

Tritax Symmetry (Hinckley) Limited

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

The Hinckley National Rail Freight Interchange Development Consent Order

Project reference TR050007

Explanatory Memorandum

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Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations
2009 (as amended) Regulation 5(2)(c)

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1. INTRODUCTION

- 1.1 This explanatory memorandum is submitted on behalf of Tritax Symmetry (Hinckley) Limited and forms part of the application for the Hinckley National Rail Freight Interchange Order 202[X] submitted to the Secretary of State pursuant to section 37 of the Planning Act 2008 (“the Application”). The Application seeks approval of the draft Development Consent Order (“DCO”) for a new rail freight interchange, warehousing and associated infrastructure near Junction 2 of the M69 Motorway near Hinckley in Leicestershire known as the Hinckley National Rail Freight Interchange (“HNRFI”).
- 1.2 This memorandum explains the purpose and the effect of provisions in the draft DCO (document reference: 3.1), as required by Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹ (“the 2009 Regulations”), as amended and has been prepared taking into account the guidance set out in the Advice Note 13: Preparation of a Draft Development Consent Order and Explanatory Memorandum (version 3, republished in February 2019). The DCO has been prepared taking into account the guidance set out in Advice Note 15: Drafting Development Consent Orders (version 2, republished in July 2018).
- 1.3 The applicant is Tritax Symmetry (Hinckley) Limited, a special purpose vehicle set up to promote and develop HNRFI (“TSH”).
- 1.4 TSH has submitted a document called ‘Guide to Application’ (document reference: 1.4) which provides an overview of the Application and explains each of the documents submitted with the Application. The Application documentation is also itemised in the Electronic Application Index (document reference: 1.5).

2. THE SCOPE OF THE PROPOSED ORDER

NSIP Criteria

- 2.1 Pursuant to section 14(l) of the Planning Act 2008 (as amended) (“the 2008 Act”) the construction of a rail freight interchange which meets the relevant criteria will be considered a Nationally Significant Infrastructure Project (‘NSIP’). The relevant criteria are set out in section 26 of the 2008 Act. The development proposed by the Application constitutes an NSIP as it is a rail freight interchange which:
 - 2.1.1 would be in England;
 - 2.1.2 would be over 60 hectares in area;

¹ S.I. 2009/2264.

- 2.1.3 would be capable of handling consignments of goods from more than one consignor and to more than one consignee and at least 4 goods trains a day;
 - 2.1.4 would be part of the railway network in England;
 - 2.1.5 would include warehouses to which goods can be delivered from the railway network in England; and
 - 2.1.6 would not form part of a military establishment.
- 2.2 The purpose of the DCO is to authorise the construction and use of the rail freight interchange and associated development (see below).

Scope of the proposed development

- 2.3 The land on which HNRFI will be developed is referred to in the draft DCO as the order limits and is shown on the Order Limits Plan (document reference: 2.27) (the "Order Limits"). Some powers, such as alteration of speed limits where no physical works are proposed, are sought outside of the Order Limits.
- 2.4 The draft DCO permits the works summarised below, which are described in more detail in Schedule 1 of the DCO:-

Nationally Significant Infrastructure Project

- a) the demolition of Woodhouse Farm, Hobbs Hayes Farm, Freeholt Lodge and the existing bridge over the Leicester to Hinckley railway on Burbage Common Road;
- b) new rail infrastructure including points off the existing Leicester to Hinckley railway providing access to a series of parallel sidings at the HNRFI, in which trains would be unloaded, marshalled and loaded;
- c) an intermodal freight terminal or 'railport' capable of accommodating up to 16 trains up to 775m in length per day, with hard-surfaced areas for container storage and HGV parking and cranes for the loading and unloading of shipping containers from trains and lorries ;
- d) up to 850,000 square metres (gross internal area or GIA) of warehousing and ancillary buildings with a total footprint of up to 650,000 square metres and up to 200,000 square metres of mezzanine floorspace, including the potential for some buildings to be directly rail connected if required by occupiers. These buildings might incorporate ancillary data centres to support the requirements of HNRFI occupiers and operators. They would also incorporate roof-mounted

photovoltaic arrays with a generation capacity of up to 42.2 megawatts (MW), providing direct electricity supply to the building or exporting power to battery storage in the energy centre ;

- e) a new road ('the A47 Link Road') from the modified M69 Junction 2 to the B4668 / A47 Leicester Road with a new bridge over the railway, providing vehicular access to the proposed HNRFI from the strategic highway network. The A47 Link Road would be intended for adoption as a public highway under the Highways Act 1980;
- f) an energy centre incorporating an electricity substation connected to the local electricity distribution network and a gas-fired combined heat and power plant (designed to be ready for 100% hydrogen in the grid gas supply) with an electrical generation capacity of up to 5 megawatts (MW). Total electricity generation capacity would therefore be 47.4MW(;
- g) a lorry park with welfare facilities for drivers and HGV fuelling facilities);
- h) a site hub building, providing office, meeting space and marketing suite for use in connection with the management of the HNRFI and ancillary car parking;
- i) terrain remodelling, hard and soft landscape works, water course diversion, amenity water features and planting;
- j) noise attenuation measures, including acoustic barriers up to six metres in height;
- k) habitat creation and enhancement and the provision of publicly accessible amenity open space at the south-western extremity of the HNRFI near Burbage Wood and to the south of the proposed A47 Link Road between the railway and the B4668/A47 Leicester Road;
- l) pedestrian, equestrian and cycle access routes and infrastructure, including a new dedicated route for pedestrians, cyclists and horse riders from a point south of Elmesthorpe to Burbage Common;
- m) utility compounds, plant and service infrastructure;
- n) security and safety provisions inside the HNRFI including gatehouses, fencing and lighting; and
- o) drainage works including surface water retention ponds, underground attenuation tanks and swales.

