



NORTHAMPTON
GATEWAY
STRATEGIC RAIL FREIGHT INTERCHANGE

EXPLANATORY MEMORANDUM

DOCUMENT 3.2B

The Northampton Gateway Rail Freight Interchange Order 201X

Regulation No: 5 (2) (c)

EXPLANATORY MEMORANDUM | 19 MARCH 2019

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**THE NORTHAMPTON GATEWAY RAIL FREIGHT
INTERCHANGE ORDER 201X**

EXPLANATORY MEMORANDUM

Eversheds Sutherland

19 March 2019

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

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1. Introduction

- 1.1 This memorandum accompanies an application for a development consent order (“the Application”) submitted on behalf of Roxhill (Junction 15) Limited (“the Applicant”). The Application seeks approval of the Draft Northampton Gateway 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 (April 2012) and the DCO has been prepared taking into account the guidance set out in Advice Note 15: Drafting a Development Consent Order (version 2, June 2015).
- 1.3 The Applicant is Roxhill (Junction 15) Limited, a special purpose vehicle set up to promote and develop the development applied for. Roxhill (Junction 15) Limited is a joint venture company owned in equal shares by Roxhill Developments Holdings Limited (itself being a wholly owned subsidiary of Roxhill Developments Group Limited) and SEGRO Properties Limited, a wholly owned subsidiary of SEGRO PLC, a FTSE 100 company. Further details of the Applicant and related companies can be found in the Funding Statement (Document 4.2).
- 1.4 This Explanatory Memorandum relates to the Applicant’s final draft DCO submitted to the Examining Authority on 19 March 2019 (Document 3.1E). Each version of the draft DCO submitted to the Examining Authority has been accompanied by a tracker identifying the changes from the preceding version and explaining the reasons for those changes (Document series 3.4).
- 1.5 The Applicant has submitted a document called ‘Guide to Application’ (Document 1.3A) which provides an overview of the Application and explains each of the documents submitted with the Application. Further documentation has been provided to the Examining Authority throughout the Examination. The up to date list is contained in the Document List (Document 1.4H).

2. The Purpose of the Order

NSIP Criteria

- 2.1 Section 3 of the Guide to Application explains that the proposed development constitutes a Nationally Significant Infrastructure Project (NSIP), being a rail freight interchange which meets the criteria set out in Section 26 of the Planning Act 2008 (as amended) (“the 2008 Act”). The purpose of the Order is therefore to authorise the construction and use of the rail freight interchange and associated development (see below).

Scope of the proposed development

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

- i) An intermodal freight terminal including container storage and HGV parking, rail sidings to serve individual warehouses, and the provision of an aggregates facility as part of the intermodal freight terminal, with the capability to also provide a 'rapid rail freight' facility;
- ii) Up to 468,000 sq. m. (approximately 5 million sq. ft.) (gross internal area) of warehousing and ancillary buildings, with additional floorspace provided in the form of mezzanines;
- iii) A secure, dedicated, HGV parking area of approximately 120 spaces including driver welfare facilities to meet the needs of HGVs visiting the site or intermodal terminal;
- iv) New road infrastructure and works to the existing road network, including the provision of a new access and associated works to the A508, a new bypass to the village of Roade, improvements to Junction 15 and to J15A of the M1 motorway, the A45, other highway improvements at junctions on the local highway network and related traffic management measures;
- v) Strategic landscaping and tree planting, including diverted public rights of way;
- vi) Earthworks and demolition of existing structures on the main site.

2.3 The proposed development can be most easily appreciated by reference to the plan titled 'Components of the Proposed Development' (Document 2.13) and is more fully described in Schedule 1 of the draft DCO (Document 3.1E) and in the other Application documentation, in particular the Guide to Application (Document 1.3A) and Chapter 2 of the Environmental Statement (Document 5.2).

2.4 The draft DCO also authorises associated development (see paragraph 2.5 below). Provision for ancillary matters is made in the body of the draft DCO (see paragraph 2.7 below).

Associated Development

2.5 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 Act. This comprises Works No.s 8 to 17. Paragraphs 3.14 to 3.22 of the Guide to Application set out the details of the associated development.

- 2.6 Paragraphs 3.6 to 3.13 of the Guide to Application explain why the associated highway works, although substantial, do not constitute NSIPs in their own right.

Ancillary Matters

- 2.7 The draft DCO also deals with some ancillary matters – that is, provisions not dealing with development.
- 2.8 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 and diversion of public rights of way).
- 2.9 The compulsory purchase powers sought are explained within the Statement of Reasons (Document 4.1).

3. Location of the development to be authorised

- 3.1 The Application principally relates to land immediately to the west of the M1 motorway at Junction 15 and east of the Northampton Loop railway line. The location of the site can be seen on the Location Plan (Document 2.12).
- 3.2 The site for the rail freight terminal, warehouses, related infrastructure, landscaping and access is identified as the ‘main site’ in the Order and comprises the works areas for Works No.s 1 to 6. In addition there are highway mitigation works an overview of which is seen on the Highway Plans Key Plan (Document 2.4). These works include the site access off the A508, works to Junction 15A and 15 of the M1, a bypass for Roade and various other junction improvements. These are all identified on the Works Plans (Documents 2.2A - G). The ‘highway works’ are defined in the draft Order as Works Nos. 7, 8, 9 and 11 to 17. Further detail of the package of highway mitigation works is found in paragraph 2.5 of the Guide to Application and the Transport Chapter of the Environmental Statement (Chapter 12).
- 3.3 Works No. 10 comprises a foul drainage sewer and outlet serving the main site the detail of which is shown on drawing number NGW-BWB-GEN-XX-SK-C-SK13 Rev P2 contained in Appendix 7.3 of the Environmental Statement.
- 3.4 The land affected by the proposed development is referred to in the draft DCO as the ‘Order limits’. The Order limits comprise approximately 290 hectares of land, of which the main site comprises approximately 219.
- 3.5 The main site, Roade Bypass and some highway works are within the administrative areas of South Northamptonshire District Council and Northamptonshire County Council. The remaining areas of the Order limits are within the administrative areas

of Northampton Borough Council and Northamptonshire County Council. Administrative boundaries are shown on the Location Plan (Document 2.12).

4. Plans and Other Documents

4.1 The documentation submitted with the Application is described in section 6 of the Guide to Application and includes all the plans and documents required to comply with Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended).

4.2 The plans submitted with the Application include:

- i) A **Location Plan** enabling the identification of the site and the administrative boundaries (Document 2.12);
- ii) **Land Plans** (pursuant to Regulation 5(2)(i) - Documents 2.1A - F) showing the land affected by the development and the land subject to compulsory purchase powers.
- iii) **Works Plans** (pursuant to Regulation 5(2)(j) - Documents 2.2A - G) identifying the areas for the different works which are referred to in Schedule 1 in the Draft DCO (Document 3.1D) and, where appropriate, show limits of deviation.
- iv) **Access and Rights of Way Plans** (pursuant to Regulation 5(2)(k) - Documents 2.3A - E) which identify new and altered means of access, stopping up of streets and roads, new and diverted public footpaths, bridleways and cycle tracks.
- v) **Parameters Plan** (pursuant to Regulation 5(2)(o) - Document 2.10) which identifies the parameters with which the Works must comply. The parameters plan is the plan upon which the environmental assessment reflected in the Environmental Statement has been based. The approach taken by the parameters plan is described in more detail in section 6 below.
- vi) **Highway Plans** (pursuant to Regulation 5(2)(o) – Documents 2.4A - H, 2.4J - N and 2.4P - U). These describe the various elements of the highway mitigation on plan and also, where felt helpful, in cross section. The key plan (Document 2.4) is also intended to provide a useful overview of the entirety of the development and mitigation.
- vii) **Highway Classification Plans, Traffic Regulation Plans and Speed Limit Plans** (Documents 2.5A - D, 2.6A - C and 2.7A - D).

These plans deal with the consequential changes to the regulation of the highways as a result of the highway works. They are cross referred to in the schedules in the Draft DCO specifically dealing with those measures.

