

## Explanatory Memorandum (Tracked)

The West Midlands Rail Freight Interchange Order 201X

Regulation 5 (2) (c)

Eversheds Sutherland - 21 August 2018



THE WEST MIDLANDS RAIL FREIGHT INTERCHANGE ORDER 201X

EXPLANATORY MEMORANDUM

21 August~~19 July~~ 2019

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

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Eversheds Sutherland (International) LLP

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## EXPLANATORY MEMORANDUM

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## 1. Introduction

- 1.1 This memorandum accompanies an application for a development consent order (“the Application”) submitted on behalf of Four Ashes Limited (“the Applicant”). The Application seeks approval of the Draft West Midlands Rail Freight Interchange Order 201X (“the DCO”).
- 1.2 As required by Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, as amended, (“the Regulations”), this memorandum explains the purpose and the effect of provisions in the draft Order. It has been prepared taking into account the guidance set out in the Advice Note 13: Preparing the Draft Order and Explanatory Memorandum (February 2019) and the DCO has been prepared taking into account the guidance set out in Advice Note 15: Drafting a Development Consent Order (July 2018).
- 1.3 The Applicant is Four Ashes Limited, a special purpose vehicle set up to promote and develop the development applied for. The company is a joint venture between:
- 1.3.1 Kilbride Holdings – a company specializing in rail infrastructure to serve business and industry;
  - 1.3.2 the Grosvenor Group – a privately owned international property group; and
  - 1.3.3 Piers Monckton – the primary land owner.
- 1.4 This Explanatory Memorandum relates to the draft DCO submitted to the Examining Authority for Deadline ~~85~~ on ~~219 August~~ July 2019 (Document 3.1 ~~ED~~). Each version of the draft DCO submitted to the Examining Authority has been accompanied by a DCO changes tracker which identifies the changes from the preceding version and explains the reasons for those changes (Document series 3.4).

## 2. The Purpose of the Order

### *NSIP Criteria*

- 2.1 Section 14 of the Planning Act 2008 (as amended) (“the 2008 Act”) sets out the type of projects that are classified as nationally significant infrastructure projects (“NSIP”). Section 14(1)(l) of the 2008 Act identifies “the construction or alteration of a rail freight interchange”.
- 2.2 Section 26 of the 2008 Act sets out the conditions which must be satisfied for the construction of a rail freight interchange to be classified as an NSIP. Section 26(1) advises that a rail freight interchange will only be treated as an NSIP when each of the conditions set out in subsections (3) to (7) are expected to be met.

- 2.3 The authorised development accords with these conditions as the proposed development includes the construction of a new rail freight interchange that will:
- 2.3.1 be situated in England and be at least 60 hectares in area (section 26(3)(a) and (b));
  - 2.3.2 be capable of handling consignments of goods from more than one consignor and to more than one consignee and at least four goods trains per day (section 26(4)(a) and (b));
  - 2.3.3 be part of the railway network in England (section 26(5));
  - 2.3.4 include warehouses to which goods can be delivered from the railway network in England either directly or by means of another form of transport (section 26(6)); and
  - 2.3.5 not be part of a military establishment (section 26(7)).
- 2.4 The proposed development therefore falls within the definition of a rail freight interchange NSIP as set out in the 2008 Act.
- 2.5 Consideration has been given as to whether any of the highway works might constitute an NSIP in their own right. Whether they do depends on whether the works meet the criteria and thresholds relating to ‘highway’ NSIPs set out in section 22 of the 2008 Act.
- 2.6 The only highway works which are capable of being a ‘highway’ NSIPs are new highways, or works being carried out on highways, for which the Secretary of State or a strategic highways company will be, or is, the highway authority.
- 2.7 There are no new lengths of highway included in the proposals for which the Secretary of State or a strategic highways company would be the highway authority. For the avoidance of doubt the highway authority for the A5/A449 link road to be constructed will be Staffordshire County Council.
- 2.8 The works to the existing highways are relatively minor and considered to be an improvement and are not considered in themselves to have a significant effect on the environment and do not therefore meet the criteria for an NSIP. Were they to be considered “alterations” then they each fall well below the lowest threshold for alterations being 9.24ha. None of the highway works are therefore considered to be an NSIP in their own right.



### *Scope of the proposed development*

2.9 The DCO sought will permit, in summary, the following works:-

- i) An intermodal freight terminal with direct connections to the West Coast Main Line capable of accommodating up to 10 trains per day and trains of up to 775m long, including container storage, associated Heavy Goods Vehicle parking, rail control building and staff facilities;
- ii) Up to 743,200 sq m of rail served warehousing and ancillary service buildings;
- iii) New road infrastructure and works to the existing road infrastructure;
- iv) Demolition of and alterations to existing structures and earthworks to create development plots and landscape zones;
- v) Reconfiguring and burying of electricity pylons and cables; and
- vi) Strategic landscaping and open space, including alterations to public rights of way and the creation of new ecological enhancement areas and publicly accessible open areas.

2.10 The proposed development is more fully described in Schedule 1 of the draft DCO (Document 3.1EG) and in the other Application documentation. The individual works are described in Section 6 (see paragraphs 6.1196 – 6.1230).

2.11 The draft DCO also authorises associated development (see paragraph 2.12 below). Provision for ancillary matters is made in the body of the draft DCO (see paragraph 2.13 below).

### *Associated Development*

2.12 The draft DCO specifically authorises development which is not part of the NSIP itself but is associated with it, as provided for by section 115(2) of the 2008 Act. These comprise Works No.s 6, 7, 8, 9a, 9b, 10a, 10b, and 11 and 12. These aspects of the authorised development are considered to be associated development as they each are “*typical of development brought forward*” with the NSIP or “*help address its impacts*”. They are “*not an aim in itself*” but are “*subordinate to the principal development*”<sup>1</sup>.

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<sup>1</sup> See paragraph 5(ii) Guidance on associated development applications for major infrastructure projects April 2013.

### *Ancillary Matters*

- 2.13 The draft DCO also deals with some ancillary matters – that is, provisions not dealing with development.
- 2.14 For example, it seeks powers for the purposes of carrying out the authorised development to acquire rights and land pursuant to section 120 of the Act and powers, under section 120 (3) and (4) and Part 1 of Schedule 5, paragraph 2, to authorise the creation, extinguishment and interference with interests in, or rights over, land (including the stopping up of a public right of way and creation of public rights of way).
- 2.15 The compulsory purchase powers sought are explained within the Statement of Reasons (Document 4.1AC).

### **3. Location of the development to be authorised**

- 3.1 The land affected by the proposed development is referred to in the draft DCO as the Order limits. These are shown on the Order Limits and Parish Boundaries Plan (Document 2.4). The Order limits comprise approximately 297 hectares of land lying to the west of Junction 12 of the M6 approximately 10km to the north of Wolverhampton and west of Cannock.
- 3.2 The Order limits are located within South Staffordshire District. Whilst the majority of the land is within the parish of Penkridge, parts are also within the parishes of Brewood and Coven, and Hatherton. The boundaries of the parishes are shown on the Order Limits and Parish Boundaries Plan.
- 3.3 The strategic rail freight interchange (“SRFI”) would broadly be bounded by the A5 trunk road to the north (from Junction 12 to the Gailey Roundabout); Calf Heath reservoir, the M6, Stable Lane and Woodlands Lane to the east; Station Drive, Vicarage Road and Straight Mile to the south; and the A449 trunk road (Stafford Road), from the Gailey Roundabout to Station Drive to the west. The south-eastern area of the site is also bisected by Vicarage Road.

### **4. Plans**

- 4.1 The plans submitted with the Application include:
- i) An Order Limits and Parish Boundaries Plan enabling the identification of the land affected and; the existing development in the immediate locality; and the parish boundaries (Document 2.4);
  - ii) Land Plans (pursuant to Regulation 5(2)(i) - Documents 2.1A to and 2.1L) showing the land affected by the development and the land subject to compulsory purchase and temporary possession powers.

- iii) Works Plans (pursuant to Regulation 5(2)(j) - Documents 2.2A to 2.2I) identifying the areas for the different works which cross refer to Schedule 1 in the Draft DCO and, where appropriate, show the limits of deviation.
- iv) Access and Rights of Way Plans (pursuant to Regulation 5(2)(k) - Documents 2.3A to 2.3G) which identify new and altered means of access, stopping up of streets and roads, stopped up and new public footpaths, bridleways, cycle tracks and diversions.
- v) Parameters Plans (pursuant to Regulation 5(2)(o) - Documents 2.5A-D, 2.6A-D and 2.7A-D) which identify the parameters with which the Works must comply. The parameters plans are the plans upon which the environmental assessment reflected in the Environmental Statement has been based. The approach taken by the parameters plans is described in more detail in Section 5 below.
- vi) Highway General Arrangement Plans, Rail Plans and Bridge Plans (pursuant to Regulation 5(2)(o) – Document series 2.9, 2.14, 2.15 to 2.18) which describe various aspects of the road and rail infrastructure. Although there are rail and highway elements included in the proposed development it was established at an early stage of pre-application discussions with the Planning inspectorate that Regulation 6 of the Regulations<sup>2</sup> was not engaged since those elements were not NSIPs in their own right. Nonetheless the information supplied does contain the information required to comply with Regulation 6.
- vii) Other Plans – these comprise the remainder of the plans submitted with the Application. Some are cross referred to within the description of the Works in Schedule 1 of the Draft DCO and/or the requirements in Schedule 2 of the Draft DCO. Some are supplied for illustrative purposes only. These plans include:
  - a) Highway Classification Plans (Document series 2.13) which identify the new classification of the A5/A449 link road following the construction of the authorised development;
  - b) Future Highways Maintenance Plans (Document series 2.10) which identify the extent of works on the trunk road network and

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<sup>2</sup> Infrastructure Planning (Applications: Prescribed Forms and procedure) Regulations 2009 (as amended).

the county highway network and future responsibility for maintenance;

- c) Traffic Regulation Order Plans (Document series 2.11) and Speed Limit Plans (Document series 2.12) which deal with consequential changes to the regulation of highways as a result of the works;
- d) An Illustrative Masterplan (Document series 2.8), is also provided to assist in demonstrating a form of development which would comply with the parameters which have been assessed (as shown on the Parameter Plans). It is not the basis for the environmental assessment reflected in the Environmental Statement and it identifies simply one way in which a development may come forward in conformity with the Parameters Plans.

