38 of the Boston Alternative Energy Facility Order 2023, Article 44 of the A47 Wansford to Sutton Development Consent Order 2023 and Article 50 of the M25 Junction 28 Development Consent Order 2022.

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

**Article 47 (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 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 In common with other recent DCOs, the Order disapplies 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.

- 8.4 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 48 (Application of landlord and tenant law)**

- 8.5 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.
- 8.6 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 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.
- 8.7 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 49 (Defence to proceedings in respect of statutory nuisance)**

- 8.8 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:
- 8.8.1 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
- 8.8.2 is a consequence of the construction, maintenance or operation of the authorised development and that it cannot reasonably be avoided.
- 8.9 It is appropriate that an undertaker should not face a finding of statutory nuisance for carrying out development scrutinised through the examination process and consented by order of the Secretary of State in the above circumstances. Article 49 imposes a high standard on the undertaker – notably higher than section 158 of the 2008 Act itself – by referring to the CoPA processes and specifying that the nuisance must not have been reasonably avoidable. This strikes a fair balance.
- 8.10 The Applicant's approach in including an article regarding proceedings for statutory nuisance is well precedented and the precise selection of types of nuisance is precedented in Article 38 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016.
- 8.11 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. This provision is necessary to clarify the scope of the defence of statutory authority arising from the Order. The code of construction practice will reflect the set of appropriate measures and controls endorsed by



the Secretary of State. It is not reasonable or appropriate for a claim of statutory nuisance to succeed in respect of activity by the undertaker in compliance with such measures.

- 8.12 Paragraph (2) is preceded in Article 43 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and Article 44(2) of the Boston Alternative Energy Facility Order 2023.
- 8.13 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.
- 8.14 It must also be noted in connection with Article 49 that section 152 of the 2008 Act provides for compensation to persons whose land is injuriously affected by the carrying out of works, where a defence of statutory authority in civil or criminal proceedings for nuisance is available by virtue of section 158 and Article 49.
- 8.15 This Article is based on Article 7 of the Model Articles and recent DCOs (in particular The Sizewell C (Nuclear Generating Station) Order 2022) and departures from these precedents are based on the above cited precedents and justified for the above reasons.

***Article 50 (No double recovery)***

- 8.16 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.
- 8.17 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.
- 8.18 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 51 (Protection of interests)***

- 8.19 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.
- 8.20 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 52 (Certification of documents, etc.)***

- 8.21 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 53 (Service of notices)***

- 8.22 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.
- 8.23 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. Additional drafting clarifying when notices sent by electronic transmission are deemed served is bespoke to the Order.



**Article 54 (Arbitration)**

- 8.24 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.
- 8.25 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 55 (Procedure in relation to certain approvals etc.)**

- 8.26 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.
- 8.27 The Article has precedent from Article 85 of the Sizewell C (Nuclear Generating Station) Order 2022.

**Article 56 (Deemed consent)**

- 8.28 Article 56 specifies the process by which an authority which receives a valid application for consent or approval to which Article 56 applies is deemed to have provided such consent or approval if it fails to notify the undertaker of its decision within 56 days. The Article provides that any such application for consent or approval must include a statement explaining this and that any application which does not include such a statement is not subject to deemed consent.
- 8.29 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 authority's ability to refuse the application but simply imposes a deadline by which it must exercise its statutory functions.
- 8.30 The inclusion of deemed approval, which is applied by a number of 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.
- 8.31 Deeming provisions are well precedented in recently made DCOs, including the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, the A12 Chelmsford to A120 Widening Development Consent Order 2024 and the Boston Alternative Energy Facility Order 2023 (all of which use a shorter period than the Order of 28 days after which consent is deemed to have been granted).

**9. SCHEDULES**

- 9.1 Schedules 1 to 12 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 2.4 of this 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 (Interpretation) of Schedule 2 sets out relevant defined terms used in the requirements. Paragraph 1(2) clarifies that references to "part" of the authorised development mean individual "stages, phases or elements of the authorised development" in respect of which an application is made under Schedule 2. This reflects the fact that the undertaker will seek to discharge requirements in respect of components of the authorised development as it progresses through the construction timetable. The wording of sub-paragraph 1(2) is preceded in Schedule 2 of the Boston Alternative Energy Facility Order 2023.
- 9.6 Paragraph 1(3) provides that a discharging authority can only agree details pursuant to an "unless otherwise agreed" provision in Schedule 2 if it is satisfied that so doing does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement (Doc Ref. 5.1). This ensures that a discharging authority cannot authorise a change that goes beyond the scope of the Project as assessed in the Environmental Statement (Doc Ref. 5.1) and scrutinised during the examination.
- 9.7 Paragraph 2 (Anticipatory steps towards compliance with any requirement) of Schedule 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.
- 9.8 The requirements themselves are numbered from 3 to 26 and are summarised below:

#### ***Requirement 3 – Time limit and notifications***

- 9.9 Provides that the authorised development must begin 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 use of 'start date' for this timeframe is justified for the same reasons as set out above in respect of Article 31 (Time limit for exercise of authority to acquire land compulsorily), that unsuccessful legal challenges should not erode the time period within which the undertaker can begin the authorised development.
- 9.10 The undertaker must give CBC notice of:
- 9.10.1 the date on which the authorised development begins;
  - 9.10.2 the anticipated date of commencement of the authorised development;
  - 9.10.3 the actual date of commencement of the authorised development;
  - 9.10.4 the anticipated date of commencement of dual runway operations; and
  - 9.10.5 the actual commencement of dual runway operations.

#### ***Requirement 4 – Detailed design***

- 9.11 Provides for the approval of detailed design (layout, siting, scale and external appearance) by CBC (in consultation with MVDC and RBBC to the extent that they are the relevant planning authority for any land to which the details relate). The details to be submitted for approval must accord with Appendix 1 of the **Design and Access Statement** (Doc Ref.





- 7.3) unless otherwise agreed with CBC (in consultation with the other cited authorities), with any such agreement being subject to paragraph 1(3) of Schedule 2. The details submitted must also demonstrate that in carrying out the works they detail the undertaker would comply with the limits and parameters in Article 6 (Limits of Works).
- 9.12 The approval of detailed design for highway works 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).
- 9.13 Works defined as 'excepted development' are similarly 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.
- 9.14 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. In addition, 'excepted development' is required to be carried out in accordance with Appendix 1 of the **Design and Access Statement** (Doc Ref. 7.3) unless otherwise agreed with CBC.

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

- 9.15 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 Appendix 1 of the **Design and Access Statement** (Doc Ref. 7.3) unless otherwise agreed with CBC (in consultation with the other cited authorities), with any such agreement being subject to paragraph 1(3) of Schedule 2. The details must also accord with the surface access general arrangements, surface access engineering section drawings and surface access structure section drawings or otherwise demonstrate that the works to which they relate could be carried out in accordance with Article 6 (Limits of Works). This reflects the fact that the surface access plans and drawings referred to show a preliminary design that is subject to finalisation in collaboration with the relevant highway authorities and detailed design must be afforded the flexibility in Article 6 (Limits of Works).

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

- 9.16 Provides that the national highway works must be carried out in accordance with Part 3 of Schedule 9 (protective provisions) and that design details submitted pursuant to those provisions must comply with the same requirements as details submitted pursuant to requirement 5 (local highway works), described above.
- 9.17 Requirement 6(3) provides 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 national highway works by the third anniversary of the commencement of dual runway operations unless otherwise agreed with National Highways.

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

- 9.18 Provides that construction of the authorised development must be carried out in accordance with **ES Appendix 5.3.2: Code of Construction Practice** (Doc Ref. 5.3) unless otherwise agreed with CBC.

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

- 9.19 Provides that a landscape and ecology management plan must be approved by CBC (in consultation with RBBC, MVDC or Tandridge District Council to the extent relevant) prior to commencement of any part of the authorised development. Where the landscape and ecology management plan relates to highway works, CBC must approve it in consultation



with the relevant highway authority. A landscape and ecology management plan submitted for approval must be substantially in accordance with the **ES Appendix 8.8.1: Outline Landscape and Ecology Management Plan** (Doc Ref. 5.3) and must include a timetable for the implementation of the landscaping works it contains.

***Requirement 9 – Contaminated land and groundwater***

- 9.20 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***

- 9.21 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 CBC (in consultation with West Sussex District Council, the Environment Agency and Thames Water Utilities Limited). The drainage details must be in accordance with the drainage design principles in Appendix 1 of the **Design and Access Statement** (Doc Ref. 7.3).
- 9.22 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 CBC on the proposed development and must be carried out in accordance with the drainage design principles in Appendix 1 of the **Design and Access Statement** (Doc Ref. 7.3).