- viii) **Rail Plans** - (pursuant to Regulation 5(2)(o) – Documents 2.8 and 2.9A - D). These plans illustrate the rail infrastructure for which authority is sought and the rail terminal along with the potential expansion of the terminal.
- ix) An **Illustrative Masterplan** (Document 2.11), is also provided to assist in demonstrating a form of development of the main site which would comply with the parameters which have been assessed (as shown on the Parameters Plan). 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 Plan.

5. Summary of the Works

5.1 The authorised development is divided up into separate works that describe the different aspects of the proposal. The works numbers relate to areas shown on the Works Plans (Documents 2.2A - G).

5.2 The detail of the Works are set out in Schedule 1 of the draft DCO and can be further summarised as follows:

(1) The **NSIP** being:

- a) The **Main Site (Works Nos 1 – 6)** - the SRFI including rail terminal and infrastructure and warehouses; and
- b) **Works No 7** – the A508 access to the Main Site as shown on the relevant Highway Plans (Documents 2.4B and 2.4C)

These works are most easily understood by referring to

- the Parameters Plan (Document 2.10) which shows the development parameters with which the development must comply; and
- the Illustrative Masterplan (Document 2.11) which shows one way in which the development might proceed in accordance with those parameters.

(2) The **Bypass Site** or **Bypass Corridor** being **Works No 13** as shown on the relevant Highway Plans (specifically, Documents 2.4D and 2.4E); and

(3) The **Highway Mitigation Works** or **Highway Mitigation Measures** being:

Works Nos 8,9 & 11 – works to Junction 15 of the M1 & the A45 (Documents 2.4A and 2.4B); and Junction 15A of the M1 (Document 2.4F)

Works No 12 & 14 - 17 – works to the A508 Corridor (Documents 2.4C, 2.4E and 2.4 F) and Knock Lane/Blisworth Road (Document 2.4F)

- all as shown on the Highway Plans (Document series 2.4).

(4) **Works No. 10** - the foul drainage sewer and outlet serving the Main Site the detail of which is shown on drawing number NGW-BWB-GEN-XX-SK-C-SK13 Rev P2 contained in Appendix 7.3 of the Environmental Statement.

6. The Assessment Parameters

6.1 The Parameters Plan is the plan which identifies the parameters of the authorised development on the main site and is the basis of the environmental assessment that has been carried out.

6.2 The Parameters Plan identifies the parameters that apply to each development zone. In addition to identifying the spatial extent of each use, the plan sets out the maximum zone floorspace, maximum overall floorspace, the finished floor levels and building height range and the height and location of the strategic bunding. The extent of the structural green infrastructure to be provided is also identified. 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”.

6.3 The control of the development is secured by reference to:

- articles 4 (*Parameters of authorised development*) and 45 (*Governance of requirements and governance of protective provisions relating to highway works*);
- the description of the works in Schedule 1;
- the requirements in Schedule 2; and
- the parameters on the Parameters Plan and the limits of deviation shown on the Works Plans.

6.4 Details over and above those shown on the parameters plan, 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 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.

- 6.5 In the case of highway works comprised in Works Nos. 7 to 9 and 11 to 17, 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 Highways Plans – General Arrangements (Documents 2.4A - F).
- 6.6 The approved details cannot however stray outside the authorised development or beyond the parameters, as is made clear by articles 4 and 45. The approval of details subsequent to the making of the Order, and the ability to change details approved, as provided for in article 45(2), is in accordance with paragraph 19 of Advice Notice 15: Drafting Development Consent Orders.

7. The Draft Order

- 7.1 This section of the memorandum explains the provisions of the draft Order as submitted to the Examining Authority on 19 March 2019 (Document 3.1E). It refers to the model provisions, however, there are substantive departures from those provisions in view of the revocation of Section 38(3) of the Act 2008 and repeal of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. The model provisions are therefore taken only as a starting point along with articles used in other approved Development Consent Orders. In particular regard has been had to The Daventry International Rail Freight Interchange Alteration Order 2014¹, The East Midlands Gateway Rail Freight Interchange and Highway Order 2016², The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016³ and The York Potash Harbour Facilities Order 2016⁴.
- 7.2 The text below deals with each article and Schedule of the draft DCO in turn. Explanation is included for each article as requested by the Examining Authority in ISH3:27 in respect of the relevant powers in the 2008 Act.
- 7.3 The 2008 Act allows a DCO to contain various powers, so long as those powers are related to or ancillary to the proposed development. Section 120 of the 2008 Act sets out what a DCO may contain:

7.3.1 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*”:

¹ S.I. 2014 No. 1796
² S.I. 2016 No. 17
³ S.I. 2016 No. 547
⁴ S.I. 2016 No. 772

- (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.

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.

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).

- 7.3.2 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.
- 7.3.3 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.
- 7.3.4 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 transitional provisions and savings.

PART 1

PRELIMINARY

Article 1 (Citation and commencement)

7.4 This article provides for citation and commencement of the Order.

Article 2 (Interpretation)

7.5 This article provides for the interpretation of the Order, principally comprising the definition of terms.

7.6 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, substitution 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 Act to expressly refer to Roxhill (Junction 15) 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 the Roxhill (Junction 15) Limited only.
- 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.
- v) Definitions have also been added separately to Schedule 2 to enable easy reference to the requirements.

7.7 Article 2(2) expands the definition of rights over land to clarify that it includes rights to do, or to place and maintain, anything in on or under land or in the air-space above its surface.

7.8 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 most recently was included in The Keuper Gas Underground Storage Facility Order 2017⁵ and The M20 Junction 10a Development Consent Order 2017⁶.

7.9 Article 2(4) ties in references to work numbers to the works in Schedule 1 and references to requirements to the requirements listed in Schedule 2.

7.10 Article 2(5) provides that areas referred to in the Book of Reference (Document 4.3A) are approximate – for the same reason as Article 2(3) is required.

7.11 Articles 2(3) - (5) are identical to those included in The East Midlands Gateway Rail Freight Interchange and Highway Order 2016⁷.

7.12 Article 2(6) clarifies that, where the word approximate is used prior to a quantum, that does not enable the ability to go beyond the parameters and authorise works that have not been assessed. This provision is a sensible precaution to ensure that

⁵ S.I. 2017 No. 433

⁶ S.I. 2017 No. 1202

⁷ S.I. 2016 No. 17

the Rochdale Envelope is not beached and a similar provision was included in the York Potash Harbour Facilities Order 2016⁸.

PART 2

PRINCIPAL POWERS

Article 3 (Development consent granted by the Order)

7.13 This article provides (as permitted by section 115 of the 2008 Act) 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. Previous versions of the draft DCO submitted to the Examining Authority included an additional paragraph (article 3(2)) which allowed for some preparatory works to proceed in advance of the rest of the authorised development. That drafting was based on other Orders⁹ since it was considered a prudent provision, allowing for some preparatory works to be carried out in advance of main design approval. Following discussions at Examination and with the local authorities, the ability to carry out suitable preparatory works before main design approval is now dealt with in the requirements and the previous article 3(2) was removed from the draft DCO submitted to the Examining Authority on 20 November 2018 (Document 3.1B).

7.14 In the previous version of the draft DCO submitted on 26 February 2019 (Document 3.1D), wording was added to ensure that the use of the authorised development is specifically included in the development consent. The reason for the inclusion of “and used” is that, although section 157 of the 2008 Act authorises the use of buildings in respect of which development consent is granted, there is no similar provision related to land. Whilst it is acknowledged that this is also expressly included in articles 5 (dealing with rail infrastructure and warehousing) and 39 (dealing with the railway system), in those articles, the “use” provision relates only to some specific works and not the “authorised development” in its entirety.

Article 4 (Parameters of authorised development)

7.15 This article identifies the parameters and limits of deviation with which the authorised development must comply. The Parameters Plan provides the parameters for the main site and the Works Plans provide the limits of deviation for all of the proposed development. The article is included pursuant to section 115 of the 2008 Act, since the parameters set the extent of the authorised development for which consent is granted.