Associated Development

2.5 As permitted by section 115 of the 2008 Act, the draft DCO specifically authorises development which is not part of the NSIP itself but is associated with it. These works are known as associated development. The following associated development is proposed:

- a) works to M69 Junction 2 comprising the reconfiguration of the existing roundabout and its approach and exit lanes, the addition of a southbound slip road for traffic joining the M69 motorway and the addition of a northbound slip road for traffic leaving the M69 motorway at Junction 2;
- b) modifications to the junction at Hinckley Road and Stanton Lane, junction of the A47 Normandy Way with A47 Ashby Road, junction of A47 Normandy Way with the B4668 Leicester Road, junction of the B4114 Coventry Road with Croft Road, works to the Cross in Hand roundabout, junction of the B4114 Coventry Road with the B518 Broughton Road, and amendments to Traffic Regulation Orders on the local road network in response to the different traffic flow pattern resulting partly from the trips generated by the HNRFI development and principally from the change in movements as a result of the M69 Junction 2 upgrade;
- c) installation of a new foul rising main;
- d) earthworks to create screening bunds, soft landscaping works surrounding the development, basins for water attenuation, noise attenuation, amenity open space, provision of a new turning head;
- e) works affecting existing pedestrian level crossings on the Leicester to Hinckley railway at Outwoods, Thorney Fields Farm north-west of Sapcote, at Elmesthorpe. In addition, pedestrian level crossings serving footpaths that connect Burbage Common Road to Earl Shilton and Barwell are proposed for closure with the associated footpaths being diverted;); and
- f) off-site (outside the proposed Order Limits) railway infrastructure including signals, signage and electricity connections.

Consideration of Highway NSIP

2.6 TSH has given consideration as to whether any of the highway works would constitute a highway NSIP in their own right.

- 2.7 In particular Work No. 8 and Work No. 16 may have had the potential to be highway NSIPs (as the relevant highway authority for these parcels is the Secretary of State or a strategic highways company – a qualifying requirement).
- 2.8 The other work parcels consisting of highway works did not have the potential to meet the qualifying criteria as the relevant highway authority for the highway areas affected was not the Secretary of State or a strategic highways company.

Qualifying Criteria

- 2.9 Section 14(h) of the 2008 Act confirms that highway-related development will be an NSIP in the event it meets the relevant criteria.
- 2.10 The relevant criteria are contained within section 22 of the 2008 Act. There are three categories of highway-related development which could constitute NSIPs, they are:
- 2.10.1 **construction** of a highway;
 - 2.10.2 **alteration** of a highway; and
 - 2.10.3 **improvement** of a highway.
- 2.11 Each category has its own qualifying requirements. Taking each in turn:
- 2.11.1 **Construction**
 - 2.11.1.1 the highway will (when constructed) be wholly in England;
 - 2.11.1.2 the Secretary of State or a strategic highways company² will be the highway authority for the highway; and
 - 2.11.1.3 the area of development will be greater than the relevant limit set out in subsection (4) of section 22 (see paragraph 2.12 below)
 - 2.11.2 **Alteration**
 - 2.11.2.1 the highway will (when constructed) be wholly in England;
 - 2.11.2.2 the Secretary of State or a strategic highways company will be the highway authority for the highway; and

² Such as National Highways

2.11.2.3 the area of development will be greater than the relevant limit set out in subsection (4).

2.11.3 **Improvement**

2.11.3.1 the highway will (when constructed) be wholly in England;

2.11.3.2 the Secretary of State or a strategic highways company will be the highway authority for the highway; and

2.11.3.3 the improvement is likely to have a significant effect on the environment.

2.12 The relevant limits set out in subsection (4) are as follows:

2.12.1 in relation to the *construction* of a motorway: 15 hectares;

2.12.2 in relation to the *alteration* of a motorway: 15 hectares;

2.12.3 in relation to the *construction* of a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour or greater: 12.5 hectares;

2.12.4 in relation to the *alteration* of a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour or greater: 12.5 hectares;

2.12.5 in relation to the *construction* of any other highway: 7.5 hectares, and

2.12.6 in relation to the *alteration* of any other highway: 7.5 hectares.

Application of the criteria to HNRFI

2.13 As previously noted the relevant highway works considered against the NSIP criteria (due to their potential to meet the qualifying criteria) were the works to junction 2 of the M69 motorway (Work No. 8) and part of the works to the roundabout known as the 'Cross in Hand' at the A5, A4303, Coal Pit Lane and B4027 (Work No. 16), for which National Highways is the strategic highway authority in respect of the A5 element.

Work No. 8 – J2 M69 motorway

2.14 TSH have agreed with National Highways that the relevant category of section 22 applicable to the highway works proposed as Work No. 8 in the DCO is the **alteration of a motorway**. This is because the proposed works are to an existing junction of the M69 motorway. Furthermore, TSH have agreed with National Highways that

the relevant area to consider for the calculation of this Work area is as shown coloured dark blue on the plan at **Appendix 1**. This area includes the physical alteration works to the motorway for which National Highways is the responsible highway authority as well as land to be used temporarily in connection with those works (for example, for a construction compound). As is clear from the plan at **Appendix 1**, this area is **10.6** hectares and therefore falls below the threshold of 15 hectares to qualify as a highway NSIP pursuant to section 22 of the 2008 Act.

- 2.15 National Highways agree with TSH that the remaining element of Work No. 8 should not be classified as alteration works, rather these are minor improvement works (such as new signage) and are shown shaded green on the plan attached at **Appendix 2**.

Work No. 16 – Cross in Hand Roundabout (A5 only)

- 2.16 The proposed alterations at this roundabout include lane widening and the provision of signage. These works involve Leicestershire and Warwickshire local highway authorities as well as National Highways. The total area of the works for which National Highways is the strategic highway authority, is **1.6** hectares. This is below the qualifying threshold of **12.5** hectares (being alterations to a highway, other than a motorway, where the speed limit is equal to or greater than 50 miles an hour), and therefore these works do not qualify as an NSIP. The relevant area for the alteration is shown coloured pink on **Appendix 3**.
- 2.17 It is therefore concluded that all the highway works forming part of the development will be associated development pursuant to section 115 of the Act as they do not meet the criteria of constituting separate NSIPs in their own right.

Ancillary Matters

- 2.18 The draft DCO also deals with some ancillary matters – i.e. provisions which are not development, as permitted by section 120 of the 2008 Act.
- 2.19 The 2008 Act allows a DCO to contain various powers, so long as those powers are related to or ancillary to HNRFI. Section 120 of the 2008 Act sets out what a DCO may contain:
- Section 120(1) permits the inclusion of “*requirements in connection with the development for which consent is granted*”. Further consideration of the imposition of requirements is set out at paragraph 5.168 below.
 - 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 power is wide ranging and is limited only by the fact that a provision must be related to the authorised development for it to be included

in DCO. TSH has indicated in this Explanatory Memorandum where a matter included in the draft DCO is considered to fall within this section and also where a matter is covered by one or more of the other sub-sections in section 120 of the 2008 Act.