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

- 9.23 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 (in consultation with the Environment Agency and the relevant 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***

- 9.24 Requires that no part of the authorised development may commence until a construction traffic management plan has been approved by the CBC (in consultation with West Sussex County Council, Surrey County Council and National Highways on matters related to their function). 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***

- 9.25 Requires that no part of the authorised development may commence until a construction workforce travel plan has been approved by CBC (in consultation with West Sussex County Council, Surrey County Council and National Highways on matters related to their function). 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***

- 9.26 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 parts of the authorised development in West Sussex 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 the relevant 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**

9.27 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:

9.27.1 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

9.27.2 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**

9.28 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:

Leq 16 hour day 51 dB 146.7 km<sup>2</sup>

Leq 8 hour night 45 dB 157.4 km<sup>2</sup>

9.29 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**

9.30 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**

9.31 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.

- 9.32 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.
- 9.33 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***

- 9.34 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. 'Commercial air transport movements' is defined as "air transport movements with the exception of diverted or emergency flights".
- 9.35 Provides that the repositioned northern runway must not be used between the hours of 23:00 - 06:00 but may be used between these hours where the main runway is not available for use for any reason.
- 9.36 Provides that the repositioned northern runway must not be used (a) for aircraft landings or (b) for departures of aircraft larger than Code C aircraft (by reference to the Convention on International Civil Aviation).

***Requirement 20 – Surface access***

- 9.37 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 CBC (in consultation with National Highways).

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

- 9.38 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 CBC.

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

- 9.39 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 highway authority.
- 9.40 Each public rights of way implementation plan submitted pursuant to sub-paragraph (1) must be substantially in accordance with **ES Appendix 19.8.1: Public Rights of Way Management Strategy** (Doc Ref. 5.3) and in accordance with the rights of way and access plans.
- 9.41 The development of any new or diverted public right of way listed in Part 3 of Schedule 4 must be carried out in accordance with the relevant public rights of way implementation plan approved pursuant to sub-paragraph (1) unless otherwise agreed with the relevant highway authority.

***Requirement 23 – Flood compensation delivery plan***

- 9.42 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), 36(a), 36(b), 36(c), 37(a), 37(b), 37(f)-(j) or 37(l), a flood compensation delivery plan setting out the timeframe for delivering Work Nos. 30(a) (earthworks and works to construct an attenuation storage facility), 31(b) (constructing a flood compensation area at Car Park X), 38(a) (constructing a flood compensation area at Museum Field) and 39(a)





(divert and extend River Mole course) must be submitted to and approved by CBC in consultation with the Environment Agency.

**Requirement 24 – Flood resilience statement**

- 9.43 Provides that the authorised development must be carried out in accordance with the Flood Resilience Statement (Annex 6 to **ES Appendix 11.9.6: Flood Risk Assessment** (Doc Ref. 5.3)).

**Requirement 25 – Operational waste management plan**

- 9.44 Requires the undertaker to submit an operational waste management plan to CBC for approval within six months after the commencement of dual runway operations. The plan must be substantially in accordance with the **Operational Waste Management Strategy** (Doc Ref. 10.12). The airport must be operated in accordance with the approved plan.

**Requirement 26 – Water treatment works footpath**

- 9.45 Requires that a specified public access by foot is provided prior to the commencement of Work No. 43 (water treatment works) and kept in place until the completion of those works.

**Schedule 3 (Stopping up of streets and private means of access and provision of new streets and private means of access)**

- 9.46 Schedule 3 sets out the streets 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)**

- 9.47 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)**

- 9.48 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)**

- 9.49 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)**

- 9.50 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)**

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

**Schedule 9 (Protective provisions)**

- 9.52 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)***

- 9.53 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 (Part 1), the replacement land to be provided (Part 2) and the special category land over which rights will be acquired (Part 3).

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

- 9.54 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 55 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.
- 9.55 Paragraph 3 of Schedule 11 provides for the payment of fees by the undertaker to discharging authorities providing their agreement, endorsement or approval in respect of requirements to which Part 1 of Schedule 11 of the Order applies. The specified fee is by reference to the fee payable to local planning authorities in respect of the discharge of planning conditions for non-householder development in regulation 16 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.
- 9.56 This approach to fees is well precedented, including in paragraph 4 of Schedule 11 to the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024, paragraph 2 of Schedule 4 to the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and paragraph 26 of Schedule 2 to the Manston Airport Development Consent Order 2022.
- 9.57 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)***

- 9.58 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 52.