⁸ S.I. 2016 No. 772

⁹ Such as The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 S.I. 2016 No 17 (article 3(2)) and The National Grid (Hinkley Point C Connection Project) Order 2016 S.I. 2016 No. 49 (Schedule 2(1) – definition of “commencement”).

- 7.16 This approach is in line with the Rochdale Envelope approach and the guidance set out in Planning Inspectorate’s Advice Notes 9 and 15.
- 7.17 As in recent orders¹⁰ (although slightly different), the article allows for exceptions to the application of the limits where the relevant planning authority are satisfied that it would not result in any significant adverse effects on the environment. This approach was first the subject of specific consideration during the Examination into the DCO for the A14 Cambridge to Huntingdon Improvement Scheme where the specific drafting of this provision was discussed and altered, as a result of which the Examining Authority made a specific finding that the proposed article was acceptable.¹¹ The principle is the same here, except:
- 7.17.1 the relevant planning authority is the proposed adjudicator rather than the Secretary of State, which it is felt is more appropriate, given the involvement of the relevant planning authority in dealing with approval of details for the remainder of the development; and
- 7.17.2 the wording refers to the exception to the application of the limits being permitted only where there the relevant planning authority is satisfied that it wouldn’t result in “significant adverse effects on the environment” as opposed to other DCOs which refer to “materially new or materially worse environmental effects.” This is a change from the first drafts of the draft DCO, and follows discussions at Examination. The intention is that the test applied is the same test as that set out for “subsequent applications” in Schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017¹². Therefore, drafting has been added so that the consideration of any change will effectively amount to a “subsequent application” and dealt with accordingly.
- 7.18 The article referred to above is felt to be preferable to the approach contained in the East Midlands Gateway Rail Freight Interchange and Highway Order 2016¹³ whereby 20 metres flexibility was allowed either side of the boundary of two numbered works irrespective of the environmental impact of that change.

Article 5 (Authorisation of Use)

- 7.19 This article authorises the operation and use of the RFI 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.

¹⁰ For example Article 7 The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (S.I. 2016 No. 547).

¹¹ See paragraphs 8.2.15 to 8.2.21 of Examining Authority’s Report.

¹² S.I. 2017 No. 572 (as amended)

¹³ S.I. 2016 No. 17 (article 4(d)).

The article includes confirmation that the development of the RFI and warehousing may be used for the purposes for which it is designed. This follows the approach taken in Thames Tideway Tunnel, Article 4¹⁴. The article is included to give express authorisation of the use of Works 1 – 6, pursuant to section 157 of the 2008 Act.

Article 6 (Maintenance of authorised development)

- 7.20 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 East Midlands Gateway Rail Freight Interchange and Highway Order 2016¹⁵ except that a caveat, in respect of works which would result in a likely significant environmental effect which had not been assessed, has been deleted from the definition of “maintain” and is instead in Article 6(3). This follows the advice in Advice Note 15: Drafting Development Consent Orders¹⁶ to the effect that operative provisions should not be contained in definitions (paragraph 6.1). This provision 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)

- 7.21 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 Roxhill (Junction 15) Limited as follows:
- (a) Part 5 (Powers of Acquisition) will be for the sole benefit of Roxhill (Junction 15) 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 Roxhill (Junction 15) 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 13 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 Schedule 13.
- 7.22 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

¹⁴ The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 SI 2016 No. 2384

¹⁵ S.I. 2016 No. 17

¹⁶ The Planning Inspectorate, Version 2 (June 2018)

the land interests within the Order limits to ensure an orderly and comprehensive approach to the carrying out of the works.

- 7.23 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. It is included in other Orders such as the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016.¹⁷

PART 3

STREETS

Article 8 (Street works)

- 7.24 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, the application of which is permitted by section 120(5)(a) of the 2008 Act. The provision relates to the authorised development and is therefore permitted by section 120(3) of the 2008 Act, in addition to 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).
- 7.25 This article is identical to article 10 of the East Midlands Gateway Rail Freight Interchange and Highway Order 2016¹⁸ 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 private accesses affected and the creation of private streets on the main site.

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

- 7.26 This article is not contained in the model provisions but is based upon one that has precedent in other draft Development Consent Orders, for example the Heysham to

¹⁷ S.I. 2016 No. 863 (article 7(2))

¹⁸ S.I. 2016 No. 17

M6 Link Road Order¹⁹, North Doncaster Chord Order²⁰ and The Keuper Underground Gas Storage Facility Order²¹. It is identical to article 9(1) of the East Midlands Gateway Rail Freight Interchange and Highway Order²². The article is authorised pursuant to section 120(3) of the 2008 Act since any necessary works are related to the authorised development, in addition to 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 Applicant suggests the provision is also authorised by section 120(5)(c) since 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.

- 7.27 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 timely a route to a decision. This deemed consent approach was incorporated in the National Grid (Hinkley Point C Connection Project) Order.²³

Article 10 (Permanent stopping up of streets)

- 7.28 This article makes provision for the stopping up of streets permanently where a substitute is to be provided. The drafting of this article largely reflects that of article 9 in the model provisions and Schedule 4 of the Order has been completed to identify the lengths of street that are to be permanently stopped up subject to this article and alternative street to be provided. All of the streets to which this article applies which are to be permanently stopped up are highways and these are shown on the Access and Rights of Way Plans (Documents 2.3A - E).
- 7.29 This article also makes provision for all rights of way (both public and private) in the stopped up streets to be extinguished and provision is made for the payment of compensation.
- 7.30 The article is in identical terms to the article contained in East Midlands Gateway Rail Freight Interchange and Highway Order²⁴ save that the East Midlands Gateway Order also deals with streets for which no substitute is to be provided, which is not applicable in this case. In addition to section 120(3) (i.e. by virtue of the stopping up being related to the authorised development), the inclusion in the DCO of the power

¹⁹ The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 S.I. 2013 No. 675

²⁰ The Network Rail (North Doncaster Chord) Order 2012 S.I. No. 2635

²¹ S.I. 2017 No. 433

²² S.I. 2016 No. 17

²³ S.I. 2016 No. 49 (for example, articles 12, 13 and 14).

²⁴ S.I. 2016 No. 17

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.

Article 11 (Temporary stopping up of streets)

- 7.31 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 the 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.
- 7.32 The drafting of this article generally reflects 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.
- 7.33 The article is, in substance, the same as that included in the M20 Junction 10a Development Consent Order 2017²⁵, the only difference being that the earlier Order also included a restriction of use, which it is not thought necessary to include in this case.

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

- 7.34 This article is a departure from article 10 of the model provisions. It has been included in the Order to allow for the creation, substitution and stopping up of rights of way affecting land within the Order limits. It is necessary for some public rights of way to be stopped up and substitutes provided in order for the authorised development to be carried out.
- 7.35 Section 136 of the 2008 Act requires that the Order may include the stopping up of a public right of way provided that an alternative right of way will be provided, or an alternative is not required. This article makes provision for alternative public rights of way to be created for the majority of the existing public rights of way that are to be stopped up.
- 7.36 Schedule 5 of the Order identifies the public rights of way that are affected by this article. Part 1 specifies the extent of the permanent stopping up, along with the new public rights of way that are to be created. The Schedule fixes terminus points for the new rights of way to be created; however, the exact alignment of the

²⁵ S.I. 2017 No. 1202 (article 14)

right of way between those points is to be agreed by with the local highway authority.