## 5. The Assessment Parameters

- 5.1 The Parameters Plans (Documents 2.5 to 2.7) are the plans which identify the parameters of the authorised development and are the basis of the environmental assessment that has been carried out.
- 5.2 The Parameters Plans identify the parameters which apply to different areas of the Order limits. These include the maximum overall floorspace to be constructed, the building height range and the green infrastructure to be provided. These provide the “Rochdale Envelope” for the purposes of the environmental assessment of the development on the site. This is in line with Advice Note 9 “Using the Rochdale Envelope”.
- 5.3 The control of the development is secured by reference to:
  - 5.3.1 *Articles 4 (Parameters of authorised development) and 44 (Governance of requirements and protective provisions relating to highway works);*
  - 5.3.2 the description of the works in Schedule 1;
  - 5.3.3 the requirements in Schedule 2; and
  - 5.3.4 the parameters on the Parameters Plans and the limits of deviation shown on the Works Plan, Bridge Plans and Rail Section Plans.
- 5.4 Details over and above those shown on the Parameters Plans, including, for example, the precise location and height of buildings within the development zones; the detailed design of the rail infrastructure; detailed landscaping scheme and ecological mitigation details, are to be approved following the approval grant of the

DCO and following the submission of details to the local planning authority pursuant to the requirements contained in Schedule 2 of the DCO.

- 5.5 In the case of highway works comprised in Works No. 4 and 7, and any parts of Works No. 5 that involve the public highway, the detailed working drawings of the works involved will be governed by Parts 2 and 3 of Schedule 13. Those designs are required to be in accordance with the Highway General Arrangement Plans (Document Series 2.9).
- 5.6 The approved details cannot however stray outside the description of the authorised development or beyond the parameters shown on the Parameters Plans as is made clear by Articles 4 and 44. The approval of details subsequent to the making of the Order, and the ability to change details approved, as provided for in Article 44(2), is in accordance with paragraph 19.4 of Advice Notice 15: Drafting Development Consent Orders<sup>3</sup>.

## 6. The Draft Order

- 6.1 This section of the memorandum explains the provisions of the Applicant's final draft Order as submitted to the Examining Authority at Deadline 8 (Document 3.1E) ~~Planning Inspectorate with the Application~~. There are substantial departures from the model provisions in view of their lack of direct relevance to the development proposed, the revocation of Section 38(3) of the Act 2008 and repeal of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. The starting point therefore was Articles used in other approved Development Consent Orders. In particular regard has been had to The Daventry International Rail Freight Interchange Alteration Order<sup>4</sup>; The East Midlands Gateway Rail Freight Interchange and Highway Order<sup>5</sup>; The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order<sup>6</sup> and The York Potash Harbour Facilities Order<sup>7</sup>.
- 6.2 The text below deals in turn with each Article and Schedule of the draft DCO. To assist the Examining Authority, and to provide context for the dDCO, the relevant provisions of the 2008 Act are described below. In addition, further explanation is included for each article to confirm the relevant powers under the 2008 Act.
- 6.3 The 2008 Act allows a Development Consent Order to contain various powers provided that those powers are related to or ancillary to the proposed development. Section 120 of the 2008 Act sets out what a DCO may contain:

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<sup>3</sup> The Planning Inspectorate, Version 1 (October 2014).

<sup>4</sup> S.I. 2014 No. 1796.

<sup>5</sup> S.I. 2016 No. 17.

<sup>6</sup> S.I. 2016 No. 547.

<sup>7</sup> S.I. 2016 No. 772.

- 6.3.1 Section 120(1) permits the inclusion of “*requirements in connection with the development for which consent is granted*”. Section 120(2) states that requirements “*may in particular include*”:
- (a) requirements which are akin to conditions which could have been imposed on the grant of a permission or consent which would have been required for the development, were it not required to be authorised by the DCO (i.e. were it not an NSIP development); or
  - (b) requirements to obtain the approval of the Secretary of State or any other person, if they do not fall within (a) above.
- 6.3.2 There is therefore no limit to the general scope of requirements set out in section 120(1). Section 120(2) does not limit the scope of requirements but simply gives examples. The ability to impose requirements in law is therefore unconstrained other than that the requirement must be connected to the development.
- 6.3.3 The NPSNN provides guidance as to the imposition of requirements and states that they should only be imposed if they are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects (Paragraph 4.9).
- 6.3.4 Section 120(3) of the 2008 Act permits the inclusion in the DCO of a provision “*relating to, or to matters ancillary to, the development for which the consent is granted.*” This is a wide power, only limited by the fact that a provision must be related to the authorised development for it to be included. The Applicant therefore considers that all powers sought under the DCO fall within section 120(3), but it has also, where applicable, set out in this Explanatory Memorandum where a matter might also be covered by one or more of the other sub-sections in s120 of the 2008 Act.
- 6.3.5 Section 120(4) sets out (together with Part 1 of Schedule 5 to the 2008 Act) some specific matters which may be included in a DCO. It is important to note that this subsection does not limit the matters which may be included in a DCO pursuant to s.120(3) – notably, the section states: “*the provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5*” (Applicant’s underlining). The Applicant considers, therefore, that a provision is not precluded simply because it is not specifically listed in Part 1 of Schedule 5 (indeed, section 120(4) also allows a provision which is *related to* those matters listed in Part 1 of Schedule 5 to the 2008 Act), provided that the provision is related to the authorised development.

- 6.3.6 Section 120(5) sets out further specific powers which a DCO may include, and importantly, only some of these powers are limited to circumstances where certain tests must be met:
- (a) a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;
  - (b) a DCO may make amendments, repeals or revocations of statutory provision of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of or in connection with that DCO;
  - (c) a DCO might include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the DCO; and
  - (d) a DCO may include incidental, consequential, supplementary, transitional or transitionary provisions and savings.

## **PART 1**

### **PRELIMINARY**

#### *Article 1 (Citation and commencement)*

- 6.4 This Article provides for citation and commencement of the Order.

#### *Article 2 (Interpretation)*

- 6.5 This Article provides for the interpretation of the Order principally including the definition of terms.

- 6.6 Definitions to note are:

- i) “authorised development” has been amended from the term in the model provisions to include any works carried out pursuant to the requirements.
- ii) the terms “relevant highway authority” and “relevant street authority” have both been included as defined terms, as, whilst some Articles apply only to public highways (e.g. Article 12 public rights of way – creation and stopping up) and therefore refer to the “highway authority”, the term “street

authority” is also needed as some Articles apply to private streets, such as those to be provided on the main site (e.g. Article 9 power to alter layout, etc., of streets).

- iii) The definition of “undertaker” has been amended, as permitted by section 156(2) of the 2008 Act, to expressly refer to Four Ashes Limited and includes (in respect of the main site only) those persons who have the benefit of the Order in accordance with Section 156 of the Planning Act 2008. Article 7 restricts the benefit of the order in certain respects to Four Ashes Limited only. The definition was amended in the Deadline 6 version of the dDCO (Document 3.1D, REP6-003 and REP6-004) to clarify that the definition does not include SI Group unless SI Group is carrying out the authorised development other than the remediation strategy. It was further amended in the final dDCO (Document 3.1E) to ensure that the term did not apply to persons owning land within the main site until such time as the authorised development commences on their land.
- iv) Definitions of the “main site” and “highway works” have been added to facilitate the drafting of the separate provisions relating to those elements of the development.

- 6.7 Article 2 (2) expands the definition of rights over land and clarifies that it includes rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface.
- 6.8 Article 2 (3) makes it clear that measurements are approximate to take account of marginal differences arising out of construction of the works. This allows only small tolerances since the works are still subject to the constraints imposed by Articles 4 and 45. This provision is normal and was included in The Keuper Gas Underground Storage Facility Order 2017<sup>8</sup> and the M20 Junction 10a Development Consent Order 2017<sup>9</sup>.
- 6.9 Article 2 (4) ties in references to work numbers to the works in Schedule 1 and references to requirements to the requirements listed in Part 1 and Part 2 of Schedule 2.
- 6.10 Article 2 (5) provides that areas referred to in the Book of Reference (Document 4.3BA) are approximate – for the same reason as Article 2 (3) is required.

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<sup>8</sup> S.I. 2017 No. 433.

<sup>9</sup> S. I. 2017 No. 1202.



- 6.11 Articles 2 (3) - (5) are identical to those included in the East Midlands Gateway Rail Freight Interchange and Highway Order<sup>10</sup>.
- 6.12 Article 2 (6) clarifies that where the word approximate is used prior to a quantum it does not provide latitude for going beyond the parameters and carrying out works that have not been assessed. This provision is a sensible precaution to ensure that the Rochdale Envelope is not breached and was included in the York Potash Harbour Facilities Order 2016<sup>11</sup>.

## **PART 2**

### **PRINCIPAL POWERS**

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

- 6.13 This Article provides development consent for the authorised development to be carried out within the Order limits subject to the provisions of the Order and to the requirements.

#### *Article 4 (Parameters of authorised development)*

- 6.14 This Article is included to allow flexibility for the works to be carried out within the parameters identified on the Parameters Plans. The parameters identified on the Parameters Plans have been used for the purposes of environmental assessment of the authorised development.
- 6.15 As explained above, this approach is in line with the Rochdale Envelope approach and the guidance set out in Planning Inspectorate's Advice Notes 9 and 15.
- 6.16 The Article also provides for limits of deviation as shown on the Works Plans (Document 2.2A-I), Bridge Plans (Document 2.17 and 2.18A-D) and Rail Section Plans (Document 2.16A-E).
- 6.17 The Article is consistent with the equivalent article in the East Midlands Gateway Rail Freight Interchange and Highway Order.

#### *Article 5 (Authorisation of Use)*

- 6.18 This Article authorises the operation of the SRFI development and ensures that the concept of ancillary uses applies to the warehousing built pursuant to the DCO as it would had the warehousing been built pursuant to a planning permission. The Article includes confirmation that the development of the SRFI and warehousing may be used for the purposes for which they are designed. This follows the approach taken

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<sup>10</sup> S. I. 2016 No. 17.

<sup>11</sup> S. I. 2017 No. 772.

in Thames Tideway Tunnel Article 4<sup>12</sup>. The article gives express authorisation for the use of Works 1 – 3 pursuant to section 157 of the 2008 Act.

*Article 6 (Maintenance of authorised development)*

- 6.19 This Article is based upon Article 3 of the model provisions and provides for the maintenance of the authorised development by the undertaker. The definition of maintenance is identical to that contained in the recently approved East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>13</sup> except that a caveat, in respect of works which would result in a significant environmental effect which had not been assessed, has been deleted from the definition and is instead in Article 6(2). This follows the advice in Advice Note 15: Drafting Development Consent Orders to the effect that operative provisions should not be contained in definitions (paragraph 6.1). The power is permitted by section 120(3) of the 2008 Act because maintenance of the authorised development is clearly “related” to the consent.

*Article 7 (Benefit of the Order)*

- 6.20 The Order will benefit the “undertaker”, as defined, which in the case of the main site, will include all parties who qualify under Section 156 of the 2008 Act. However, some powers will benefit only Four Ashes Limited, as follows:

- (a) Part 5 (Powers of Acquisition) will be for the sole benefit of Four Ashes Limited to ensure that the Articles relating to the exercise of compulsory acquisition powers cannot be transferred unless the Secretary of State consents; and
- (b) only Four Ashes Limited have the power to carry out the highway works and deliver them in accordance with the protective provisions in Parts 2 and 3 of Schedule<sup>13</sup> unless the Secretary of State consents to a transfer of those powers or the relevant highway authority takes over responsibility for carrying out the highway works in default of the undertaker pursuant to the provisions of Parts 2 and 3 of Schedule 13.