- Section 120(4) sets out (together with Part 1 of Schedule 5 to the 2008 Act) some other matters which may be included in a DCO under section 120(3). It is important to note that this subsection does not restrict the matters which may be included in a DCO pursuant to section 120(3) – for instance 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’

(TSH’s emphasis).

TSH does not consider that a provision is prevented from inclusion 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.

2.19.1 Section 120(5) specifies further powers which a DCO may include. This subsection provides that a DCO may:

- (a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;
- (b) 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) 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) include incidental, consequential, supplementary, transitional or transitional provisions and savings.

2.20 The draft DCO includes powers to acquire land for the purposes of carrying out the authorised development (Article 23) and acquire rights (Article 25) pursuant to section 120 of the 2008 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 (Article 26, Article 28). The justification for these powers is explained within the Statement of Reasons (document reference 4.1).

- 2.21 The draft DCO also includes other ancillary matters such as the improvement/alteration/diversion and stopping up of highways (Article 9, Article 10, Article 11, Article 12) and the creation of new public rights of way and new private means of access (Article 13, Article 14). The DCO also applies, disapplies and modifies certain legislation relating to HNRFI (Article 47).

3. LOCATION OF HNRFI

- 3.1 The Application principally relates to land to the north west of junction 2 of the M69 motorway. The site is bounded on its north west boundary by the Nuneaton to Felixstowe railway and to the south east by the M69 motorway. The woodland areas of Burbage Wood, Aston Firs and Freeholt Wood, together with a gypsy and traveller community and mobile home site are located at the south west of the site. The location of the site can be seen on the Location Plan (document reference: 2.1).
- 3.2 The site for the rail freight terminal, warehouses, associated infrastructure, landscaping and access, including a proposed link road to the A47 is identified as the 'main site' in the DCO and comprises the works areas for Work Nos. 1 to 7 and is referred to as the Main Site in this document.
- 3.3 There will also be works to Junction 2 of the M69 motorway within the strategic road network including new southern slip roads (Work No. 8) and to the approach to the Junction within the local highway network (Work No. 9).
- 3.4 There are also some other highway mitigation works proposed at various existing highway junctions within the vicinity of the site. These are defined in the draft DCO as Work Nos. 10 to 17 and are identified on the highway general arrangement plans (document series: 2.4).
- 3.5 The vast majority of land within the Order Limits lies within the District of Blaby and County of Leicestershire. There are some parts, however, which fall within Hinckley and Bosworth Borough (Leicestershire County) and one highway junction which falls within the areas of Harborough District (Leicestershire County) and Rugby Borough (Warwickshire County). Administrative boundaries are shown on the Location Plan (document reference: 2.27).

4. PLANS AND OTHER DOCUMENTS

- 4.1 The documentation submitted with the Application is described in the Guide to Application (document reference: 1.4) and includes all the plans and documents required to comply with Regulation 5(2) of the 2009 Regulations.
- 4.2 The plans submitted with the Application include:

- (i) A **Site Location Plan** identifying the site and the administrative boundaries (document reference: 2.1);
- (ii) **Land Plans** (pursuant to Regulation 5(2)(i) – document series: 2.20) showing the land affected by the development and the land subject to compulsory acquisition powers;
- (iii) **Works Plans** (pursuant to Regulation 5(2)(j) - document series: 2.2) identifying the areas for the different works which are referred to in Schedule 1 in the Draft DCO (document reference: 3.1) and, where appropriate, show limits of deviation;
- (iv) **Access and Rights of Way Plans** (pursuant to Regulation 5(2)(k) – document series: 2.3) 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 Plans** (pursuant to Regulation 5(2)(o) - document series: 2.12) which identify the parameters with which the Works must comply;
- (vi) **Highway Plans** (pursuant to Regulation 5(2)(o) – document series: 2.4). These show the various elements of the highway mitigation;
- (vii) **Highway Classification Plans** (document series: 2.5), **Traffic Regulation Plans** (document series: 2.6) and **Speed Limit Plans** (document series: 2.7). These plans deal with the changes to the regulation of the highways as a result of the highway works;
- (viii) **Railport General Arrangement Plans** (document series: 2.25), **Railport Line Diagram** (document reference: 2.22), and **Rail Sections Plans** (document series: 2.23) - (pursuant to Regulation 5(2)(o)). These plans illustrate the rail infrastructure for which authority is sought and the rail terminal;
- (ix) An **Illustrative Masterplan and Illustrative Context Masterplan** (document references: 2.8 and 2.9), are 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 Plans (document series: 2.12); and
- (x) **Other Plans:**
 - **Crown Land Plans** – (Pursuant to Regulation 5(2)(n) (document series: 2.26) – these plans identify the crown land within the Order limits.

- **Order Limits Plan** (Pursuant to Regulation 5(2)(o) (document reference: 2.27) – this plan shows the extent of the land covered by the draft DCO.
- **Bridge Plan** (pursuant to Regulation 5(2)(o) (document reference: 2.19) – this plans show the indicative general arrangement of the proposed bridge of the A47 Link Road over the railway.
- **Indicative Phasing & Works Plans** (document series: 2.18) – these plans show the indicative phasing / order of the development on the Main Site.

5. THE DRAFT ORDER

- 5.1 This section of the memorandum explains each Article and Schedule of the draft DCO submitted with the Application (document reference: 3.1), as required by Regulation 5(2)(c) of 2009 Regulations (as amended).
- 5.2 Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the ‘Model Provisions’) has been repealed, the drafting of the DCO has been developed using the Model Provisions as a starting point, and has taken into account other approved Development Consent Orders. In particular, regard has been had to The East Midlands Gateway Rail Freight Interchange and Highway Order 2016³, The Northampton Gateway Rail Freight Interchange Order 2019⁴ and The West Midlands Rail Freight Interchange Order 2020⁵ given their particular relevance as rail freight DCOs. Additionally, other recently approved DCO have been considered and mention of those is included in this document.

PART 1 - PRELIMINARY

Preamble

- 5.3 The draft DCO begins with a preamble, as with all statutory instruments. The preamble includes reference to section 131(5) of the 2008 Act because the draft DCO includes special category land (namely Common Land). The inclusion of Common Land in the DCO is explained further in the explanation of Part 5 below, and in the Statement of Reasons (document reference: 4.1).