- 7.37 Part 2 of Schedule 5 identifies the existing rights of way which will be permanently stopped up for which no substitute is to be provided.
- 7.38 The rights of way which it is proposed will be permanently stopped up for which no substitutes are to be provided, and the rationale, are set out in the table below:

PROW Stopped Up	Extent of Stopping Up	Reason no substitute is provided
KZ19 (part)	Between points 12 and 13 on Document 2.3D	This short length of footpath is to be stopped up where it crosses the widening of the A508 near the roundabout with the Roade bypass. A crossing over the A508 for pedestrians will be provided as part of the highway works and therefore no formal substitute is required.
RZ3 (part)	Between points 23 and 24 on Document 2.3D	This short length of footpath is to be stopped up where it crosses the Roade bypass. A crossing over the bypass for pedestrians will be provided as part of the highway works and therefore no formal substitute is required.
RZ6 (part)	Between points 25 and 26 on Document 2.3E	A very short length of bridleway is to be stopped up where it crosses the widening of the A508 near

PROW Stopped Up	Extent of Stopping Up	Reason no substitute is provided
		<p>the roundabout with the Roade bypass. The bridleway will become part of the A508 and the revised termination point of RZ6 will be at the new highway boundary. No alternative is required because, as with the existing situation, the bridleway will continue to join with the highway.</p> <p>A route within the new public highway will be available and will connect the revised termination point of RZ6 to:</p> <p>a) the carriageway to enable horses to join the carriageway as they do at present; and</p> <p>b) to the footway / cycleway that is proposed to connect into the wider network along the Roade Bypass, thus providing a significant improvement for pedestrians and cyclists using the bridleway.</p>

7.39 This article also provides for the creation of new public rights of way as part of the authorised development (i.e. not provided as a result of the stopping up and substitution of an existing right of way). These are as set out in Part 3 of Schedule 5. The creation of the 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 rights of way are included in the DCO is to facilitate the development consented by the DCO, and therefore their creation is clearly related to the authorised development.

7.40 The new rights of way, their purpose and how they relate to the development are set out in the table below. The need for these rights of way was determined using the Walking, Cycling & Horse Riding Assessment and Review (WCHAR) Assessment and Review process. The WCHAR assessment and review reports are found at Appendices 18 and 19 respectively of the Transport Assessment (TA), the TA being Appendix 12.1 to the Environmental Statement (Document 5.2). The assessment identifies the opportunities and the review assesses the scheme proposals against the opportunity and recommended changes, as necessary. These were then incorporated into the design of the development.

New Public Right of Way	Purpose	Opportunity reference(s) in WCHAR Assessment and Review reports
Proposed cycle track between the points marked 18-22 on the access and rights of way plans (Document 2.3D)	To provide a link for pedestrians and cyclists between the shared footway and cycle facility that is proposed along the Roade Bypass and the existing bridleway (KZ10/RZ1)	19
Proposed public footpath between the points marked 6-27 of the access and rights of way plans (Document 2.3A)	To provide a leisure connection for pedestrians between Collingtree Road and the diversion of footpath KX13 around the northern part of the Main Site	9
Proposed cycle track between the points marked 28-30 on the access and rights of way plans (Document 2.3B)	To provide connectivity between the diversion of footpath KX17 (which is to be a cycle track) and the shared footway and cycle facility that is proposed along the A508	10, 12 and 15
Proposed cycle track between the points marked 9-10 on the access and rights of	This is provided for the same reason given below for the new footpath between the points	9 and 15

New Public Right of Way	Purpose	Opportunity reference(s) in WCHAR Assessment and Review reports
way plans (Document 2.3C)	marked 10-11-1 on the access and rights of way plans (Documents 2.3A and 2.3C). However, it is to be designated as a cycle track to allow cycle access into this part of the SRFI development.	
Proposed public footpath between the points marked 10-11-1 on the access and rights of way plans (Documents 2.3A and 2.3C)	To enhance the overall footpath provision around the Main Site by providing a new connection that is not currently possible	9

7.41 This article is based on article 12 of The East Midlands Gateway Rail Freight Interchange and Highway Order²⁶ but with some modification to make it clearer, based on the experience of applying the East Midlands Gateway provision in practice.

Article 13 (Accesses)

7.42 The new means of access to the main site is identified in Schedule 1 and is part of the highway works covered by Schedule 13. However, to allow some flexibility, this article is included to allow for modification of the access, 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.

7.43 Paragraph 4 provides for alterations to private means of access to be carried out (as detailed in Part 1 of Schedule 6) to enable the carrying out and use of the highway works.

²⁶ S.I. 2016 No. 17

7.44 Paragraph 5 refers to some private means of access which are being closed for which no substitute is to be provided. These are listed in Part 2 of Schedule 6. The reasons why no substitute is being provided are set out in the table below.

Private Means of Access	Reason why no substitute to be provided
The private means of access shaded purple and marked A on the access and rights of way plans (Document 2.3A)	There is no need for the existing farm access into the main site from Collingtree Road because the site is being developed and the use for which that access was required will cease.
The private means of access shaded purple and marked B on the access and rights of way plans (Document 2.3A).	There is no need for the existing farm access into the main site from Collingtree Road because the site is being developed and the use for which that access was required will cease.
The private means of access shaded purple and marked E on the access and rights of way plans (Document 2.3B).	There is no need for a private access into the main site from this part of the A508 because the site is being developed and the use for which that access was required will cease.
The private means of access shaded purple and marked H on the access and rights of way plans (Document 2.3B).	There is no need for a private access into the main site from this part of the A508 because the site is being developed and the use for which that access was required will cease.
The private means of access shaded purple and marked J on the access and rights of way plans (Document 2.3C).	The existing farm access at this location on the A508 into the main site is to be removed in order to construct the new highway works. Whilst the private means of access marked M will replace this access in a similar location, the use of M (i.e. for the main site) is for different purposes to the current use by farm traffic.

Private Means of Access	Reason why no substitute to be provided
The private means of access shaded purple and marked AQ on the access and rights of way plans (Document 2.3E).	Alternative and more suitable access into this land is already provided to the south.
The private means of access shaded purple and marked AW on the access and rights of way plans (Document 2.3A).	The existing farm access from Collingtree Road into the main site is not required following the development.
The private means of access shaded purple and marked D on the access and rights of way plans (Document 2.3B).	This access serves a small area of land that will be subsumed into the improvement works for J15 M1 motorway and the A45. It is not needed for access purposes.

7.45 Paragraph 6 refers to new means of access and the table below explains why these are to be created:

New Private Means of Access	Reason for Creation of New Private Means of Access
The private means of access hatched turquoise and marked M on the access and rights of way plans (Document 2.3C).	The private means of access marked M is the main entrance into the SRFI. Whilst it will replace the private means of access marked J in a similar location, the use of M (i.e. for the main site) is for different purposes to the current use.
The private means of access hatched turquoise and marked AG on the access and rights of way plans (Document 2.3D).	The private means of access marked AG is required in order to maintain access to farmland in this location i.e. the land beyond parcel 4/18 shown on the Land Plans (Document 2.1D).

New Private Means of Access	Reason for Creation of New Private Means of Access
The private means of access hatched turquoise and marked AH on the access and rights of way plans (Document 2.3D).	The private means of access marked AG is required in order to maintain access to farmland in this location i.e. the land to the east of parcel 4/21 shown on the Land Plans (Document 2.1D).
The private means of access hatched turquoise and marked AR on the access and rights of way plans (Inset 4A of Document 2.3D).	AR is required to provide access to severed land on the southern side of the bypass and direct access from the bypass is not possible at this location. The length of AR is due to the need to connect the severed land to the end of the public highway on Bailey Brooks Lane.

7.46 The creation of the private accesses is permitted by section 120(3) of the 2008 Act because the purpose for which the provisions relating to the creation of the private accesses are included in the DCO is to facilitate the development consented by the DCO, and therefore their creation is clearly related to the authorised development.

7.47 The article is the same as article 14 of The East Midlands Gateway Rail Freight Interchange and Highway Order²⁷ except for the following:

7.47.1 a deemed approval provision has been included at article 13(3); and

7.47.2 the stage by which the access must be closed or by which any substitute access must be provided is identified, as provided for in articles 13(4) and (6).