- 6.21 In respect of (b) above, it is felt that the power to carry out the highway works should be restricted to the named undertaker rather than be available to all the owners of the land interests within the Order limits to ensure an orderly and comprehensive approach to the carrying out of the works.

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<sup>12</sup> The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S. I. 2014 No. 2394)

<sup>13</sup> S.I. 2016 No. 17

- 6.22 Sub-paragraph 4 has been included to ensure that any works which may be carried out by other parties under the protective provisions are authorised<sup>14</sup>. Such a provision is included in other Orders such as The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016<sup>15</sup>.

### **PART 3**

#### **STREETS**

##### *Article 8 (Street works)*

- 6.23 This Article is broadly based on Article 8 of the general model provisions. It makes provision for the undertaker to carry out the works described in Article 8 (a) – (j) for the purposes of the authorised development affecting the streets specified in Schedule 3. Ordinarily the undertaker would require a street works licence pursuant to the New Roads and Street Works Act 1991 to carry out such works, however, the inclusion of this Article in the Order will provide a statutory right to undertake street works within the specified streets without the need for the undertaker to obtain a separate licence from the street authority. The authority given by Article 8(1) is a statutory right for the purposes of sections 48(3) and 51(1) of the New Roads and Street Works Act 1991 and is permitted by section 120(5)(a) of the 2008 Act.
- 6.24 This Article is similar to Article 10 of the East Midlands Gateway Rail Freight Interchange and Highway Order<sup>16</sup> with the exception that the East Midlands Gateway Order refers to highways rather than streets and relates only to highway works affecting the public highway. The Article included in this draft DCO is broader and includes private streets, given the number of private accesses affected. The provision relates to the authorised development and is therefore permitted by section 120(3) of the 2008 Act. The Applicant also considers the powers are permitted by section 120(4) and specifically paragraph 15 of Part 1 of Schedule 5 to the 2008 Act (i.e. the carrying out of civil engineering or other works).
- 6.25 Sub-paragraphs (3) and (4) have been added in response to a request from Staffordshire County Council.

##### *Article 9 (Power to alter layout, etc., of streets)*

- 6.26 This Article is not contained in the model provisions but is based upon an Article that has precedent in other approved Development Consent Orders, for example

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<sup>14</sup> For example, the protective provisions for the Canals and Rivers Trust (Part 7 of Schedule 13) include the ability of the Trust to carry out works instead of the undertaker.

<sup>15</sup> S. I. 2016 No. 863 (Article 7(2)).

<sup>16</sup> S.I. 2016 No. 17.

the Heysham to M6 Link Road Order<sup>17</sup>, North Doncaster Chord Order<sup>18</sup> and The Keuper Underground Gas Storage Facility Order<sup>19</sup>. It is similar to Article 9(1) of the East Midlands Gateway Rail Freight Interchange and Highway Order<sup>20</sup>. The Article is authorised pursuant to section 120(3) of the 2008 Act since any necessary works are related to the authorised development, as well as section 120(4) and specifically paragraph 15 of Part 1 of Schedule 5 to the 2008 Act (i.e. the carrying out of civil engineering or other works). The provision is also authorised by section 120(c), given that it is necessary and expedient to give full effect to the development consent granted by the Order (Article 3) in order to authorise the development detailed in Schedule 1.

- 6.27 This Article is confined to the roads which will be maintained as private roads. Any alteration to those roads, although private, will still require the consent of the local highway authority who will be concerned to ensure that the arrangement of streets within the main site is acceptable. A deemed consent provision has been included to ensure there is a timely route to a decision. This deemed consent approach was incorporated in The National Grid (Hinkley Point C Connection Project) Order<sup>21</sup>.

*Article 10 (Permanent stopping up of streets)*

- 6.28 This Article makes provision for the stopping up of streets permanently where a substitute is to be provided. Schedule 4 of the Order has been completed to identify the street that is to be permanently stopped up subject to this Article (known as Gravelly Way) and alternative streets to be provided. This is also shown on the Access and Rights of Way Plans (Document 2.3A and 2.3C).
- 6.29 This Article also makes provision for all rights of way (both public and private) in the stopped up street to be extinguished and provision is made for the payment of compensation. The Article is similar to the Article contained in the East Midlands Gateway Rail Freight Interchange and Highway Order<sup>22</sup> save that the East Midlands Gateway Order also deals with the stopping up of streets for which no substitute is to be provided, which is not applicable in this case. The power is authorised by section 120(3) by virtue of the stopping up being related to the authorised development, as well as section 120(4) and paragraph 17 of Part 1 of Schedule 5 to the 2008 Act.

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<sup>17</sup> The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 S.I. 2013 No. 675.

<sup>18</sup> The Network Rail (North Doncaster Chord) Order 2012 S.I. No. 2635.

<sup>19</sup> S.I. 2017 No. 433.

<sup>20</sup> S.I. 2016 No. 17.

<sup>21</sup> S. I. 2016 No. 49 (for example, Articles 12, 13 and 14).

<sup>22</sup> S. I. 2016 No. 17.

*Article 11 (Temporary stopping up of streets)*

- 6.30 This Article deals with the temporary stopping up of streets for the purpose of carrying out the authorised development. It is included in the Order as it may be necessary for the undertaker to stop up streets temporarily. As with article 10, in addition to section 120(3) (i.e. by virtue of any temporary stopping up being related to the authorised development), the inclusion in the DCO of the power to stop up these streets is specifically authorised by section 120(4) and paragraph 17 of Part 1 of Schedule 5 to the 2008 Act.
- 6.31 The drafting of this Article generally reflects that provided for by the model provisions, however, paragraphs 3 and 4(a) of the model provisions have not been included as it is considered that it is not necessary to specify any streets to be temporarily stopped up at this stage and it is drafted so that the prior consent of the street authority is required before any streets are stopped up temporarily.
- 6.32 The Article is, in substance, the same as Article 14 of the M20 Junction 10a Development Consent Order 2017<sup>23</sup>, the only difference being that the earlier order also included a restriction of use, which it is not necessary to include in this case.
- 6.33 Articles 11, 13, 17, 21 and 22 include deemed consent provisions in line with other, approved, DCO. Highways England has objected to these provisions. The Applicant's justification for the provisions is set out in Appendix 3 to the Applicant's Responses to Other Parties' Deadline 2 Submissions (Document 11.1 REP3-007).
- 6.34 Highways England have stated that they would accept a requirement not to unreasonably withhold or delay consent instead of deemed consent. The Applicant has therefore included drafting for this in the relevant articles by way of the addition of italicised wording, to assist in the event that the position of Highways England is accepted.
- 6.35 For the reasons given in Appendix 3, referred to above, the Applicant believes there is no reason to treat Highways England differently from other statutory agencies or bodies and would request that the articles be included in the DCO without the italicised wording.

*Article 12 (Public rights of way – creation and stopping up)*

- 6.36 This Article has been included in the Order to allow for the creation and stopping up of rights of way affecting land within the Order limits. It is necessary for a public right of way to be stopped up in order for the authorised development to be carried out.

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<sup>23</sup> S. I. 2017 No. 1202.

- 6.37 Section 136 of the 2008 Act provides 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.
- 6.38 As part of the authorised development, at the time of writing, there is one existing public right of way proposed to be stopped up with no substitute provided. This is footpath Penkridge 29, to the extent shown with a dashed red line on the Access and Rights of Way Plans (Document 2.3A). There is no proposed substitute because the footpath does not connect with other footpaths and is therefore effectively a cul-de-sac terminating in the area which is to comprise the Croft Lane Community Park to be provided as part of the authorised development. There is proposed to be the provision of permissive footpaths throughout the community parks, which, combined with a new public footpath linking the onsite road infrastructure and the canal towpath, will provide extensive accessibility to and throughout the site. This is further explained in the Applicant's response to ExQ2.13.7 (Document 15.1) submitted at Deadline 5.
- 6.39 Schedule 5 of the Order identifies the public right of way that is affected by this Article. Part 1 specifies the extent of the permanent stopping up of footpath Penkridge 29.
- 6.40 At the time of writing, the Applicant is aware that Staffordshire County Council made an order on 25 April 2019 to amend the definitive map to add a byway open to all traffic pursuant to an application from 1998. The order is the subject of ongoing consultation and, as discussed during the Examination of the DCO and following a representation received by the County Council that the byway should be a bridleway, the Applicant has amended Article 12(3) to refer to a public right of way rather than a byway open to all traffic. The provision ensures that, if that order is confirmed at any time, the public right of way shall be stopped up without the need for any further order. The route of the public right of way is shown on sheet 7 of the access and rights of way plans (Document 2.3G) between points A and B. The route of the public right of way effectively follows the extent of the currently adopted public highway known as Gravelly Way until that road turns into a private road shortly after the railway bridge. The route then continues until it meets the bridge over the Canal. There is no proposed substitute because Gravelly Way is proposed to be stopped up and replaced with the A5/A449 link road which itself will include a public footway and cycleway. The Applicant proposes a range of improvements to the private access arrangements to the existing business park which involves vehicular access from the link road and pedestrian and cycle routes over the Canal bridge linking to the Canal towpath and the link road.
- 6.41 This Article also provides for the creation of the wholly new public right of way (i.e. not provided as a result of the stopping up of an existing right of way) comprised in the authorised development. Part 2 of Schedule 5 specifies the new public right of way that is to be created. The Schedule fixes terminus points for the new right

of way to be created. The creation of public rights of way is permitted by section 120(3) of the 2008 Act. The purpose for which the provisions relating to the creation of the public right of way are included in the DCO is to facilitate the development authorised by the DCO, and therefore its creation is clearly related to the authorised development.

- 6.42 Some of the paths across the site are to be permissive. This is to allow flexibility in respect of their alignment during the course of the development and the finalising of details for the Community Parks. The provision of the permissive paths is secured by requirement 22 contained in Part 1 of Schedule 2 to the DCO.

*Article 13 (Accesses)*

- 6.43 The new means of accesses to the main site are identified in Schedule 1 and are part of the highway works covered by Schedule 13. However, to allow some flexibility, this Article is included to allow for modification of the accesses, or other means of access to be provided. This is subject to prior agreement with the relevant highway authority or, in the case of private streets, the street authority.
- 6.44 Paragraph 4 refers to some private means of access which are being closed for which no substitute is to be provided. These are listed in Part 1 of Schedule 6. The reasons why no substitute is being provided are set out below.

Private Means of Access	Reason why it is no longer required
Field access to the west of the A449 shown with a green dot at point 1 on the Access and Rights of Way Plans (Document 2.3A and 2.3F)	This access is being removed in order to accommodate the relocated A5 laybys. Access to this land is currently available from the south via Marsh Farm, which is not affected by the development.
Field access to the east of the A449 shown with a green dot at point 2 on the Access and Rights of Way Plans (Document 2.3A and 2.3F)	This access is an access to land which will be developed as part of the authorised development and it will therefore no longer be required as a field access.
Field access to the south of the A5 shown with a green dot at point 3 on the Access and Rights of Way Plans (Document 2.3A and 2.3B)	This access is an access to land which will be developed as part of the authorised development and it will therefore no longer be required as a field access.