³ S.I. 2016 No. 17

⁴ S.I. 2019 No 1358

⁵ S.I. 2020 No. 511

Article 1 (Citation and commencement)

- 5.4 This Article sets out the name of the Order and states the date on which it comes into force.

Article 2 (Interpretation)

- 5.5 This Article principally comprises the definition of terms used throughout the draft DCO.
- 5.6 The definitions are straightforward and are not explained in detail in this document, however one definition of note which is different from most other DCOs (apart from those for rail freight developments) is that of “**undertaker**” – this expressly refers to Tritax Symmetry (Hinckley) Limited and includes (in respect of the main site only), those persons who have the benefit of the DCO in accordance with section 156 of the Planning Act 2008, once the development has commenced. Article 7 restricts the benefit of the DCO in certain respects to the Tritax Symmetry (Hinckley) Limited only.
- 5.7 The remainder of Article 2 is consistent with many other DCOs including The West Midlands Rail Freight Interchange Order 2020⁶, The Northampton Gateway Rail Freight Interchange Order 2019⁷ and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016⁸ and sets out further matters relating to interpretation.

PART 2 - PRINCIPAL POWERS

Article 3 (Development consent granted by the Order)

- 5.8 This Article provides development consent for the authorised development to be carried out and used within the Order Limits subject to the provisions of the draft DCO and to the requirements.
- 5.9 The Article includes the reference to the authorised development being “used” specifically to ensure that the consent for use of the whole of the authorised development is covered. Section 157 of the 2008 Act authorises the use of *buildings* in respect of which development consent is granted, but there is no similar provision related to land. Further, although “use” is also expressly included in Articles 5 (for the rail infrastructure and warehousing) and 40 (for the railway system), in those Articles, the “use” provision relates only to some specific works.

⁶ S.I. 2020 No. 511

⁷ S.I. 2019 No 1358

⁸ S.I. 2016 No. 17

Article 4 (Parameters of authorised development)

- 5.10 This Article is included in the draft DCO pursuant to section 115 of the 2008 Act and identifies by reference to the Parameters Plans (document series: 2.12), the Works Plans (document series: 2.2), the Highway Plans (document series 2.4) and the railway plans (document series: 2.23 – 2.25), the parameters and limits of deviation within which the authorised development must be carried out. The Parameters Plans provide the parameters for the Main Site, the Works Plans show the maximum extent of the areas within which the Works (defined in Schedule 1 of the draft DCO) may take place and provide the lateral limits of deviation for Work Nos. 4 and 7. Article 4(3) also provides that any Work which has a boundary with Work No. 4 or 7 may move to abut Work 4 or 7 in the event that Work 4 or 7 deviates within its permitted limits of deviation. The highway plans provide the vertical limits of deviation for the highway works and the rail plans provide the vertical limits of deviation for the rail works.
- 5.11 The Parameters Plans are the basis of the environmental assessment that has been carried out. The plans identify the parameters of the authorised development on the Main Site which are secured through Article 4. They identify the parameters that apply to each development zone and set out the maximum zone floorspace, maximum overall floorspace, the finished floor levels and building height range. 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 Planning Inspectorate Advice Note 9 “Using the Rochdale Envelope⁹”.
- 5.12 The detail of the authorised development (aside from the highway works) which is not set out on the Parameters Plans will be approved following the grant of the draft DCO and through the submission of details to the local planning authority pursuant to the requirements contained in Schedule 2 (Requirements) of the draft DCO. This would include, for example, location and height of buildings and ecological mitigation details.
- 5.13 The detail of the highway works will be approved through the provisions of the relevant protective provisions with the appropriate highway authority (Parts 2 and 3 of Schedule 13). The design of those works are required to be in accordance with the Highway Plans (document series: 2.4).
- 5.14 This approach is in accordance with the guidance set out in the Planning Inspectorate’s Advice Notes 9¹⁰ and 15¹¹.

⁹ Rochdale Envelope: Version 3, republished July 2018

¹⁰ Rochdale Envelope: Version 3, republished July 2018

¹¹ Drafting Development Consent Orders: Version 2, republished July 2018

- 5.15 The Article allows for exceptions to the application of the limits of deviation where the relevant planning authority are satisfied that it would not result in any materially new or materially different significant effects on the environment that have not been assessed in the Environmental Statement (document reference: 6.1).
- 5.16 This approach was authorised in The Northampton Gateway Rail Freight Interchange Order 2019¹² and has previously been considered to be an acceptable principle. This Article is consistent with the relevant Article in that Order¹³.

Article 5 (Authorisation of Use)

- 5.17 This Article gives express authorisation of the use of Work No. 1 to 7, pursuant to section 157 of the 2008 Act. It authorises the operation and use of the rail freight terminal and warehousing and ensures that ancillary uses apply in the same way as if the rail terminal and/or warehousing were built pursuant to a planning permission.
- 5.18 The Article follows the approach taken in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order ¹⁴ and other more recent Development Consent Orders¹⁵.

Article 6 (Maintenance of authorised development)

- 5.19 This Article is based upon Article 3 of the Model Provisions and provides for the maintenance of the authorised development (apart from the highway works, the maintenance of which is covered by Article 15).
- 5.20 The inclusion of this Article is permitted by section 120(3) of the 2008 Act because maintenance of the authorised development is clearly “related” to the consent. The Article permits any activity within the definition of “maintain” as per Article 2, but does not authorise any maintenance activity which would be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the Environmental Statement (document reference 6.1) or in any updated environmental information submitted pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017¹⁶.

Article 7 (Benefit of Order)

¹² S.I. 2019 No 1358 (Article 4)

¹³ Article 4

¹⁴ SI 2014 No. 2384 (Article 4)

¹⁵ The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) (Article 5) and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511) (Article 5).