Article 14 (Maintenance of highway works)

7.48 This article is included to provide for the maintenance of the new 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 undertaker under the highway protective provisions in paragraph 6 of Part 2 and paragraph 6 of Part 3 of Schedule 13 (provisional certificate). The article is based on article 15 of The East Midlands Gateway Rail Freight Interchange and Highway Order²⁸ but, borne

²⁷ S.I. 2016 No. 17

²⁸ S.I. 2016 No. 17

out of the experience of applying the East Midlands Gateway Order, it is more specific as to the point at which maintenance of the highway works is the responsibility of the relevant highway authority. In addition, it also cross refers to the dedication provisions contained in Schedule 13. 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 authority for the highway works is also authorised by section 120(4) and paragraph 23 of Part 1 to Schedule 5 of the 2008 Act.

Article 15 (Classification of highways)

- 7.49 This drafting of this article is based on articles found in other Development Consent Orders.²⁹ It is required to make provision for the classification of new highways within the Order limits. The provision to classify the highways is specifically permitted by section 120(4) and paragraph 19 of Part 1 to Schedule 5 of the 2008 Act.

Article 16 (Speed limits)

- 7.50 This article is based upon articles in other Development Consent Orders, for example, the M1 Junction 10(a) Order,³⁰ and Houghton Regis Order³¹ and The East Midlands Gateway Rail Freight Interchange and Highway Order³². 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 relevant part 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 highway 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(4) and paragraph 19 of Part 1 of Schedule 5 of the 2008 Act.
- 7.51 Part 1 of Schedule 8 provides for amendments to existing orders. The existing orders which are the subject of amendment are contained in Document 6.10.

²⁹ e.g. the Heysham to M6 Link Road Order 2013 S.I. 2013 No. 675 and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 S.I. No.17 (article 16)

³⁰ The M1 Junction 10a (Grade Separation) Order 2013 S.I. 2013 No. 2808

³¹ The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 S.I. 2014 No. 2637

³² S.I. 2016 No. 17

- 7.52 Paragraph 9 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)

- 7.53 This article provides for the necessary amendments to existing traffic regulation orders consequent on the highway mitigation works. Copies of the existing orders to be amended are contained in Document 6.10. The article also makes provision for new permanent and temporary Traffic Regulation Orders to give the ability with the consent from the relevant traffic authority to impose such orders as may be necessary for the carrying out of the works. These powers are similar to those contained in the Thames Tideway Order³³. Please see paragraph 7.58 below for the justification of the need to revoke The County of Northampton (Church Lane, Blisworth) (Weight Restriction) Order 1971. This explains that the revocation of that Order is related to the authorised development and therefore the power for its inclusion in the DCO falls within section 120(3) of the 2008 Act. Further, the provision is also 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*” being specifically permitted by section 120(4)).

Article 18 (Clearways)

- 7.54 Article 18 provides for Clearways along lengths of the new highway works. It adopts the same approach as The East Midlands Gateway Rail Freight Interchange and Highway Order³⁴ save that this draft DCO does not deal with “no waiting” provisions because none are necessary. The lengths of road affected are identified in Part 2 of Schedule 9. Similar to the inclusion of the article authorising traffic regulation, this article is related to the authorised development and is therefore permitted by section 120(3) of the 2008 Act.

Article 19 (Motor Vehicle Restrictions)

- 7.55 Article 19 provides for weight limit restrictions for vehicles with a maximum gross weight exceeding 7.5 tonnes on certain roads as specified in Part 3 of Schedule 9. These areas are specified with reference to zones, which are shown on the Traffic Regulation Plan (Sheet 3) (Document 2.6C). The provision of these motor vehicle restrictions, as with the traffic regulation and provision of clearways articles, is

³³ The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014 No. 2384) (article 18).

³⁴ S.I. 2016 No. 17 (article 19).

related to the authorised development, and is therefore permitted by section 120(3) of the 2008 Act.

- 7.56 Paragraphs 8.63 to 8.66 of the Transport Assessment (TA) and the HGV traffic flow plots provided at TA Appendix 43 (Appendix 12.1 of the Environmental Statement (Document 5.2)) demonstrate that, if unmitigated, there is potential for development HGV traffic to use unsuitable local roads when travelling to and from the south of the development; through Roade, on Blisworth Road (Courteenhall); the unnamed road to Quinton, and on Main Road (Shutlanger).
- 7.57 Paragraph 8.67 of the TA concludes that “...a scheme of HGV management measures to control and restrict HGV movements on the local roads, in combination with the proposed A508 Roade Bypass, would be beneficial”. The Applicant also received feedback from members of the public as part of its Stage 2 consultation, which demonstrated a clear concern about the potential for HGV traffic from the Proposed Development to use Rowtree Road in East Hunsbury. In accordance with section 49 of the 2008 Act, the Applicant took these concerns into account and a series of 7.5T environmental weight restrictions, as described at paragraph 4.40 of the TA, were therefore proposed. The principle and extent of the restrictions were agreed with Northamptonshire County Council as local highway authority. The TA describes, at paragraph 4.41, how the proposed 7.5T environmental weight restrictions would complement the existing 7.5T environmental weight restrictions that are in place on Watering Lane and Pury Road which will be retained.
- 7.58 There is an existing environmental weight limit on Church Lane in Blisworth. The new environmental weight restriction is to include Stoke Road in Blisworth which connects to the eastern end of Church Lane. As the two roads meet each other, in order to permit a comprehensive weight limit zone, the roads need to be included within the same environmental weight restriction zone. This was required by Northamptonshire County Council as local highway authority. This requires that the existing weight limit order “The County of Northampton (Church Lane, Blisworth) (Weight Restriction) Order 1971” is revoked under article 17 and that the new weight restriction will include Church Lane. This can be seen by the extent of Zone B including Church Lane and there is a zone termination point at the High Street end of Church Lane. These are shown on the Traffic Regulation Plan (Document 2.6B).
- 7.59 Article 19(3) imposes the restriction of no right turn into or out of the A508 Blisworth Road comprised in Works No.11, as noted in Part 4 of Schedule 9.

Article 20 (Agreements with Highway Authorities)

- 7.60 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, maintenance of the structure of any bridge carrying a highway over or under a

railway and landscaping. Following discussion at Examination, the Applicant has added some wording to the article to clarify that any such agreements must be related to the authorised development.

- 7.61 All of the highway works will be carried out in accordance with the powers within the DCO and the relevant provisions of Parts 2 or 3 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, s.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.
- 7.62 The article is in the same form as article 21 as The East Midlands Gateway Rail Freight Interchange and Highway Order³⁵ with the addition of article 20(1)(d) as a result of the experience of applying the East Midlands Gateway Order. It is therefore the Applicant's view 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)

- 7.63 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.
- 7.64 The drafting has been updated from the model provisions to refer to the Environmental Permitting (England and Wales) Regulations 2010 which supersede the relevant provisions of the Water Resources Act 1991. The article has also been amended to reflect discussions with the highway authorities (Highways England and Northamptonshire County Council).

Article 22 (Authority to survey and investigate the land)

- 7.65 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)

- 7.66 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 powers 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 relevant local planning authority (being either South Northamptonshire District Council or Northampton Borough Council) depending on which administrative area the proposed acquisition is situated in. 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.
- 7.67 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 recent approved Orders³⁶. It is considered that 15 years is an appropriate time period for the relevant security to be in place, since this extends 10 years from the final date on which any compulsory acquisition may be exercised under the DCO.
- 7.68 The scope of the article is identical to that contained in the East Midlands Gateway Order. 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 relevant 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.

³⁶ e.g. 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 880) (article 37(4)).

Article 24 (Compulsory acquisition of land)

- 7.69 This article will authorise the compulsory acquisition of land shown on the Land Plans (Document 2.1A - F) and described in the Book of Reference (Document 4.3A) and is permitted by section 120(4) and paragraph 1 of Part 1 of Schedule 5 to the 2008 Act, and by section 123 of the 2008 Act. The Applicant is seeking acquisition of the freehold in respect of the land shown coloured pink on the Land Plans. There are also some parcels of land over which the Applicant has secured agreement relating to the freehold but where it has not been possible to guarantee termination of tenancies and therefore in respect of those parcels the Applicant seeks acquisition of leasehold/tenant rights only, and those parcels are also shown pink on the Land Plans. This is explained in further detail in the Statement of Reasons (Document 4.1).
- 7.70 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.
- 7.71 Further detail on the rationale for this article is contained in the Statement of Reasons (Document 4.1).