Private Means of Access	Reason why it is no longer required
Access to Clovelly south of the A5 shown with a green dot at point 4 on the Access and Rights of Way Plans (Document 2.3A and 2.3B)	This access is an access to land which will be developed as part of the authorised development and access thereto will therefore no longer be required.
Access to Fir Tree Cottage to the east of the A449 shown with a green dot at point 5 on the Access and Rights of Way Plans (Document 2.3E)	This access is an access to land which will be developed as part of the authorised development and access thereto will therefore no longer be required.
Field access to the east of the A449 shown with a green dot at point 6 on the Access and Rights of Way Plans (Document 2.3E)	This access is an access to land which will be developed as part of the authorised development and it will therefore no longer be required as a field access.
Access to Croft Farm shown coloured purple between points FF and GG on the Access and Rights of Way Plans (Document 2.3A)	This access is an access to land which will be developed as part of the authorised development and access thereto will therefore no longer be required.
Access to Calf Heath Quarry shown coloured purple between points HH and II on the Access and Rights of Way Plans (Document 2.3B)	This access is an access to land which will be developed as part of the authorised development and access thereto will therefore no longer be required.

- 6.45 Paragraph 5 provides for alterations to private means of access to be carried out (as detailed in Schedule 6) to enable the carrying out and use of the highway works.
- 6.46 The purpose for which the provisions relating to the creation of private accesses are included in the DCO is to facilitate the development consented by the DCO, hence their creation is “related to the authorised development”. The provisions are therefore permitted by section 120(3) of the 2008 Act.



6.47 Article 13 is the same as Article 14 of The East Midlands Gateway Rail Freight Interchange and Highway Order<sup>24</sup> save that –

6.47.1 a deemed approval provision has been included at Article 13(3) (in respect of which see paragraphs 6.33 to 6.35 above); and

6.47.2 the stage by which the access must be closed, or by which any replacement, or new, access is to be provided is identified, as provided for in Articles (4), (5) and (6).

*Article 14 (Maintenance of highway works)*

6.48 This Article is included to provide for the maintenance of the new A5/A449 Link Road and altered public highways following the completion of the relevant works. It cross refers to the process of certification of commencement of maintenance by the highway authority upon the issue of the relevant certificates under the provisions of Parts 2 and 3 of Schedule 13. The Article is based on Article 15 of The East Midlands Gateway Rail Freight Interchange and Highway Order<sup>25</sup> but, it is more specific as to the point atef which maintenance of the highway works is the responsibility of the relevant highway authority. In addition the Article also cross refers to the dedication provisions contained in Parts 2 and 3 of Schedule 13.

6.49 This provision is permitted by section 120(3) of the 2008 Act because maintenance of the highway works is clearly “related” to the consent. The specification of the highway authorised is authorised by section 120(4) and paragraph 23 of Part 1 to Schedule 5 of the 2008 Act.

*Article 15 (Classification of A5/A449 link road)*

6.50 This Article is based on Articles found in other Development Consent Orders<sup>26</sup> and is included to make provision for the classification of the new A5/A449 link road. The provision to classify the link road is specifically permitted by section 120(3) of the 2008 Act since the classification of the link road (being part of the authorised development) is clearly a matter ancillary to the proposed development.

*Article 16 (Speed limits)*

6.51 This Article is based upon Articles in other Development Consent Orders, for example, the M1 Junction 10a Order<sup>27</sup>, the Houghton Regis Order<sup>28</sup> and the East

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<sup>24</sup> S.I. 2016 No. 17.

<sup>25</sup> S.I. 2016 No. 17.

<sup>26</sup> e.g. the Heysham to M6 Link Road Order 2013 S.I. 2013 No. 675.

<sup>27</sup> The M1 Junction 10a (Grade Separation) Order 2013 S.I. 2013 No. 2808.

<sup>28</sup> The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 S.I. 2014 No. 2637.

Midlands Gateway Rail Freight Interchange and Highway Order<sup>29</sup>. It makes provision for the lengths of road identified in Schedule 8 to be subject to new speed limits as set out in that Schedule upon completion of the authorised development, as if such restrictions were imposed by an order under the Road Traffic Regulation Act 1984. The article also enables temporary speed limits during construction by agreement with the relevant traffic authority. The inclusion of the article is permitted by section 120(3) of the 2008 Act, since the regulation of speed limits on the various highways is related to the provision of the highway works as part of the authorised development. The requirement of the various speed limits is also necessarily related to the classification of the various highways, and is therefore permitted by section 120(3) of the 2008 Act as a matter ancillary to the proposed development and by section 120(4) and paragraphs 19 and 20 of Part 1 of Schedule 5 of the 2008 Act.

- 6.52 Paragraph 8 of this Article makes it clear that the new speed limits set by the Order may be varied in the future by the relevant traffic authority, as they could have been had they been imposed by an order under the Road Traffic Regulation Act 1984.

*Article 17 (Traffic Regulation)*

- 6.53 This Article provides for the amendments to existing traffic regulation orders requested by Highways England and consequent on Article 18 (Clearways, No Waiting and Limited Waiting) and Article 19 (Motor Vehicle Restrictions), as set out in Part 1 of Schedule 9. The justification for the amendments sought, provided by Highways England (in their Deadline 5 submission (REP5-046) is as follows:

*“The wide verges of the SRN on the A449 and A5 leave open the option of uncontrolled and indiscriminate parking by HGVs and other vehicles. This leads to significant safety concerns created by uncontrolled parking – reductions in sighting distances on the main carriageways by indiscriminately parked vehicles, damage to SRN assets by vehicles accessing and egressing the verge, and potential for the depositing of mud and detritus on the live carriageway.*

*Should the DCO be made and the SRFI delivered this will increase the number of vehicles, particularly HGVs, in the area. The Site-wide HGV Management Plan (document AS-040) is based on the premise that HGV routing and parking falls under its scope. The Plan is intended (among other things) to “provide a strategy for the management of road based HGVs to and from the Site together with the methods and measures by which these will be achieved”. A prohibition on verge parking in the locality of the site is entirely consistent with the Plan’s desired outcomes that seeks to prevent off-site parking. Without such prohibition(s) these outcomes could be undermined.*

*On this basis, and the known pressures on formal roadside facilities, it is probable that indiscriminate verge parking will occur without a suitable prohibition. We would therefore expect to see the existing orders amended to address this and we support the principle of the applicant’s amendments to Schedule 9 of the dDCO in this regard.”*

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<sup>29</sup> S.I. 2016 No. 17.

6.54 Highways England subsequently requested further extensions to those TRO amendments (as confirmed in their Deadline 7 submission (REP7-030)) and as explained in the Applicant's Responses to Other Parties' Deadline 6 Submissions (Document 18.1), the Applicant has updated the Traffic Regulation Plans (Document series 2.11) and the dDCO (Document 3.1E).

6-546.55 Copies of the existing orders to be amended are contained in Document 7.8. The provision is permitted by section 120(4) and paragraph 20 of Part 1 to Schedule 5 of the 2008 Act which deals with the specification of the classes of traffic authorised to use a highway – in that this is a provision relating to that paragraph (matters “*related to*” or “*ancillary to*” being specifically permitted by section 120(4)).

6-556.56 The Article also allows for future traffic regulation (with consent of the relevant traffic authority) which may be necessary for the construction, operation or maintenance of the authorised development. These powers are similar to those contained in the Thames Tideway Order<sup>30</sup>, including the incorporation of a deemed consent provisions, in respect of which please see paragraphs 6.33 – 6.35 above.

*Article 18 (Clearways, No Waiting and Limited Waiting)*

6-566.57 Article 18 provides for Clearways, No Waiting and Limited Waiting areas along lengths of road identified in Parts 2, 3 and 4 of Schedule 9. The Article is based on The East Midlands Gateway Rail Freight Interchange and Highway Order<sup>31</sup>. Similar to the inclusion of the article authorising traffic regulation, this article is related to the authorised development and is permitted by section 120(3) of the 2008 Act.

*Article 19 (Motor Vehicle Restrictions)*

6-576.58 Article 19 includes restrictions on use of parts of the highway consequential upon the highway works as identified in Parts 5 and 6 of Schedule 9. This governs the various prohibited movements and the proposed one way street along part of Crateford Lane. The power is clearly required in order to facilitate the authorised development and implement the prohibited movements. Its inclusion in the DCO is therefore permitted by section 120(3) of the 2008 Act.

*Article 20 (Agreements with Highway Authorities)*

6-586.59 This Article is included to allow the undertaker to enter into agreements with the relevant highway authority relating to the construction of a new highway, carrying out of works in the highway, stopping up, alteration or diversion of highways,

<sup>30</sup> The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S. I. 2014 No. 2384, Article 18).

<sup>31</sup> S. I. 2016 No. 17.

maintenance of the structure of any bridge carrying a highway over or under a railway and landscaping.

~~6-596.60~~ All of the highway works will be carried out in accordance with the powers within the DCO and the relevant provisions of Schedule 13, however, this Article is included in the Order as a precautionary measure in relation to any agreements that might be required with the Highway Authority thus avoiding the need to find an alternative statutory authority, which may not be fit for purpose. For example, section 278 of the Highways Act 1980 can authorise works to the public highway, however they have to be undertaken on behalf of the highway authority and be of public benefit, which would not necessarily be the case.

~~6-606.61~~ The Article is in the same form as Article 21 of The East Midlands Gateway Rail Freight Interchange and Highway Order<sup>32</sup> with the addition of Article 21(d). The Applicant considers that the inclusion of this Article is permitted by section 120(3) of the 2008 Act because it would permit agreements related to the authorised development or matters ancillary to the authorised development.

#### **PART 4**

#### **SUPPLEMENTAL POWERS**

##### *Article 21 (Discharge of water)*

~~6-616.62~~ This Article largely reflects the drafting of Article 14 in the general model provisions and is required to allow for the drainage of the land within the Order limits in connection with the carrying out and maintenance of the development. Under the provisions of this Article consent is required from the person who owns the relevant watercourse, public sewer or drain but such consent may not be unreasonably withheld. Its inclusion is permitted by section 120(3) as well as section 120(4) and specifically paragraph 26 of Part 1 to Schedule 5 of the 2008 Act.

~~6-626.63~~ The drafting has been updated from the model provisions to refer to the Environmental Permitting (England and Wales) Regulations 2016 which supersede the relevant provisions of the Water Resources Act 1991. These powers are similar to those contained in the Thames Tideway Order<sup>33</sup>, including the incorporation of a deemed consent provisions, in respect of which please see paragraphs 6.33 – 6.35 above.

##### *Article 22 (Authority to survey and investigate the land)*

<sup>32</sup> S. I. 2016 No. 17.

<sup>33</sup> The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S. I. 2014 No. 2384, Article 18).