¹⁶ S.I. 2017 No. 572 (as amended)

- 5.21 The DCO will benefit the “undertaker”, as defined. In the case of the Main Site, this includes all parties who qualify under section 156 of the 2008 Act, once the development commences. However, some powers will benefit only TSH as follows:
- (a) Part 5 (Powers of Acquisition) will be for the sole benefit of TSH 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 TSH will 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 (Protective Provisions) unless the Secretary of State consents to a transfer of those powers or the relevant highway authority takes over responsibility for carrying out the highway works in default of the undertaker, pursuant to the provisions of Parts 2 and 3 of Schedule 13 (Protective Provisions).
- 5.22 The application of the compulsory acquisition powers to TSH only is appropriate due to the need to provide security on the ability to fund any potential compensation due as a result of the exercise of those powers.
- 5.23 It is considered that the power to carry out the highway works should be restricted to the named undertaker as opposed to being available to all the owners of the land interests within the Order Limits, so that TSH, as the developer of the site overall, can ensure the comprehensive delivery of the highway infrastructure.
- 5.24 Sub-paragraph 4 is included to ensure that any works which may be carried out by other parties under the Protective Provisions are authorised.
- 5.25 This wording has been included in other Orders such as the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016¹⁷, The Northampton Gateway Rail Freight Interchange Order 2019¹⁸ and The West Midlands Rail Freight Interchange Order 2020¹⁹.

Article 8 (Transfer of the benefit of certain provisions of the Order)

- 5.26 This Article is included to set out the procedure to be followed in the event that a request to transfer the benefit of Part 5 and/or Parts 2 and 3 of Schedule 13 (Protective Provisions) is made to the Secretary of State, as permitted by Article 7(2) and (3)(a).

¹⁷ S.I. 2016 No. 863 (Article 7)

¹⁸ S.I. 2019 No 1358 (Article 7)

¹⁹ S.I. 2020 No. 511 (Article 7)

- 5.27 This Article is based on Article 5 of the Model Provisions but contains a requirement to consult with the Secretary of State prior to seeking their consent for a transfer and provisions relating to the giving of notice to the Secretary of State prior to such transfer taking effect.

PART 3

STREETS

Article 9 (Street works)

- 5.28 This Article permits the carrying out of, on the streets specified in Schedule 3 (Streets subject to street works), the works described in the Article for the purposes of the authorised development.
- 5.29 The inclusion of this Article in the draft DCO provides a statutory right to undertake street works within the specified streets and means that the undertaker will not need to obtain a separate licence from the street authority under the New Roads and Street Works Act 1991.
- 5.30 This Article is based on Article 8 of the Model Provisions although it includes a more extensive list of potential works than Model Provision 8. The extended list of potential works is the same as that included in other Orders such as The West Midlands Rail Freight Interchange Order 2020²⁰.

Article 10 (Power to alter layout, etc., of streets)

- 5.31 This Article is not included in the Model Provisions but is included in similar form in in many other Development Consent Orders including the recent Southampton to London Pipeline Order 2020²¹.
- 5.32 The inclusion of the Article in the draft DCO is authorised pursuant to section 120(3) of the 2008 Act since any necessary works are related to the authorised development.
- 5.33 This Article relates to the roads in the main site which will be maintained as private roads. Any alteration to those roads will still require the consent of the local highway authority, notwithstanding that they are private roads. A deemed consent provision has been included to ensure there is timely a route to a decision.
- 5.34 This deemed consent approach is increasingly incorporated in many DCOs, , for example, see the National Grid (Hinkley Point C Connection Project) Order²²

²⁰ S.I. 2020 No. 511 (Article 8)

²¹ S.I. 2020 No. 1099 (Article 10)

²² S.I. 2016 No. 49 (Article 12)

(although it is noted this had a shorter 28 day period). It was also included, with the 42 day period as is proposed here, in The Northampton Gateway Rail Freight Interchange Order 2019²³ and The West Midlands Rail Freight Interchange Order 2020²⁴.

Article 11 (Permanent stopping up of streets)

- 5.35 This Article is based on Article 9 of the Model Provisions and allows the stopping up of streets permanently. Schedule 4 (Streets to be permanently stopped up for which no substitute is to be provided) of the draft DCO identifies the lengths of street that are to be permanently stopped up and the stage of the authorised development at which the stopping up is to take place. The extents of stopping up are shown on the Access and Rights of Way Plans (document series: 2.3). The Article makes provision for all rights of way in the stopped up streets to be extinguished. Provision is also made for the payment of compensation.
- 5.36 The Article is similar to the Article included in East Midlands Gateway Rail Freight Interchange and Highway Order 2016²⁵.
- 5.37 The power is authorised by section 120(3) by virtue of the stopping up being related to the authorised development, and its inclusion in the draft DCO is also specifically authorised by section 120(4) and paragraph 17 of Part 1 of Schedule 5 to the 2008 Act, since all of the streets to which this Article applies which are to be permanently stopped up are highways.

Article 12 (Temporary closure of streets)

- 5.38 This Article provides for the temporary closure of streets for the purpose of carrying out the authorised development. It is included in the draft DCO to ensure that the undertaker has the power to close streets temporarily should it be necessary. As with Article 11, the inclusion of the power is authorised by section 120(3) (i.e. by virtue of the temporary closure being related to the authorised development), section 120(4) and paragraph 17 of Part 1 of Schedule 5 to the 2008 Act.
- 5.39 The Article is largely based on the Model Provision Article 11 save that it does not specify any streets to be temporarily stopped up at this stage because that is not considered necessary and the Article is drafted so that the prior consent of the street authority is required before any streets are stopped up temporarily.

²³ S.I. 2019 No 1358 (Article 9)

²⁴ S.I. 2020 No. 511 (Article 9)

²⁵ S.I. 2016 No. 17 (Article 11)

- 5.40 The Article is similar to many other DCOs, for example, the M20 Junction 10a Order 2017²⁶, The Northampton Gateway Rail Freight Interchange Order 2019²⁷ and The West Midlands Rail Freight Interchange Order 2020²⁸.