Article 25 (Compulsory acquisition of rights)

- 7.72 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 (Document 2.1A - F), described in the Book of Reference (Document 4.3A). The article is permitted by section 120(4) and paragraphs 1³⁷ and 2 of Part 1 to Schedule 5 of the 2008 Act. The land in which new rights may be created is listed in Schedule 11. The article departs from article 21 of the model provisions and is based on recently approved provisions in various Development Consent Orders.³⁸ This approach ensures that compulsory purchase is limited only to the rights that are required.
- 7.73 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.

³⁷ 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.

³⁸ 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)

Article 26 (Acquisition of part of certain properties)

- 7.74 This article is permitted by section 120(4) and paragraph 1 of Part 1 to Schedule 5, and by section 123 of the 2008 Act and 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. As permitted by section 120(5)(a) of the 2008 Act, 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 2016.³⁹

Article 27 (Private Rights)

- 7.75 This article is largely based on article 22 of the model provisions, with some amendments (most notably it applies to private rights and restrictions 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 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)

- 7.76 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 delivery of the development.
- 7.77 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. The power is also 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.

³⁹ S. I. 2016 No.880

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

- 7.78 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 article follows article 19 of the model provisions and its inclusion is permitted by 120(4) and paragraphs 2 and 3 of Part 1 to Schedule 5 of the 2008 Act.

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

- 7.79 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 2), in accordance with section 154(3) of the 2008 Act.

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

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

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

- 7.82 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)

- 7.83 This article allows the undertaker to extinguish rights of statutory undertakers and to replace, renew, reposition, alter and/or supplement apparatus belonging to the statutory undertakers 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)

- 7.84 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. This article is required to enable the carrying out of the authorised development and it is therefore permitted by section 120(3) of the 2008 Act.

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

- 7.85 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.
- 7.86 The article also makes provision for the time limit for return of the land, restoration and payment of compensation.
- 7.87 Paragraph (10) incorporates section 13 of the Compulsory Purchase Act 1965 and applies it to the temporary use of the land specified in Schedule 12 and shown coloured yellow on the Land Plans (Documents 2.1A - F). 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)

- 7.88 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 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)

- 7.89 This 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.
- 7.90 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)

- 7.91 This article is based on other recent DCOs⁴⁰ and secures the established principle that a claimant in compulsory purchase is to be compensated for no more and no less than his loss. The article ensures that compensation is not payable in respect of the same loss or damage under both the Order and other compensation regimes. 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)

- 7.92 This article is based on the article contained within Schedule 2 of the model provisions (model provisions for Railways). It is included as 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)

- 7.93 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

⁴⁰ e.g. The Triton Knoll Electrical System Order 2016 (S.I. 2016 880) article 28

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)

- 7.94 This article is based on an article at Schedule 2 of the model provisions (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 (Defence to proceedings in statutory nuisance)

- 7.95 This article is based upon an article in the model provisions and appears in a number of approved Development Consent Orders. It provides a defence in the circumstances specified to proceedings brought in relation to a nuisance caused by noise or vibration. The article is included as authorised by section 158 of the 2008 Act.

Article 43 (Felling or lopping of trees and removal of hedgerows)

- 7.96 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. It is included pursuant to sections 120(3) and 120(4) and paragraph 13 of Part 1 to Schedule 5 of the 2008 Act.
- 7.97 The article makes provision for compensation to be payable for any loss or damage arising, as authorised by section 120(4) and paragraph 26 of Part 1 to Schedule 5 of the 2008 Act.
- 7.98 The article also allows for the felling, lopping or cutting back of trees subject to a tree preservation order, as identified in appendix C of the arboricultural assessment included within the Environmental Statement, with the consent of the relevant planning authority. The article follows the guidance in paragraph 22 of Advice Note Fifteen: Drafting Development Consent Orders.

Article 44 (Protective Provisions)

- 7.99 The article gives effect to the protective provisions which are contained in Schedule 13 referred to further below.

Article 45 (Governance of requirements and governance of protective provisions relating to highway works)

- 7.100 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.
- 7.101 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 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 7.17 above), the article has been amended in the latest draft of the DCO (Document 3.1D) to apply the “subsequent application” provisions under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 7.102 The approaches taken to the governance of approval of details and subsequent amendments vary considerably in approved orders.
- 7.103 It is felt preferable that an overarching provision such as that contained in article 45 should be within an article rather than in the requirements. This is particularly so in this case since the paragraphs (1) and (2) cover Schedule 13, in addition to the requirements in Schedule 2.
- 7.104 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.

Article 46 (Disapplication, application and modification of legislative provisions)

- 7.105 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.
- 7.106 Article 46(1) dis-applies 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. The County Council (as the relevant drainage authority) have approved the removal of the need for drainage consents.

- 7.107 Article 46(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 the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 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 the draft DCOs submitted in respect of the applications for Tilbury 2, Millbrook Power (Gas Fired Power Station) and The A19/A184 Testos' Junction Improvement.
- 7.108 Article 46(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 sub 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 2016⁴¹.
- 7.109 Article 46(4) dis-applies Regulation 4 of the Town and country Planning (Control of Advertisements)(England) Regulation 2007 in respect of advertisements located in the locations shown on the Parameters Plan (Document 2.10). It obviates the need to obtain a further consent for the totems and sign boards required for the development.
- 7.110 Article 46(5) dis-applies the 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.⁴²
- 7.111 Article 46(6) - Schedule 14 refers to miscellany of controls and applies/modifies and/or amends them as appropriate to ensure they facilitate, and do not constrain, the development. This is based on the approach taken in the Thames Tideway Tunnel Order ⁴³ and is agreed with the highway authorities (Highways England and Northamptonshire County Council).
- 7.112 Article 46(7) ensures that anything permitted as a result of the provisions of article 46 does not prevent the operation of the 2017 EIA Regulations, as suggested in Advice Note 15: Drafting Development Consent Orders.

⁴¹ S.I. 2016 No. 17

⁴² See for example Thames Tideway Tunnel, Article 14 DCO and National Grid Hinckley Point C Connection

⁴³ SI 2014 No. 2384

Article 47 (Certification of plans and documents)

- 7.113 This article reflects the drafting of the model provisions and specifies with reference to Schedule 16 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.

Article 48 (Service of Notices)

- 7.114 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 49 (Arbitration)

- 7.115 This article is included in case of any dispute regarding the provisions of this Order, subject to it being expressly dis-applied, as it is in the case of some of the protective provisions which provide for their own dispute resolution mechanisms. 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.
- 7.116 The article was amended in the previous version of the DCO (Document 3.1D) to reflect the various bodies to which specific matters are to be referred and to avoid conflict with any enforcement action being taken under Part 8 of the 2008 Act.

SCHEDULES

Schedule 1 (Authorised Development)

- 7.117 This schedule describes the authorised development for which Development Consent is sought, including associated development. The NSIP and Associated Development are identified separately.
- 7.118 The Works are summarised as follows:

NSIP

Works No 1

This is the new rail infrastructure works from the existing Northampton Loop line 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 a new railway line to serve the warehousing to be constructed within Works No. 4.

Works No 4

This is the construction of the rail served warehousing along with development such as ancillary buildings, service yards, storage areas and infrastructure to serve. It also provides for rail infrastructure for rail connected units within Zones A1 – A4 as shown on the parameters plan.

Works No 5

This comprises the principal road infrastructure on the main site including internal estate (private) roads, footpaths and cycle tracks, vehicle lay-bys and bus stops.

Works No 6

This comprises structural landscaping surrounding the built development on the main site including earthworks, bunding, flood alleviation and surface water attenuation, boundary treatments and habitat creation. It also provides for the continuing agricultural use of some of the land within the main structural landscaping area.