6-636.64 This Article is included to enable the undertaker to enter land within the Order limits to survey or investigate the land. This drafting broadly reflects that in Article 16 of the model provisions save for an amendment to paragraph 2, so that notice need not be served on the undertaker in the event that they are the owner of the land. The provision is permitted by sections 120(3) and 120(4) of the 2008 Act, and specifically paragraph 12 of Part 1 to Schedule 5.

## **PART 5**

### **POWERS OF ACQUISITION**

#### *Article 23 (Guarantees in respect of payment of compensation)*

6-646.65 The Applicant has included this Article as security in respect of payment of compensation for the protection of any interests which are to be compulsorily acquired. The Article will ensure that no compulsory acquisition can be pursued until appropriate security for the liabilities of the undertaker to pay compensation in respect of that acquisition has been provided to the local planning authority, being South Staffordshire Council. The article is related to the powers for the acquisition of land and is therefore related to paragraph 1 of Part 1 of Schedule 5 to the 2008 Act. Its inclusion is therefore authorised by section 120(4) of the 2008 Act.

6-656.66 The requirement to provide a form of security, for potential compensation as a result of exercising compulsory acquisition powers, is a generally accepted principle which has been included in various recently approved Orders<sup>34</sup>. It is considered that 15 years is an appropriate period for the relevant form of security to be in place, since this extends 10 years beyond the final date from which any compulsory acquisition may be exercised under the DCO.

6-666.67 The scope of the Article is identical to that contained in The East Midlands Gateway Rail Freight Interchange and Highway Order<sup>35</sup>, however, the specific drafting is informed by the more recent York Potash and Triton Knoll approved Orders. Article 23(3) includes a provision requiring the local planning authority to be furnished with relevant information when exercising its judgment on the adequacy of the proposed security, which is identical to the York Potash Order. Article 23(5) is based on the Triton Knoll Order.

#### *Article 24 (Compulsory acquisition of land)*

6-676.68 This Article will authorise the compulsory acquisition of land identified on the Land Plans and described in the Book of Reference and is permitted by section

<sup>34</sup> The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016 No. 17, Article 24), The York Potash Harbour Facilities Order 2016 (S.I. 2016 No. 772, Article 23) and The Triton Knoll Electrical System Order 2016 (S.I. 2016 No. 880, Article 37 (4)).

<sup>35</sup> S.I. 2016 No. 17.

120(4) and paragraph 1 of Part 1 of Schedule 5 to the 2008 Act, and by section 123 of the 2008 Act.

6-686.69 This Article also provides for the extinguishment of rights, trusts and incidents to which the land was previously subject as permitted by paragraph 2 of Part 1 of Schedule 5 to the 2008 Act..

6-696.70 Further detail on the rationale for this Article is contained in the Statement of Reasons (Document 4.1CA).

*Article 25 (Compulsory acquisition of rights)*

6-706.71 This Article is included to allow the compulsory acquisition of existing rights and the power to create and acquire compulsorily new rights over the land shown on the Land Plans and described in the Book of Reference. The land in which new rights may be created is listed in Schedule 11 by reference to the land plans. The article is permitted by section 120(4) and paragraphs 1<sup>36</sup> and 2 of Part 1 to Schedule 5 of the 2008 Act.

6-716.72 The Article is based on recently approved provisions in various Development Consent Orders<sup>37</sup>. This approach ensures that compulsory purchase is limited only to the rights that are required.

6-726.73 The approach requires a modification to compulsory purchase and compensation provisions and these are dealt with in Schedule 12 which is permitted by section 120(5)(a) of the 2008 Act.

*Article 26 (Acquisition of part of certain properties)*

6-736.74 This Article follows model provision 26 and covers an alternative procedure where the undertaker acquires only part of certain types of property, subject to the right of the owner to require the whole of the property to be acquired, in the event that part cannot be taken without material detriment to the remainder. The Article replaces section 8(1) of the Compulsory Purchase Act 1965 and provides a process and timetable for the dealing of claims of material detriment. The Article is based on other DCOs such as the Triton Knoll Electrical System Order 2016<sup>38</sup> and is permitted by section 120(4) and paragraph 1 of Part 1 to Schedule 5, and by section 123 of the 2008 Act.

<sup>36</sup> Paragraph 1 refers to “land” but section 159 of the 2008 Act confirms that in this context, “land” includes a right in, on, over or under land.

<sup>37</sup> e.g. The York Potash Harbour Facilities Order 2016 (S.I. 2016 No. 772), The Triton Knoll Electrical System Order 2016 (S.I. No 2016 No. 880) and The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014 No. 2384).

<sup>38</sup> S.I. 2016 No.880

*Article 27 (Private Rights)*

6.746.75 This Article is largely based on Article 22 of the model provisions, with some amendments (most notably it applies to private rights generally rather than just private rights of way). It provides that all private rights over land which is subject to compulsory acquisition (in respect of the freehold) are extinguished and in respect of compulsory acquisition of rights, are extinguished to the extent that those rights are inconsistent with the rights required for the authorised development. This power is permitted by section 120(4) and paragraph 2 of Part 1 to Schedule 5 of the 2008 Act. The power is also supplementary to articles 24 and 25 and the Applicant considers that its inclusion is therefore necessary to give full effect to the Order; it is therefore permitted by section 120(5)(c) of the 2008 Act.

*Article 28 (Power to override easements and other rights)*

6.756.76 Article 28 ensures that where the works permitted by the Order interfere with existing easements or other rights, those rights shall not present an impediment to delivery. Its purpose is to provide certainty that the carrying out of the authorised development will not be prevented as a result of any unknown third party rights. It also ensures that the land is affected to the minimum extent necessary to enable the delivery of the development.

6.766.77 The Article provides for compensation to be payable to the beneficiary of any right that is extinguished, abrogated or discharged. This power is permitted by sections 120(3), 120(4) and paragraphs 2 and 3 of Part 1 to Schedule 5 of the 2008 Act. As with Article 27, the Applicant considers that the power is supplementary to articles 24 and 25 and its inclusion is therefore necessary to give full effect to the Order; it is therefore permitted by section 120(5)(c) of the 2008 Act.

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

6.776.78 By incorporating the ‘mineral code’ this Article exempts the existing minerals under land being automatically acquired pursuant to the exercise of compulsory acquisition. It also addresses the situation where an owner wishes to work existing minerals and provides the undertaker with the ability to compensate the owner for any inability to do so as a result of the development. The inclusion of the power is permitted by 120(4) and paragraphs 2 and 3 of Part 1 to Schedule 5 of the 2008 Act.

6.786.79 As discussed during the Examination of the DCO, the Applicant has amended this Article so that it is clear which parcels will not be affected by the mineral code.

6.796.80 It is intended that the mineral code will not apply to any land which is to proposed to be compulsorily acquired, or to land where the minerals are specifically noted as being subject to compulsory acquisition (i.e. land shown tinted pink, hatched pink or tinted orange on the land plans). This is because the mines/minerals

will be acquired pursuant to those compulsory acquisition powers or through voluntary agreement, where agreements are concluded and honoured.

*Article 30 (Time limit for exercise of authority to acquire land and rights compulsorily)*

6-806.81 This Article imposes a time limit of five years from the date the Order comes into force for the exercise of compulsory acquisition powers. The time limit for exercising the compulsory acquisition powers under Part 1 of the Compulsory Purchase Act is disapplied by section 125(3)(a) of the 2008 Act. This article imposes a time limit which is linked to the time period in which the authorised development must commence (see Requirement 1), in accordance with section 154(3) of the 2008 Act.

*Article 31 (Application of Part 1 of the Compulsory Purchase Act 1965)*

6-816.82 This Article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the DCO by section 125 of the Planning Act 2008 and deals with amendments required as a result of the Housing and Planning Act 2016. The modification of those provisions is permitted by section 120(5)(a) of the 2008 Act.

*Article 32 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)*

6-826.83 This Article follows Article 23 of the model provisions to apply for the application of the vesting declaration procedure to the compulsory acquisition under the Order. Some of those provisions are changed to clarify that the “undertaker” will be a “public authority” under the Compulsory Purchase (Vesting Declarations) Act 1981. It also departs from the model provisions to reflect the recently enacted amendments to the Compulsory Purchase (Vesting Declarations) Act 1981 made by the Housing and Planning Act 2016. The application of the Act is permitted by section 120(5)(a) of the 2008 Act.

*Article 33 (Statutory Undertakers and operators of the electronic communications code network)*

6-836.84 This Article allows the undertaker (subject to the protective provisions) to extinguish rights of statutory undertakers and operators of the electronic communications code network and to replace, renew, reposition, alter and/or supplement apparatus belonging the statutory undertakers and operators of the electronic communications code network within the Order Limits. The inclusion of the Article is authorised by section 127(2) and (3) of the 2008 Act. The Applicant considers that any statutory undertakers’ land affected can be replaced (or relocated/diverted) without serious detriment to the carrying on of the undertaking, and there are suitable protective provisions proposed in this regard.

*Article 34 (Rights under or over streets)*



6-846.85 Article 34 gives the Applicant the power to occupy land above or below streets within the Order limits without having to acquire that land. Compensation is payable for any loss or damage to structures along the relevant street. The power is required in order to enable the carrying out of the authorised development and it therefore permitted by section 120(3) of the 2008 Act.

*Article 35 (Temporary use of land for carrying out the authorised development)*

6-856.86 This Article allows the Applicant to occupy the land specified in Schedule 10 temporarily while the works are carried out, and also any of the land identified for the permanent acquisition that has not yet been acquired.

6-866.87 The Article also makes provision for the time limit for return of the land, restoration and payment of compensation.

6-876.88 Paragraph (10) incorporates section 13 of the Compulsory Purchase Act 1965 and applies it to the temporary use of the land specified in Schedule 10 and identified on the Land Plans. Section 13, which allows enforcement of possession, is automatically applied to the powers in Articles 23 – 38 by virtue of Section 125 of the 2008 Act. The power is required in relation to the temporary use of land to ensure that the undertaker will be able to enforce the taking of temporary possession of the land to carry out the relevant works in the event that the owner or occupier refuses to allow possession.

*Article 36 (Temporary use of land for maintaining authorised development)*

6-886.89 This Article allows the undertaker to take temporary possession of land within the Order limits to maintain the authorised development during the 5 year maintenance period (being the five years from when that part of the development is first brought into use). The article follows article 29 of the model provisions and its inclusion in the Order is authorised by virtue of sections 120(3), 120(4) and paragraph 1 of Part 1 to Schedule 5, and section 125 of the 2008 Act.

*Article 37 (Apparatus and rights of statutory undertakers in stopped up streets)*

6-896.90 The Article follows Article 32 of the model provisions and protects statutory undertakers' rights where their apparatus is under, in, along or across a street which has been stopped up under the Order.

6-906.91 The Article provides that a statutory undertaker must remove/relocate the apparatus at the reasonable request of the undertaker (the undertaker bearing the cost of that relocation). The provision is linked to article 10 and its inclusion is therefore authorised by sections 120(3) as well as 120(4) and paragraph 14 of Part 1 to Schedule 5 of the 2008 Act, which allows provision for the removal, disposal or re-siting of apparatus.