Article 13 (Public rights of way – creation, substitution, stopping up and closure of level crossings)

- 5.41 This Article is included in the draft DCO to allow for the creation, substitution, stopping up of rights of way affecting land within the Order Limits (see tables at paragraphs 5.46 and 5.48 below for details of rights of way being created, substituted or stopped up) and for the closure of level crossings (see table at paragraph 5.50 below for details of level crossing affected) as well as temporary closure of a public right of way (U50/1 – see access and rights of way plan – document reference 2.3B). It is necessary for some public rights of way to be stopped up and substitutes provided and for the closure of the level crossings identified in order for the authorised development to be carried out.
- 5.42 This Article is similar in nature to articles found in other Orders such as The West Midlands Rail Freight Interchange Order 2020²⁹, The Northampton Gateway Rail Freight Interchange Order 2019³⁰ and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016³¹.
- 5.43 The inclusion of a power to stop up a public right of way is permitted by section 136 of the 2008 Act, if the Secretary of State is satisfied that an alternative right of way will be provided, or an alternative is not required.
- 5.44 Schedule 5 (Public rights of way) of the draft DCO identifies the public rights of way affected by the draft DCO. Part 1 specifies the extent of the permanent stopping up and the substitute public rights of way to be created. The exact alignments of the new rights of way are to be agreed between the undertaker and the local highway authority. Schedule 5 (Public rights of way) fixes only the terminus points for those new rights of way. These terminus points are shown on the Access and Rights of Way Plans (document series 2.3).
- 5.45 It is considered that proposed the substitute rights of way are proportionate to the extent of stopping up.

²⁶ S.I. 2017 No. 1202 (Article 14)

²⁷ S.I. 2019 No 1358 (Article 11)

²⁸ S.I. 2020 No. 511 (Article 11)

²⁹ S.I. 2020 No. 511 (Article 12)

³⁰ S.I. 2019 No 1358 (Article 12)

³¹ S.I. 2016 No. 17 (Article 12)

5.46 Part 2 of Schedule 5 (Public rights of way) identifies the existing rights of way which will be permanently stopped up for which no substitute is to be provided. These are also set out in the table below:

PROW Stopped Up	Extent of Stopping Up	Reason no substitute is provided
V23/1	The dashed green line between point 9 and point 11 on the access and rights of way plan (document reference: 2.3A)	Area to be redeveloped as a private railport with no public access.
U50/3	The dashed green line between point 10 and point 12 on the access and rights of way plan (document reference: 2.3A)	Area to be redeveloped as a private railport with no public access.
U52/6	The dashed green line between point 4 and point 32 on the access and rights of way plan (document references: 2.3A and 2.3C)	Alternative route provided via new bridleway and footway on A47 link road
U52/7	The dashed green line between point 32 and point 3 on the access and rights of way plan (document reference: 2.3A)	Alternative route provided along footway on A47 link road
V35/2	The dashed green line between point 29 and point 32 on the access and rights of way plan (document references: 2.3A and 2.3D)	Alternative route provided along footway on A47 link road
U50/2	The dashed green line between point 28 and point 29 on the access and rights of way plan (document references: 2.3A and 2.3D)	Alternative route provided along footway on estate roads

PROW Stopped Up	Extent of Stopping Up	Reason no substitute is provided
U53/1	The dashed green line between point 30 and point 31 on the access and rights of way plans (document references: 2.3A and 2.3D)	Alternative route provided via permissive footpath/cyclepath associated with estate road
T89/1	The dashed green line between points 24 and point 25 and point 26 on the access and rights of way plan (document reference: 2.3B)	This PROW is being stopped up as part of the necessary level crossing closure and for safety reasons, because the exit onto the B581 at point 24 is considered to be unsafe. The closure of the level crossing means that there can be no substitute provided, however, the existing route from point 26 to the B581 via Bostock Close remains

5.47 The Article also provides for the creation of new public rights of way as part of the authorised development (being wholly new and not provided as a result of the stopping up and substitution of an existing right of way). The reason for which the provisions relating to the creation of the public rights of way are included in the draft DCO is to facilitate the development and therefore their creation is clearly “related” to the authorised development pursuant to section 120(3) of the 2008 Act.

5.48 The new rights of way are detailed in Part 3 of Schedule 5 and their purpose and how they relate to the development are set out in the table below.

New Public Right of Way	Purpose
The bridleway shown with a solid yellow line between points 5 and 7 on the access and rights of way plan (document references: 2.3A, 2.3C and 2.3D)	Provide amenity route around the southern boundary of the Main HNRFI Site

New Public Right of Way	Purpose
The footpath shown dashed brown between points 8 and 10 on the access and rights of way plan (document reference: 2.3A)	To enable access over or under the railway line via A47 Link Road or Burbage Common Underbridge
The footpath shown dashed brown between points 33 and 34 on the access and rights of way plan (document references: 2.3A and 2.3D)	To provide direct stepped access to A47 Link Road footway from proposed bridleway
The footpath shown dashed brown between points 35 and 36 on the access and rights of way plan (document references: 2.3A and 2.3D)	To provide ramped access to A47 Link Road footway from proposed bridleway
The bridleway shown with a solid yellow line between points 7 and 18 on the access and rights of way plan (document reference: 2.3D)	To provide amenity route around the southern boundary of the Main HNRFI Site
The bridleway shown with a solid yellow line between points 16 and 13 on the access and rights of way plan (document references: 2.3B and 2.3D)	To provide amenity route around the south-eastern and north-eastern boundaries of the Main HNRFI Site
Extension of U17/2 between points 19 and 20 shown dashed brown on the access and rights of way plan (document reference: 2.3B)	To access existing bridge over the railway line in lieu of stopped up Thorney Fields level crossing.

- 5.49 Part 4 of Schedule 5 identifies the extent of the public right of way to be temporarily closed.
- 5.50 The closure of the level crossings identified on the Access and Rights of Way Plans (document series: 2.3) and referred to in Article 13(5) is required as part of the authorised development for the reasons set out in the table below.

Level Crossing	Reason for closure
Barwell level crossing	Development of the rail terminal prevents viable crossing in this location. Route diverted as part of the scheme design over new A47 Link Bridge.
Earl Shilton level crossing	Development of the rail terminal prevents viable crossing. Route diverted as part of the scheme design over new A47 Link Bridge.
Elmesthorpe level crossing	If a west bound 775m freight train was held at a red signal prior to accessing the terminal, it would obstruct the crossing, which could lead to dangerous misuse. Pedestrian route diverted via existing bridge.
Thorney Fields level crossing	If a west bound 775m freight train was held at a red signal prior to accessing the terminal, whilst it would not block the level crossing, it would partially obstruct the line of sight for pedestrians crossing south to north, potentially giving them insufficient time to complete their crossing, if there is an oncoming train in the other direction. Pedestrian route diverted via an existing bridge.
Outwoods level crossing	If an east bound 775m freight train was held at a red signal prior to accessing the terminal, whilst it would not block the level crossing, it would partially obstruct the line of sight for pedestrians crossing north to south, potentially giving them insufficient time to complete their crossing, if there is an oncoming train in the other direction. The level crossing to be replaced by a new footbridge providing equivalent access.