Works No 7

This comprises works to create a roundabout access to the main site off the A508 along with the dualling of a length of the A508 between the access to the main site and Junction 15 of the M1 motorway. The general arrangement of these works is shown on Document 2.4B.

Associated development**Works No 8**

These works relate to roads under the jurisdiction of Highways England and comprise works to J15 of the M1 motorway to improve the function of that junction and improvement works to the A45 northwards towards Northampton. The general arrangement of these works is shown on Document 2.4B.

Works No 9

These comprise works to Saxon Avenue and Watering Lane including the interface with Works No 7. The general arrangement of these works is shown on Document 2.4B.

Work No 10

These works involve the construction of new sewers and improvements and alterations to existing sewers required to accommodate the end of the foul drainage outfall / rising main from the main site.

Works No 11

These are works to improve the function of J15A of the M1 motorway which is under the jurisdiction of Highways England. The general arrangement of these works is shown on Document 2.4F.

Works No 12

These are works to deal with movements at the junction between the A508 and Blisworth Road intended both to address an existing difficulty with turning movements at the junction and to address the impact of the development traffic. The general arrangement of these works is shown on Document 2.4C.

Works No 13

Works No 13 comprises works to create a Road Bypass connecting the A508 Northampton Road to the A508 Stratford Road via land to the north of Road including a bridge over the railway line, roundabout junctions at each end of the bypass and at the junction with Blisworth Road and associated landscaping and related works. The general arrangement of these works is shown on Documents 2.4C and 2.4D.

Works No 14

These works comprise the improvement of the junction between the A508 and C26 near Stoke Bruerne. The works comprise the realignment of the A508 and provision of ghost island right turn junctions between the A508 and C26 Rookery Lane and the A508 and C26 Ashton Road. The general arrangement of these works is shown on Document 2.4E.

Works No 15

These works involve the improvement of the A508 at its junction with the C85 Pury Road involving the provision of a ghost island and right turn lane. The general arrangement of these works is shown on Document 2.4F.

Works No 16

These works comprise improvements to the junction of Knock Lane and C27 Stoke Road. The general arrangement of these works is shown on Document 2.4F.

Works No 17

These works comprise the provision of a pedestrian refuge on the A508, alteration to lay-by provision and a ghost island right turn junction at Church Lane. The general arrangement of these works is shown on Document 2.4F.

- 7.119 Schedule 1 also includes “**Further Works**” being diverse items the precise locations of which it is not possible to identify at this stage. 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 substations, which is subject to more detailed engineering design, or are items where their location may change, such as temporary concrete batching plants⁴⁴.
- 7.120 These works have been divided into three separate sections of further works. These apply additional, further, works to firstly, Works Nos. 1 to 5 being the rail infrastructure, rail terminal, warehouses and on site road infrastructure; secondly, Works Nos. 1 to 6, being the above and the landscaping on the main site, and, thirdly, Works Nos. 7 to 9 and 11 to 17, being the highway mitigation works.
- 7.121 All the “Further Works” are subject to the provisos contained in the schedule. The wording has been amended in the latest version of the DCO to apply the test of “significant adverse environmental effects” to any Further Works, consistent with paragraph 13 of Schedule 2 of the 2017 EIA Regulations.

Schedule 2 (Requirements)

- 7.122 As permitted by section 120(1) and (2) of the 2008 Act, the DCO also includes, at Schedule 2, requirements to govern the authorised development. 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 2014⁴⁵ and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016⁴⁶. They are, however, bespoke for the particular development proposed. The objective of these requirements is self-explanatory.
- 7.123 The topics covered by the requirements are set out below, along with an explanation, where helpful:

⁴⁴ 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 No. 675), The Daventry International Rail Freight Interchange Order (S.I. 2014 No. 1796) and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016 No. 17).

⁴⁵ S.I. 2014 No. 1796

⁴⁶ S.I. 2016 No. 17

- **Time limit for commencing the authorised development** (Requirement 2)

- **Components of development and phasing** (Requirement 3)

Notable in this requirement is a commitment on the undertaker to construct and make available a rail terminal capable of handling at least 4 goods trains per day prior the occupation of any the warehousing. This requirement is a positive response to the concerns raised in the report of the Examining Authority to the Secretary of State in relation to the East Midlands Gateway Rail Freight Interchange and Highway Order 2016⁴⁷ in which concern was expressed to the delivery of the terminal. In the East Midlands Gateway Order, 260,000 square metres of warehousing can be occupied prior to the terminal being delivered.

At the Issue Specific Hearing on the dDCO (ISH 5 on 14 March 2019), the applicant for the proposed Rail Central development on the opposite site of the Northampton Loop Line drew attention to the wording of requirement 3(3) and suggested that it might mean that no rail terminal was ever built (because an alternative timing could be agreed) and that, accordingly, the DCO might be unlawful as not permitting an NSIP within the definition of s.26 of the 2008 Act. The Applicant does not agree with Rail Central's analysis and would refer the ExA to the Applicant's response to DCO:13 in the Applicant's Responses to ExA DCO Commentary (Document 8.19).

The Applicant is however concerned to ensure that there is no doubt as to the lawfulness of any Order and suggests that a fall-back position be added to the requirement which ensures that the flexibility offered within the requirement is restricted to the "initial stages" of the development in compliance with paragraph 4.88 of the National Policy Statement for National Networks (NPSNN).

As advised in the response to DCO:13 there is only one interpretation available as to what is meant by "initial stages" in paragraph 4.88 and that is contained in the Secretary of State's decision on the East Midlands Gateway Order. The floorspace permitted to be occupied at East Midlands Gateway prior to the rail terminal being provided at East Midlands Gateway was 260,000m² (out of 555,476) i.e. 46.8% (Requirement 2(3)).

The other approved RFI DCO is The Daventry International Rail Freight Interchange Alteration Order 2014, which pre-dated the NPSNN. Although called an "Alteration" the Order authorises a new replacement rail terminal and a substantial amount of warehousing. The amount of floorspace permitted to be occupied in advance of the rail terminal in that case (governed by a

s.106 obligation rather than a requirement) was 153,290m² (out of 731,000m²) i.e. 21%.

To meet the Rail Central point the Applicant suggests that a floorspace fall-back restricting the extent of the relevant planning authority's discretion be inserted. The figure suggested is 140,400m² which is at the lower end of the range exhibited by DIRFT and EMG. It represents 30% of the floorspace excluding mezzanines and 22.5% of the total floorspace. The figure would clearly be in accordance with the NPSNN as interpreted by the Secretary of State at East Midlands Gateway with some headroom besides.

Requirement 3(3) has been amended in the dDCO submitted for Deadline 6 accordingly.

The draft of the draft DCO contains a draft requirement 3(4) in square brackets. This was inserted in a previous draft of the DCO (Document 3.1C), but as the Applicant explained in its response to ISH3:2 (see Appendix 13 of the Applicant's Post Hearing Submissions for ISH2, ISH3 and CAH1, Document 8.10), the Applicant does not consider that this requirement is necessary or appropriate, given that, having delivered the SRFI, such a requirement would constrain its operation in the future which may be affected by matters outside of the undertaker's control. The requirement was, however, added for consideration, pursuant to comments from the Examining Authority.

- **Sustainable Transport** (Requirement 4)
This requirement controls some key aspects of the development relevant to sustainable transport including a commitment to comply with an overall framework travel plan, occupier travel plans and the public transport strategy. It also requires the establishment of a sustainable transport working group which will have an ongoing roll in relation to the sustainable transport measures.
- **Design and phasing of highways works** (Requirements 5 and 6)
This requirement sets out certain triggers by when certain parts of the highway works need to have been completed and includes a requirement to construct the highway works in accordance with the provisions of Parts 2 and 3 of Schedule 13.
- **Highway Alternatives** (Requirement 7)
This requirement addresses a situation in the event that the Smart Motorway Works, which are programmed to be carried out in the vicinity of Junction 15, do not proceed as envisaged. The consequence is that a different highway interface between the M1 Motorway and the works to Junction 15 would be required and that interface is as shown on the alternative plans. Those

alternative plans can only be implemented if the Smart Motorway Project is halted or significantly delayed.