*Article 38 (No Double Recovery)*

~~6-916.92~~ This Article is included to cover the well-established principle that a claimant in a compulsory purchase matter is to be compensated for no more and no less than the actual loss, and that compensation is not payable for the same loss or damage under both the DCO and other compensation regimes. The Article is based on such Articles included in other DCOs such as The Triton Knoll Electrical System Order<sup>39</sup>. It is a supplementary provision and its inclusion is authorised by section 120(5)(d) of the 2008 Act as well as sections 120(3) and 120(4) and paragraph 36 of Part 1 to Schedule 5 of the 2008 Act.

**PART 6**

**MISCELLANEOUS AND GENERAL**

*Article 39 (Operation and Use of Railways)*

~~6-926.93~~ This Article is based on the Article contained within Schedule 2 of the model provisions (for Railways). It is included because part of the authorised development comprises the provision of a railway. This Article has been amended from the Article in the model provisions for Railways to allow only for the carriage of goods as the authorised development will not be used for the transport of passengers. The provision is included pursuant to sections 115 and 120(3) of the 2008 Act.

*Article 40 (Operational land for the purposes of the 1990 Act)*

~~6-936.94~~ This Article declares that land within the Order Limits utilised for the highway works shall be treated as operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. The provision is included pursuant to sections 115 and 120(3) of the 2008 Act.

*Article 41 (Charges)*

~~6-946.95~~ This Article is based on an Article at Schedule 2 of the model provisions (for Railways). It is included to allow the undertaker to impose charges for the carrying of goods on the railway, or for other services or facilities connected to its operation. The Article has been amended from the Article contained in the model provisions, as the proposed railway is to be used for the carriage of goods only. The provision is authorised by section 120(4) and paragraph 18 of Part 1 to Schedule 5 of the 2008 Act.

*Article 42 (Felling or lopping of trees and removal of hedgerows)*

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<sup>39</sup> S.I. 2016 No. 880.

6-956.96 This Article is based upon an Article in the model provisions. It is included to enable the undertaker to fell or lop any tree hedgerow or shrub near the authorised development, or cut back its roots, where it believes that it is necessary to prevent the tree hedgerow or shrub from interfering with the authorised development, but subject to some exceptions.

6-966.97 The Article makes provision for compensation to be payable for any loss or damage arising.

*Article 43 (Protective Provisions)*

6-976.98 The Article gives effect to the protective provisions which are contained in Schedule 13, referred to further below.

*Article 44 (Governance of requirements and protective provisions relating to highway works)*

6-986.99 The Article addresses the tension between a desire to maintain flexibility on details to be approved pursuant to requirements (and, in the case of the highway works, protective provisions) and the need to ensure that any details approved do not take the development outside the scope of the authorised development or beyond the scope of what has been environmentally assessed.

6-996.100 Paragraph (1), for the avoidance of doubt, makes it clear that all initial approvals under the requirements and Part 2 and 3 of Schedule 13 are governed by Article 4 and prevents details being approved which lead to a form of development outside the scope of that which has been assessed. Paragraph (2) then follows the advice in paragraph 19.4 of Advice Note Fifteen: *Drafting Development Consent Orders* and makes it clear that approvals may subsequently be amended but any changes to approved details must not stray outside the parameters of what has been assessed. ~~As with Article 4 (see paragraph 6.17.2 above), the dDCO applies the same test as that set out for “subsequent applications” in Schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.~~

6-1006.101 The approaches taken to the governance of approval of details and subsequent amendments vary considerably in approved orders.

6-1016.102 This Article is consistent with the approaches taken in Article 42 of The East Midlands Gateway Rail Freight Interchange and Highway Order<sup>40</sup>, requirement 34

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<sup>40</sup> S.I. 2016 No. 17.

of The White Moss Landfill Order<sup>41</sup> and requirement 35 of The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order<sup>42</sup>.

~~6.102~~6.103 It is felt preferable that an overarching provision such as that contained in this Article 44 should be within an Article rather than in the requirements. This is logically the case since the paragraph covers Schedule 13 in addition to the requirements in Schedule 2.

~~6.103~~6.104 It is very important that the flexibility that is allowed for is retained. If no provision is made for details to be approved subsequently and varied (within the constraints referred to) then this development will be substantially disadvantaged in comparison to other large scale distribution sites and its ability to compete with other sites for footloose occupiers would be adversely affected.

~~6.104 The opportunity is taken in this Article to make it absolutely clear that the requirements are, unless otherwise stated, to be enforced by the local planning authority.~~

*Article 45 (Disapplication, application and modification of legislative provisions)*

6.105 This Article seeks, as permitted by section 120(5) of the 2008 Act, to incorporate and modify legislative provisions which are necessary for carrying out the authorised development.

6.106 Article 45(1) dis~~ap~~plies the need for some additional consents to make use of the 'one stop shop' and avoid the need to obtain a separate consent governing the same development.

6.107 Article 45(2) provides that the provisions in the Neighbourhood Planning Act 2017 relating to temporary possession do not apply to the temporary possession of land under Articles 35 and 36 of the DCO. The rationale for this is that these provisions have not yet come into force. It is therefore considered appropriate to apply the temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date. It is noted that this approach has also been taken in respect of the draft DCOs submitted in respect of the applications for Tilbury 2, Milbrook Power (Gas Fired Power Station) and the A19/A184 Testos Junction Improvement.

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<sup>41</sup> S.I. 2015 No.1317.

<sup>42</sup> S.I. 2015 No.1347.

- 6.108 Article 45(3) provides that development carried out pursuant to a planning permission following implementation of the DCO would not be in breach of the DCO, ensuring no risk of criminal liability pursuant to section 161 of the 2008 Act. The paragraph encompasses any development authorised by a general development order as well as an express planning permission. This follows Article 5(2) of The East Midlands Gateway Rail Freight Interchange and Highway Order<sup>43</sup>.
- 6.109 Article 45(4) dis-applies Regulation 4 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and allows for advertisements to be approved by the local planning authority under the relevant requirement in Schedule 2, rather than the need for any separate consent.
- 6.110 Article 45(5) dis-applies the community infrastructure levy (CIL) provisions to ensure there are no unforeseen liabilities on the undertaker arising from any CIL yet to be introduced. It is common for CIL to be dis-applied in DCO<sup>44</sup>.
- 6.111 Article 45(6) dis-applies the statutory defence for nuisance provided by section 158 of the 2008 Act, as permitted by section 158(3) of the 2008 Act. The Applicant has agreed to remove the statutory defence to nuisance following discussions with South Staffordshire District Council and has therefore removed that provision from the DCO (having previously been included at Article 42). Article 45(6) is included to confirm the disapplication of the defence contained in section 158 of the 2008 Act.
- 6.112 Article 45(7) refers to Schedule 14 and a miscellany of controls and applies/modifies and/or amends them as appropriate to ensure that they facilitate or do not constrain the development. This is based on the approach taken in the Thames Tideway Tunnel Order<sup>45</sup>.
- 6.113 Article 45(8) ensures that anything permitted as a result of the provisions of this Article 45(1) to (7) does not prevent the operation of the 2017 EIA Regulations, as suggested in Advice Note 15: *Drafting Development Consent Orders*.

*Article 46 (Certification of plans and documents)*

- 6.114 This Article reflects the drafting of the model provisions and specifies (with reference to Schedule 15) the plans and documents that must be submitted, as soon as practicable following the making of the order, to the decision maker to be certified as a true copy. The documents listed in Schedule 15 are those referred to in the draft Order.

*Article 47 (Service of Notices)*

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<sup>43</sup> S.I. 2016 No. 17.

<sup>44</sup> See for example, Thames Tideway Tunnel, Article 14 and National Grid Hinkley Point C Connection.

<sup>45</sup> The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014 No. 2384).

- 6.115 This Article is a departure from the model provisions. It is included to ensure certainty regarding the procedure for service of any notice required by the Order, for example, under Article 22 (authority to survey and investigate the land). The Article is included pursuant to section 120(3) of the 2008 Act.

*Article 48 (Arbitration)*

- 6.116 This Article reflects that contained in the model provisions and is included in case of any dispute regarding the provisions of this Order unless an alternative dispute resolution is specifically referred to. The provision is included pursuant to sections 120(3) and 120(4) and paragraph 37 of Part 1 to Schedule 5 of the 2008 Act.
- 6.117 The Article was amended in a previous version of the DCO (Document 3.1A) to reflect the various bodies to which specific matters are to be referred. It ~~was~~ has been further amended in ~~the latest version of the~~ DCO (Document 3.1D) so that it does not apply to decisions taken by the Secretary of State under the Order.

**SCHEDULES**

*Schedule 1 (Authorised Development)*

- 6.118 This Schedule describes the authorised development for which Development Consent is sought, including associated development. The NSIP and Associated Development are identified separately.
- 6.119 The Works are summarised below.

**NSIP**

**Works No 1**

This is the new rail infrastructure works from the existing West Coast Main Line Loop to connect to the new rail terminal to be provided in Works No 2. This includes the alteration of some of the existing rail track and the provision of additional rail infrastructure.

**Works No 2**

This is the construction of the new rail freight terminal and rail tracks to connect with Works No 1. It includes the provision of freight storage areas, rail sidings, refuelling and maintenance areas, earthworks and other administrative buildings etc.

### **Works No 3**

This is the construction of the rail served warehousing along with ancillary development such as buildings, service yards, storage areas and infrastructure to serve.

### **Works No 4**

The A5/A449 Link Road through the site which is to become an adopted road and the removal of the existing masonry bridge over the West Coast Main Line Loop.

### **Works No 5**

The provision of internal estate (private) roads, footpaths and cycle tracks and site accesses.

### ***Associated development***

### **Works No 6**

This comprises structural landscaping surrounding the built development and includes two community parks being one in the northern part of the site (Croft Lane Community Park) and one in the southern part (Calf Heath Community Park). It also provides for the remediation works required on part of the Order Limits (the SI Land (as defined in Article 2)).

### **Works No 7**

These works are the highway works around the periphery of the site the totality of which is shown on the highway general arrangement plans (Document 2.9) and associated landscaping and related works.

*Works Nos 6(u) and 7(r) include words in italics which allow for construction of a culvert adjacent to Zone A2. For the reasons set out in Appendix 1 of the Applicant's Post Hearing Submissions (ISH6) (Document 16.3 REP6-013) the Applicant is clear that there is no need to construct an additional culvert adjacent to Zone A2 since it is entitled, as a matter of law, to use the existing shared culvert in that location. However Highways England have objected to the continued use, albeit without dealing with the legal arguments contained in Appendix 1 referred to above. Therefore, in the event that the Examining Authority is persuaded by Highways England that this might provide a barrier to delivery, notwithstanding the lack of evidence, then the italicised words could be added to provide for the construction of a new culvert.*

### **Works No 8**

These works relate to the Gravelly Way Farm buildings and authorise the conversion and use of the buildings, and new build, for the purposes of estate management offices, amenity and welfare facilities with ancillary parking and landscaping. Details of the conversion and new build will need to be submitted to and approved by the local planning authority pursuant to requirement 3 (3).