Article 14 (Accesses)

5.51 This Article is included to allow for new access to be provided or existing accesses to be altered. Any works under this Article require prior consent from the relevant highway authority or, in the case of private streets, the street authority

(save for those which are included and defined as part of the authorised development which will not require any further consent other than through the provisions of Parts 2 and 3 of Schedule 13 (Protective Provisions).

- 5.52 Paragraph 4 provides for alterations to private means of access to be carried out (as detailed in Part 1 of Schedule 6 (Private means of access)) to enable the carrying out and use of the highway works.
- 5.53 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 (Private means of access). 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 shown coloured blue and labelled D on the access and rights of way plan (document reference: 2.3A)	Existing field served by the access will be developed over therefore access is no longer required.
The private means of access shown coloured blue and labelled G on the access and rights of way plan (document reference: 2.3A)	Existing field served by the access will be developed over therefore access is no longer required.
The private means of access shown coloured blue and labelled H on the access and rights of way plan (document reference: 2.3A)	Existing field served by the access will be developed over therefore access is no longer required.
The private means of access shown coloured blue and labelled I on the access and rights of way plan (document reference: 2.3A)	Existing access to railway no longer required due to new rail terminal.
The private means of access shown coloured blue and labelled J on the access and rights of way plan (document reference: 2.3A)	Existing access to railway no longer required due to new rail terminal.

Private Means of Access	Reason why no substitute to be provided
The private means of access shown coloured blue and labelled K on the access and rights of way plan (document reference: 2.3A)	Existing access to railway no longer required due to new rail terminal.
The private means of access shown coloured blue and labelled L on the access and rights of way plan (document reference: 2.3A)	Existing access to railway no longer required due to new rail terminal.
The private means of access shown coloured blue and labelled M on the access and rights of way plan (document reference: 2.3A)	Existing access to railway no longer required due to new rail terminal.
The private means of access shown coloured blue and labelled N on the access and right of way plan (document reference: 2.3A)	Existing dwelling served by access to be developed over therefore access no longer required.
The private means of access shown coloured blue and labelled O on the access and rights of way plan (document reference: 2.3A)	Existing field served by the access to be developed over and therefore access is no longer required.
The private means of access shown coloured blue and labelled P on the access and rights of way plan (document reference: 2.3A)	Existing dwelling served by the access to be developed over and therefore access no longer required.
The private means of access shown coloured blue and labelled Q on the access and rights of way plan (document reference: 2.3A)	Existing dwelling served by the access to be developed over and therefore access no longer required.

Private Means of Access	Reason why no substitute to be provided
The private means of access shown coloured blue and labelled R on the access and rights of way plan (document reference: 2.3A)	Existing dwelling served by the access to be developed over and therefore access no longer required.
The private means of access shown coloured blue and labelled S on the access and rights of way plan (document reference: 2.3A)	Existing field served by the access to be developed over and therefore the access no longer required
The private means of access shown coloured blue and labelled T on the access and rights of way plan (document reference: 2.3A)	Existing dwelling served by the access to be developed over and therefore the access is no longer required.
The private means of access shown coloured blue and labelled U on the access and rights of way plan (document reference: 2.3B)	Existing field served by the access to be developed over and therefore the access no longer required.
The private means of access shown coloured blue and labelled V on the access and rights of way plan (document reference 2.3 B)	Existing field served by the access to be developed over and therefore the access no longer required.
The private means of access shown coloured blue and labelled W on the access and rights of way plan (document reference: 2.3B)	Existing field served by the access to be developed over and therefore the access no longer required.
The private means of access shown coloured blue and labelled AB on the access and rights of way plan (document reference: 2.3D)	Existing dwelling and fields served by the access to be developed over therefore the access is no longer required.

5.54 Paragraph 6 allows the provision of 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 marked C and shown hatched green on the access and rights of way plan (document reference: 2.3A)	New access needed into existing field due to severance resulting from the new link road.
The private means of access marked AC and shown hatched green on the access and rights of way plan (document reference: 2.3B)	New maintenance access route to drainage attention structure.
The private means of access marked X and shown hatched green on the access and rights of way plan (document reference: 2.3B)	New maintenance access route to drainage attention structure.
The private means of access shown coloured blue and labelled AD on the access and rights of way plan (document reference: 2.3D)	Access point for main development internal link road.
The private means of access shown coloured blue and labelled AE on the access and rights of way plan (document reference: 2.3D)	Access point for main development internal link road.
The private means of access shown coloured blue and labelled AF on the access and rights of way plan (document reference: 2.3D)	Access point for rail terminal and container yard.
The private means of access shown coloured blue and labelled AG on the access and rights of way plan (document reference: 2.3D)	Access point for development hospitality suite.

- 5.55 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 draft DCO is to facilitate the development consented by the draft DCO, and therefore their creation is clearly related to the authorised development.
- 5.56 The Article is similar to others included in recent DCOs such as The Northampton Gateway Rail Freight Interchange Order 2019³² and The West Midlands Rail Freight Interchange Order 2020³³.

Article 15 (Maintenance of highway works)

- 5.57 This Article provides for the maintenance of the highway works. It refers to the process of certification of commencement of maintenance by the undertaker under the Protective Provisions in paragraph 6 of Part 2 and paragraph 6 of Part 3 of Schedule 13 (Protective Provisions) and deals with the dedication of new highway, cross referring to the relevant Protective Provisions.
- 5.58 The Article has precedent in The Northampton Gateway Rail Freight Interchange Order 2019³⁴ and The West Midlands Rail Freight Interchange Order 2020³⁵.
- 5.59 The inclusion of this Article 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 16 (Classification of highways)

- 5.60 This Article is required in order to make provision for the classification of new highways within the Order Limits as identified in Schedule 7 (Classification of highways) and shown on the Highway Plans (document series: 2.5).
- 5.61 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.