- **Detailed design approval** (Requirements 8 and 9)
Requirements 8 and 9 ensure that a large number of detailed matters are approved by the relevant planning authority at the appropriate stages.
- **Provision of Landscaping** (Requirement 10)
This requirement ensures that a written landscaping scheme is submitted for each part of the main site prior to development commencing on that part.
- **Landscape and Ecological Management Plan** (Requirement 11)
This requires that the development be carried out in accordance with the submitted “LEMP” and for management and maintenance of the green infrastructure to be agreed with the relevant planning authority.
- **Construction Environmental Management Plan** (Requirement 12)
This requires that the development be carried out in accordance with phase specific construction environmental management plans “P-CEMPs” approved prior to the relevant phase of the development commencing. Each P-CEMP is to accord with the principles set out in the submitted CEMP.
- **Earthworks** (Requirement 13)
This requirement ensures that an earthwork strategy is approved prior to any development on the main site and the development be carried out in accordance with that strategy.
- **Archaeology and Built Heritage** (Requirement 14)
This requirement provides for further archaeological investigation for recording purposes and also for a building survey of the buildings on the main site which are to be demolished.
- **Lighting details** (Requirement 15)
This requirement provides for approval of all permanent lighting which must be in accordance with the principles established in the submitted lighting strategy.
- **Building Sustainability** (Requirement 16)
This requirement imposes compliance with BREEAM 2018 “Very Good” in respect of the construction of each warehouse.

- **Drainage and Flood risk** (Requirements 17 - 20)
 These requirements ensure that the appropriate mitigation is imposed and details approved at the appropriate stages of development.
- **Construction Hours** (Requirement 21)
 This requirement places restriction on the hours during which construction may take place.
- **Construction Noise** (Requirement 22)
 This requirement places a specific requirement for construction noise to be managed in accordance with the relevant P-CEMP.
- **Noise during the operational phase** (Requirements 23 and 34)
 These requirements govern the approval of details of plant which have the potential to cause noise and their prior approval. The requirements also deal with monitoring in relation to noise from train movements and the approach to dealing with noise complaints.
- **Contamination risk** (Requirements 25 and 26)
 These requirements ensure that no development is carried out on land which might be contaminated without the appropriate investigation and remediation.
- **Waste management during the operational phase** (Requirement 27)
 This requirement ensures that occupants of the development must obtain approval of a scheme for waste management which must accord with the submitted framework site waste management strategy.
- **Employment** (Requirement 28)
 This requirement covers an obligation previously contained in the draft section 106 Agreement, following discussions with the local planning authority and following a suggestion by the Examining Authority. The requirement provides for the submission and observance of employment schemes for the provision of employment and training.
- **Community Liaison Group** (Requirement 29)
 This requirement covers an obligation previously contained in the draft section 106 Agreement, following discussions with the local planning authority and following a suggestion by the Examining Authority. It provides for the establishment of a community liaison group and the approval of a protocol for that group by the relevant planning authorities.
- **Rail Central** (Requirements 30,31 and 32)

Requirements 30 and 31 were added to the previous version of the draft DCO (Document 3.1D) following discussions at Examination in respect of the interrelationship of Northampton Gateway with the proposed neighbouring Rail Central development, which was accepted for Examination in November 2018. The requirements deal with the scenario where the Rail Central Order is approved and the delivery of specific works which would be in “conflict” with the Rail Central Order. Please also see the Applicant’s response to ExQ2.3.1 (Document 8.19) submitted for Deadline 5.

Requirement 32 has been added to the latest version of the draft DCO submitted for Deadline 6 following discussions with Rail Central and Network Rail. It deals with the scenario, as above, where the Rail Central Order is granted, and ensures that the approval of the Applicant’s rail details must not prevent the Rail Central development connecting with the Northampton Loop Line.

Schedule 3 (Streets subject to Street Works)

- 7.124 This Schedule lists the streets within the Order limits which are to be subject to the street works pursuant to article 8.

Schedule 4 (Streets to be permanently stopped up for which a substitute is to be provided)

- 7.125 This Schedule lists the length of streets which are to be stopped up pursuant to article 10 and details of the substitute for those streets with reference to the Access and Rights of Way Plans (Document 2.3).

Schedule 5 (Public Rights of Way)

Part 1 - Public Rights of Way to be Stopped Up for which a substitute is to be provided

- 7.126 This Part details the public rights of way which are to be stopped up with substitute to be provided pursuant to article 12 with reference to the Access and Rights of Way Plan (Document 2.3).

Part 2 – Public Rights of Way to be stopped up for which no substitute is to be provided

- 7.127 This Part details the public rights of way which are to be stopped up with no substitute pursuant to article 12 with reference to the Access and Rights of Way Plan (Document 2.3).

Part 3 – New Public Rights of Way to be Created

7.128 This Part sets out the new public rights of way which are to be provided.

Schedule 6 (Private Means of Access)

Part 1 – Private Means of Access to be Replaced

7.129 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 Plan (Document 2.3).

Part 2 – Private Means of Access to be Closed for which no Substitute is to be Provided

7.130 This Part details the private means of access which are to be stopped up pursuant to article 13 and not replaced, with reference to the Access and Rights of Way Plan (Document 2.3).

Part 3 – New private means of Access Created

7.131 This Part sets out the new private means of access which are to be provided.

Schedule 7 (Classification of Highways)

Part 1 – New Highways

7.132 This Part sets out the classification of the new lengths of highways created as a result of the highway works.

Part 2 – Existing Highways

7.133 This Part sets out the change in classification of the existing lengths of highways created as a result of the highway works.

Schedule 8 (Speed Limits)

7.134 This schedule sets out the new speed limits which will apply following the completion of the works and also revokes existing orders which conflict with those limits.

Schedule 9 (Traffic Regulation)

Part 1 – Amendments to Existing Orders

7.135 This Part deals with any necessary amendments to existing traffic regulation orders.

Part 2 (Clearways)

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

Part 3 (Environmental Weight Limit)

7.137 This Part deals with the weight restriction orders required as a result of the highway works.

Part 4 (Prohibited Movements)

7.138 This Part deals with the no right turn into and out of the A508 Blisworth Road.

Schedule 10 (Land for temporary possession)

7.139 This Schedule sets out the land of which temporary possession may be taken as referred to in article 35.

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

7.140 This Schedule lists the parcels of land in which new rights may be created.

Schedule 12 (Modification of compulsory purchase enactments)

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

Schedule 13 (Protective provisions)

7.142 Schedule 13 includes provisions to protect the interests of various bodies whose assets may be affected by the proposed development. These include:

- Part 1: Network Rail
- Part 2: Highways England
- Part 3: Northamptonshire County Council
- Part 4: Cadent Gas Limited (as Gas Undertaker)
- Part 5: Anglian Water Limited
- Part 6: General provisions for the protection of Electricity Undertakers
- Part 7: General provisions for the protection of operators of the Electronic Communications Code Networks

- 7.143 Of particular note are Parts 2 and 3 of Schedule 13 which contain protective provisions to protect the interests of the highway authorities, being Highways England and Northamptonshire County Council. These provisions govern the carrying out of the highway works and obviate the need for any agreements pursuant to s.38 and s.278 of the Highways Act 1980 which would be the usual manner of governing off site highway works.

Schedule 14 (Miscellaneous Controls)

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

Schedule 15 (Membership, role and protocol of Sustainable Transport Working Group)

- 7.145 This Schedule sets out the membership, role and protocol of the Sustainable Transport Working Group which is to be established pursuant to requirement 4.

Schedule 16 (Certification of Plans and Documents)

- 7.146 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 DCO.

Eversheds Sutherland (International) LLP
19 March 2019