#### **Works 9a**

These works provide for the removal and undergrounding of the 132kv tower situated to the north of the A5 and includes temporary access and accommodation for the demolition of the existing tower and the construction of the new tower.

#### **Works 9b**

These works provide for the removal and undergrounding of the 132kv tower situated to the north of Straight Mile and includes temporary access and accommodation for the demolition of the existing tower and the construction of the new tower.

#### **Works 10a**

These works are the alternative access arrangements for the SI Facility (as defined in Article 2) as well as the provision of access to Works No. 3 (Zone A3) and Works No. 8.

#### **Works 10b**

These works comprise the revised access arrangements to Four Ashes industrial area. The current access off Gravelly Way will be demolished and replaced by a new access round connecting to the new A5/A449 Link Road. The works also include a new cycle path and footpath link to connect to the canal towpath.

#### ~~**Works 11**~~

~~This provides for the retention of the residence known as Straight Mile Farm which will remain within the Order Limits. This Works provides a curtilage providing a garden area for the residential property.~~

#### **Works 11~~2~~**

These works provide for an improved access to Avenue Cottages from the A5 including the provision of a turning area.

~~In the final version of the DCO, what were previously, Works No. 11 were deleted. What were Works No 12 are now Works No 11. This is for the reasons explained in the Applicant's response to REP7-121 contained in the Applicant's Responses to Other Parties Deadline 7 Submissions (Document 18.1).~~



- 6.120 Schedule 1 also includes “**Further Works**” being diverse items the precise locations of which it is not possible to identify at this stage<sup>46</sup>. These “Further Works” are not location specific because they relate to items, the precise location of which is not ascertainable at this stage, such as the location of sub-stations, which is subject to more detailed engineering, or are items whose location may change, such as temporary concrete batching plants.
- 6.121 These works have been divided into four separate sections of further works. These apply additional, further, works to:
- 6.121.1 firstly, Works Nos. 1 to 3 being the rail infrastructure, rail terminal and warehouses;
  - 6.121.2 secondly, Works Nos. 1 to 6 and Works No. 8, being the above and principal on site infrastructure,
  - 6.121.3 thirdly, Works No.s 4, 5, 7, 10a, 10b and ~~11~~<sup>12</sup> being the highway works; and
  - 6.121.4 fourth and finally, the Works which would include the public right of way (byway open to all traffic and/or bridleway), if the order amending the definitive map is confirmed (see paragraph 6.~~37~~<sup>40</sup> above).
- 6.122 All the “Further Works” are subject to the proviso contained in Schedule 1 that they do not give rise to any new or materially worse significant environmental effects not assessed in the environmental statement.
- 6.123 The above approach is consistent with the other approved Rail Freight DCO and is necessary to provide flexibility for the development in advance of knowing the occupiers’ requirements and the ultimate layout. The details of these works will be the subject of approval under the provisions of the requirements in Schedule 2.

*Schedule 2 (Requirements)*

- 6.124 As permitted by section 120(1) and (2) of the 2008 Act, the DCO also includes, requirements to govern the authorised development. The requirements are set out in Schedule 2 of the draft DCO. These have had regard to the drafting of conditions in planning permissions granted for similar schemes and also the requirements contained in The Daventry International Rail Freight Interchange Alteration Order<sup>47</sup>

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<sup>46</sup> This approach is consistent with other approved DCO e.g. The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 S.I. 2013 675), The Daventry International Rail Freight Interchange Order S.I. 2014 1796 and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 S.I. 17.

<sup>47</sup> S.I. 2014 No. 1796.

and The East Midlands Gateway Rail Freight Interchange and Highway Order<sup>48</sup>. They are, however, bespoke for the particular development proposed. The objective of these requirements is self-explanatory.

6.125 The requirements are set out below, along with an explanation, where helpful<sup>48</sup>:

- **Time limit** (for commencing the authorised development) (Requirement 1)
- **Phases of development** (Requirement 2)  
This requirement sets out the details which must be included in the phasing scheme.
- **Detailed Design Approval** (Requirement 3)  
This requirement ensures that no development may take place on a phase until the details for that phase have been approved. The requirement sets out the various details which must be approved, if they are contained within that phase. The details must be in accordance with the principles contained in the Design & Access Statement (Document 7.5).
- **Demolition and Construction Environmental Management Plan** (Requirement 4)  
This requirement prevents any phase of development commencing (excluding archaeology or ground investigations) until a demolition and construction environmental management plan (“DCEMP”) has been approved for that phase. The requirement sets out the detail to be included in each DCEMP, which must comply with the Outline Demolition and Construction and Environmental Management Plan, and requires that each phase of development be carried out in accordance with its approved DCEMP.
- **Rail** (Requirement 5 and Part 2 of Schedule 2)  
Originally the rail provisions were included in the draft section 106 Agreement which was under discussion with the local authorities at the time of the first DCO Hearing (ISH1). At ISH1 the question arose as to whether or not the rail requirements were more appropriately to be included in the DCO, given the central nature of those requirements to the NSIP development. Following ISH1 it was agreed with the local authorities that the rail requirements should be contained within the DCO. Accordingly, the appropriate provisions are now included in the draft DCO.

In summary, the Requirement:

- commits the Applicant to apply for, and progress, applications for the consents and approvals required for the construction of the terminal;
- ensures the delivery of the terminal by preventing the occupation of more than 186,000 sqm of warehousing prior to the terminal being completed;
- requires the completion of the rail terminal within six years of the occupation of more than 47,000 sqm;
- enables the Applicant to seek a review of the above requirements in the event of a delay due to matters outside the Applicant's control;
- provides that the terminal once completed must be kept available for use; and
- requires the Applicant to appoint a rail freight co-ordinator to report on progress in connection with the rail terminal

~~Part 2 includes an expanded process for determining whether or not a deferral in the delivery of the rail terminal is justified. Further detail of this is referred to in the Applicant's Post Hearing Submissions (ISH6) (Document 16.3).~~

In ExQ3 the ExA asked the Applicant for its views on a simplified form of rail requirement and an alternative approach, whereby a flexibility mechanism is retained but the Secretary of State is substituted for the Local Planning Authority, and asked for clarification on the wording as drafted. The Applicants full response to this can be found in the Applicant's Responses to ExQ3 and Requests for Information (Document 17.2 REP7-004).

The Applicant explained that it is fully committed to the provision of the rail terminal as soon as possible. The Applicant's position in relation to an element of warehousing being constructed and occupied in advance of the completion of the rail terminal has been explained throughout the process and was most recently set out at ISH5 and at section 5 onwards of Document 16.2 of the DL6 ISH5 Post Hearing submissions (REP6-012). As a reference the following submissions are relevant:

- (Initial Submission) Planning Statement (APP-252) at Section 3.7, Section 10.2.
- (Deadline 3) Timing of the Provision of the Rail Freight Terminal (REP3-007, Appendix 2).

- (Deadline 4) Post Hearing submissions ISH3 (REP4-004) Appendix 3 Rail Connectivity Note – dealing with the relationship between floorspace and the first rail services.
- (Deadline 5) - Applicant's Responses to Examining Authority's Second Written Questions and Requests for Information (REP5-004) Appendix 5 (Current SRFI Proposals), Appendix 6 (SRFI and Rail Terminal Commitments) and Appendix 7 (SRFI consents in the Green Belt).
- (Deadline 6) REP6-012 Post Hearing submissions ISH5 Doc 16.2 section 5 onwards.

The Applicant recognises that there is still concern from some parties regarding the certainty over its commitment to the delivery of the rail terminal. Whilst the Applicant considered it prudent to incorporate some flexibility into the rail requirements, it is now clear that the suggested flexibility has served to add to concerns and led to assertions as to the Applicant's alleged lack of commitment. The Applicant does not rely upon this flexibility and does not wish there to be any doubt over its commitment to providing the rail terminal or its commitment to deliver it as soon as possible and within the timetable indicated to the Examination at (Deadline 3 Document 11.1 Appendix 2 REP3-007). On that basis the Applicant has no objection to the simplified form of Rail Requirement 4 as set out in ExQ3.1.1(ii), i.e. without the tailpiece in RR 4(1) and without 4(2) to (6).

As a consequence the DCO has been amended to reflect the simplified form of paragraph 4. The alternative provisions, which include the flexibility mechanism, are included, as an option, and are set out in italics.

- **Construction Hours** (Requirement 6)  
This requirement places restriction on the hours during which construction may take place.
- **Air Quality – Operational Emissions** (Requirement 7 )  
This requirement controls the occupation of any warehouse or the rail terminal until details of any combustion plant where the single or combined NOx emission is greater than 5mg/second have been approved and any mitigation measures outlined where necessary.
- **Archaeology** (Requirement 8)  
This requirement provides for archaeological investigation for recording purposes in respect of each phase.
- **Cultural Heritage – Demolition of Heritage Assets** (Requirement 9)

This requirement governs the demolition of Woodside Harm House and its associated structures and provides for a scheme of historic building recording.

- **Cultural Heritage – Demolition of Canal Crossings** (Requirement 10)  
The requirement controls the timeframe for the demolition of the canal crossings.
- **Ecological Mitigation and Management Plan** (Requirement 11)  
This requirement ensures that no phase of the development which incorporates ecological mitigation or management may commence until a written ecological mitigation and management plan has been approved and requires that any development must be carried out in accordance with that approved plan.
- **Ground Conditions – Contamination Risk** (Requirements 12 and 13)  
These requirements ensure that no phase of the development (excluding highway works on existing highways which are governed by the protective provisions) may commence until a contamination report for that phase has been approved and any necessary further investigation carried out. The requirements provide that the development must be carried out in accordance with the details submitted and approved.
- **Earthworks** (Requirement 14)  
This requirement ensures that no phase of the development (excluding highway works on existing highways which are governed by the protective provisions) may commence until the details set out in that requirement are approved. The requirement provides that the development must be carried out in accordance with the approved details.
- **Landscape – Written Landscaping Scheme** (Requirement 15)  
This requirement ensures that no phase of the development which incorporates landscaping mitigation may commence until a written landscaping mitigation scheme has been approved and requires that any development must be carried out in accordance with that approved scheme.
- **Landscape – Implementation and Maintenance of Landscaping Works** (Requirement 16)  
This requirement ensures that the landscaping must be implemented and maintained in accordance with the scheme approved in requirement 15.
- **Landscape – Phasing of Landscaping and Ecology Works** (Requirement 17)

This requirement ensures that certain landscaping works are completed by a certain stage of the development.

- **Height of Containers** (Requirement 18)  
This requirement restricts the height of any stack of containers to 12 metres.
- **Lighting Details** (Requirement 19)  
This requirement prohibits any phase of development which contains artificial lighting from commencing until a lighting scheme has been approved. The requirement provides that the lighting scheme must be implemented as approved and further ensures that any lighting in the vicinity of the bat hop-overs must be in accordance with the principles set out in the framework ecological mitigation and management plan.
- **Noise – Construction Stage** (Requirement 20)  
The requirement sets out the maximum noise levels during construction hours and provides a procedure for dealing with complaints.
- **Noise – Operational Stage** (Requirement 21)  
The requirement ensures that certain measures must be adhered to during operation and provides a procedure for dealing with complaints.
- **Permissive Paths** (Requirement 22)  
This requirement ensures that no phase containing permissive paths may be commenced until a scheme for their provision has been approved and provides that the scheme must be implemented and maintained during the operation of the development.
- **Transport – Demolition and Construction** (Requirement 23)  
This requirement governs traffic management for the construction of the authorised development including the installation, maintenance and removal of temporary signage.
- **Transport – Phasing of Highway Works** (Requirement 24)  
Requirement 24 controls the timing for the completion of the various highway works.
- **Water and Flood Risk – Flood Risk Assessment** (Requirement 25)  
This requirement ensures that the development is carried out in accordance with the flood risk assessment submitted with the Application.
- **Water and Flood Risk – Surface Water Drainage Scheme** (Requirement 26)

The requirement prohibits any phase of development commencing (excluding archaeology works) until a surface water drainage scheme has been approved and requires that the scheme is implemented and maintained.

- **Water and Flood Risk – Foul Water Drainage** (Requirement 27)  
This requirement ensures that a foul water drainage scheme is approved prior to the commencement of development of a warehouse or the rail terminal and secures the implementation of that scheme.
- **Building Sustainability** (Requirement 28)  
The requirement imposes compliance with BREEAM 2011 “Very Good” in respect of the construction of each warehouse.
- **Waste Management During the Operational Phase** (Requirement 29)  
This requirement prevents the bringing into use of any warehouse, community park or the rail terminal until a waste management scheme for that relevant part during the operational phase is approved and requires the implementation and maintenance of that scheme for the duration of the operation of that part.

*Schedule 3 (Streets subject to Street Works)*

- 6.126 This Schedule lists the streets which are to be subject to the street works pursuant to Article 8.

*Schedule 4 (Streets to be permanently stopped up)*

*Part 1 - Streets to be permanently stopped up for which a substitute is to be provided*

- 6.127 This Part of Schedule 4 lists the street which is to be stopped up pursuant to Article 10 and details the substitution for that street with reference to the Access and Rights of Way Plans.

*Part 2 – Streets to be permanently stopped up and to become private streets*

- 6.128 This Part of Schedule 4 lists the street which is to be stopped up pursuant to Article 10 and details the part of that street which is to become a private street with reference to the Access and Rights of Way Plans.

*Schedule 5 (Public Rights of Way to be Stopped Up)*

*Part 1 - Public Rights of Way to be Stopped Up for which no substitute is to be provided.*

- 6.129 This Part details the public right of way which is to be stopped up pursuant to Article 12 with reference to the Access and Rights of Way Plans.

*Part 2 – New Public Right of Way to be Created.*

- 6.130 This Part lists the new public right of way which is to be created pursuant to Article 12 with reference to the Access and Rights of Way Plans and states when the right of way will be delivered as part of the authorised development.

*Schedule 6 (Private Means of Access)*

*Part 1 – Private Means of Access to be Closed for which no Substitute is to be Provided*

- 6.131 This Part details the private means of accesses which are to be stopped up pursuant to Article 13 and not replaced, with reference to the Access and Rights of Way Plans.

*Part 2 – Private Means of Access to be Closed and for which a substitute is to be provided*

- 6.132 This part details the private means of access which are to be stopped up and replaced pursuant to Article 13 with reference to the Access and Rights of Way Plans.

*Part 3 – New private means of Access Created*

- 6.133 This Part sets out the new private means of access which are to be provided as part of the authorised development.

*Schedule 7 (Classification of Roads) – New Roads*

- 6.134 This Part sets out the classification of the new A5/A449 Link Road.

*Schedule 8 (Speed Limits)*

- 6.135 This Schedule sets out the new speed limits which will apply following the completion of the works.

*Schedule 9 (Traffic Regulation)*

*Part 1 - Amendments to Existing Orders*

- 6.136 This Part deals with any necessary amendments to existing Traffic Regulations Orders. During the course of the Examination Highways England have requested



that additional amendments be made to existing orders and these amendments have been incorporated in the dDCO and associated plans.

*Part 2 – Clearways*

- 6.137 This Part describes the lengths of road to be subject to a new order for clearways.

*Part 3 – No waiting at any time*

- 6.138 This Part describes the lengths of road to be subject to a new order prohibiting waiting at any time.

*Part 4 – Limited Waiting*

- 6.139 This Part deals with a limited waiting order created on the new laybys created on the A449.

*Part 5 – Prohibited Movements*

- 6.140 This Part describes the newly prohibited movements consequent upon the highway works.

*Part 6 – One Way Streets*

- 6.141 This Part deals with the imposition of a one way street order on Crateford Lane, adjacent to the A449.

*Schedule 10 (Land for temporary possession)*

- 6.142 This Schedule sets out the land of which temporary position may be taken as referred to in Article 35.

*Schedule 11 (Land in which new rights may be created)*

- 6.143 This Schedule lists the parcels of land over which only new rights may be created.

*Schedule 12 (Modification of compulsory purchase enactments)*

- 6.144 This Schedule modifies provisions for compensation following the creation of new rights.

*Schedule 13 (Protective provisions)*

- 6.145 Schedule 13 includes provisions to protect the interests of various bodies whose assets may be affected by the proposed development. These will comprise:

Part 1: **Network Rail**

The protective provisions included in the draft DCO are based on Network Rail's standard provisions with some minor amendments, mainly being the provision to allow acquisition of the bridge carrying the existing Gravelly Way which is to be removed as part of the development (paragraph 4(4)). The ownership of the bridge is unclear and the Applicant must therefore secure the rights to remove the bridge by compulsory acquisition. As explained in the Statement of Reasons (Document 4.1C), and confirmed in the protective provisions (paragraph 4(1)) the Applicant is not seeking compulsory acquisition of land owned by Network Rail.

The protective provisions have been discussed with Network Rail but they have not yet indicated agreement to them.

## Part 2: **Highways England**

The provisions of Part 2 (and 3 – see below) of Schedule 13 contain protective provisions to protect the interests of the highway authorities, being Highways England and Staffordshire County Council. These provisions govern the carrying out of the highway works and obviate the need for any further agreements, such as agreements pursuant to s.38 and s.278 of the Highways Act 1980 which would be the usual manner of governing highway works.

These Part 2 provisions have been extensively discussed with Highways England and are agreed subject to:

- the issue of deemed consent which the Applicant addressed in a note in Appendix 3 of the Applicant's Responses to Other Parties Deadline 2 Submissions (REP-007); and
- agreement on .the amount of the Bond Sum and Cash Surety. ~~Information was supplied to HE on 24<sup>th</sup> May 2019 and a response is awaited. The latest position on these sums is set out in the Applicant's response to the submissions of Highways England in the Applicant's Response to Other Parties Deadline 7 Submissions (Document 18.1).~~

The Applicant is disadvantaged because Highways England has not been able to provide the Applicant with any policy (written or otherwise) explaining the basis for the amount of a Bond Sum and Cash Surety. The Applicant therefore is able only to look at the most recent precedent to assess what might be considered reasonable. The Applicant has therefore inserted a Bond Sum of

120% (including all costs and the Commuted Sum) and a Cash Surety of £150,000. These figures were agreed between Highways England and the applicant for the Northampton Gateway DCO which has recently concluded its Examination. The Applicant believes that the works on the SRN in the Northampton Gateway scheme could be considered to be more significant than the highway works on the SRN for WMI. The Applicant therefore considers these figures to be more than reasonable.

**Part 3: Staffordshire County Council as Highway Authority**

The provisions have been the subject of ongoing discussion with the County Council which has now concluded. They are agreed in full.

**Part 4: Western Power Distribution Limited**

The provisions included in the draft DCO are agreed with Western Power Distribution Limited as the electricity undertaker for the site. These will cover the undergrounding of the electricity cables and also the protection of other WPD apparatus in the site (for example, at the Four Ashes industrial area). The provisions are agreed with WPD as confirmed in their Relevant Representation (AS-008).

**Part 5: Users of the Gailey Park~~Four Ashes Access~~ Roundabout**

These provisions are included for the benefit of those users of the existing private access to the Four Ashes industrial area (now known as Gailey Park), or those with apparatus in that land with rights of access for maintenance thereof. They have the subject of lengthy discussions with those parties. At the time of writing, the Applicant ~~awaits~~ has not received a responses from ~~all of some of~~ the parties, but ~~believes~~ the provisions contained in the dDCO submitted for Deadline ~~5-8~~ (Document 3.1EG) (which are unchanged from the dDCO submitted for Deadline 6 (Document 3.1D, REP6-003 and REP6-004)) are agreed with the majority of the parties and therefore the Applicant considers them to be reasonable provisions for the benefit of ~~represent the final version which will be the subject of agreement with~~ all parties.

**Part 6: SI Group**

These provisions are agreed with SI Group and relate to the agreement reached between SI Group and the undertaker with regard to land within the Order limits owned by SI Group which is the subject of ongoing groundwater remediation.

Part 7: **Canal and River Trust**

The provisions have been discussed with the Canals and Rivers Trust (“CRT”), and are agreed with the exception of the inclusion of an indemnity for CRT in relation to loss of future income from tenants, which for reasons set out in the DCO Tracker submitted at Deadline 3 (Document 3.4A), the Applicant does not feel appropriate.

Part 8: **Cadent Gas Limited**

These provisions are agreed with Cadent Gas as the gas undertaker for the site as confirmed in their Relevant Representation (AS-007).

Part 9: **General provisions for the protection of operators of the Electronic Communications Code Network**

These provisions are based on provisions for such operators, used in other Orders. The Applicant has not received any comments on the provisions from the ~~They are the subject of current discussions with~~ mast operators in respect of the relocation of the existing masts on the site and therefore considers them to be reasonable provisions for inclusion in the DCO.

Part 10: **General provisions for the protection of Water and Sewerage Undertakers**

~~These~~ provisions included in the dDCO submitted for Deadline 8 (Document 3.1E) are agreed with South Staffordshire Water as the relevant water and sewerage undertaker. ~~based on provisions for such operators, used in other Orders. They will operate to protect the interests of water and sewerage undertakers with apparatus within the Order limits. It is thought sensible to include these provisions given the size of the site and the existence of utilities apparatus. A response is awaited from South Staffordshire Water at the time of writing.~~

*Schedule 14 (Miscellaneous Controls)*

- 6.146 This Schedule sets out various legislative provisions which are modified or excluded from application to the DCO.

*Schedule 15 (Certification of Plans and Documents)*

6.147 This Schedule lists the various plans and documents that are to be certified by the Secretary of State for the purposes of the DCO. The documents listed are those referred to in the draft Order.

Eversheds Sutherland (International) LLP  
~~21 August~~19 July 2019