³² S.I. 2019 No 1358 (Article 13)

³³ S.I. 2020 No. 511 (Article 13)

³⁴ S.I. 2019 No 1358 (Article 14)

³⁵ S.I. 2020 No. 511 (Article 14)

- 5.62 This Article is based on an article in The Northampton Gateway Rail Freight Interchange Order 2019³⁶

Article 17 (Speed limits)

- 5.63 This Article is based upon articles in other DCOs, for example, The Central Bedfordshire Council (Woodside Link Houghton Regis) Order³⁷, The East Midlands Gateway Rail Freight Interchange and Highway Order,³⁸ The Northampton Gateway Rail Freight Interchange Order 2019³⁹ and The West Midlands Rail Freight Interchange Order 2020⁴⁰.
- 5.64 Paragraph 1 of this Article and Part 1 of Schedule 8 (Speed limits) provide for amendments to existing orders. The existing orders which are the subject of amendment are contained in the Speed Limit Plans (document series: 2.7).
- 5.65 The Article allows the length of the highways identified in Schedule 8 (Speed limits) to be subject to new speed limits as set out in that schedule following 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.
- 5.66 The Article also enables temporary speed limits during construction by agreement with the relevant highway authority.
- 5.67 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 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. The Article enables the alteration of speed limits over some stretches of highway which are not within the Order limits. This is because the operation of these powers does not require physical development (other than the erection of relevant signage, the areas for which are included in the Order limits) and therefore those stretches of highway do not need to be within the Order limits. This approach is consistent with that taken in The Northampton Gateway Rail Freight Interchange Order 2019⁴¹.

³⁶ S.I. 2019 No 1358 (Article 15)

³⁷ S.I. 2014 No. 2637(Article 11)

³⁸ S.I. 2016 No. 17 (Article 17)

³⁹ S.I. 2019 No 1358 (Article 16)

⁴⁰ S.I. 2020 No. 511 (Article 16)

⁴¹ S.I. 2019 No 1358 (Article 16 and see speed limit plans (Document series 2.7) relating to that DCO)

- 5.68 Paragraph 6 provides that the new speed limits set by the draft DCO 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 18 (Traffic Regulation)

- 5.69 This Article enables amendments to existing traffic regulation orders which are necessary as a result of the authorised development. Consent of the relevant traffic authority is required.
- 5.70 The Article also provides for new permanent and temporary traffic regulation orders to allow, with the consent from the relevant traffic authority, the imposition of orders which may be necessary for the carrying out of the works. These powers are similar to those contained in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014⁴² and in The Southampton to London Pipeline Order 2020⁴³.
- 5.71 The inclusion in the DCO of this power falls within section 120(3) of the 2008 Act because the need for a Traffic Regulation Order in this manner would only be required as result of the authorised development.

Article 19 (Clearways and no waiting)

- 5.72 Article 19 provides for Clearways along lengths of the new highway works. The lengths of road affected are identified in Part 1 of Schedule 9 (Traffic regulation).
- 5.73 The Article also proposes the imposition of a “no waiting at any time” traffic regulation order along the length of the A47 Link Road from the M69 roundabout along the dual carriageway part of the road to the third roundabout. These lengths of road are set out in Part 2 of Schedule 9 (Traffic regulation).
- 5.74 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.
- 5.75 This Article is based on Articles found in other Orders such as The West Midlands Rail Freight Interchange Order 2020⁴⁴, The Northampton Gateway Rail Freight

⁴² S.I. 2014 No. 2384 (Article 18).

⁴³ S.I. 2020 No. 1099 (Article 16)

⁴⁴ S.I. 2020 No. 511 (Article 18)

Interchange Order 2019⁴⁵ and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016⁴⁶.

Article 20 (Agreements with Highway Authorities)

- 5.76 This Article allows the undertaker to enter into agreements with the relevant highway authority relating to the matters listed in the Article.
- 5.77 This ability to enter into agreements might be required with the relevant highway authority to deal with matters which might not be covered by the Protective Provisions.
- 5.78 The Article is similar to a provision included in several DCOs including The National Grid (Hinkley Point C Connection Project) Order 2016⁴⁷, The Northampton Gateway Rail Freight Interchange Order 2019⁴⁸ and The West Midlands Rail Freight Interchange Order 2020⁴⁹. It is also based on Article 13 of the Model Provisions.
- 5.79 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)

- 5.80 This Article is based on Article 14 of the Model Provisions and is required in relation to the drainage of the land within the Order Limits in connection with the carrying out and maintenance of the development. 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.

Article 22 (Authority to survey and investigate the land)

- 5.81 This Article enables the undertaker to enter land within the Order Limits or which may be affected by the authorised development to survey or investigate.

⁴⁵ S.I. 2019 No 1358 (Article 18)

⁴⁶ S.I. 2016 No. 17 (Article 19)

⁴⁷ S.I. 2016 No 49 (Article 15)

⁴⁸ S.I. 2019 No 1358 (Article 20)

⁴⁹ S.I. 2020 No. 511 (Article 20)

- 5.82 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.
- 5.83 This Article follows Article 16 of the Model Provisions and is included in almost identical form in most DCOs.

PART 5

POWERS OF ACQUISITION

Article 23 (Compulsory acquisition of land)

- 5.84 This Article will authorise the compulsory acquisition of land shown on the Land Plans (document series: 2.20) and described in the Book of Reference (document reference: 4.3) 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.
- 5.85 TSH seeks powers to acquire the freehold of the land shown coloured pink on the Land Plans. There are also some parcels of land over which TSH 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 TSH seeks acquisition of leasehold/tenant interests, and those parcels are also shown pink on the Land Plans. This is explained in further detail in the Statement of Reasons (document reference: 4.1).
- 5.86 It will be noted from the Land Plans that the Order Limits include special category land. This is common land; being Burbage Common and Woods. The compulsory acquisition of common land is subject to additional restrictions under sections 131 of the PA 2008. Section 131 has the effect that a DCO which authorises the compulsory acquisition of land forming part of a common is subject to special parliamentary procedure unless the Secretary of State is satisfied that one of subsections 131(4) to 131(5) applies and that fact is recorded in the DCO. Subsection 131(5) applies if:
- 5.86.1 the land authorised to be compulsorily acquired does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway; and
 - 5.86.2 the giving in exchange of other land is unnecessary, whether in the interests of the persons (if any) entitled to rights of common or other rights or in the interests of the public.
- 5.87 This Article therefore includes a restriction on the extent of common land which may be acquired to no more than 200 square metres and therefore TSH considers

that section 131(5) PA 2008 applies. This is because the permanent land requirement for the proposed bridleway connection from the site into Burbage Common and Woods is Burbage Common and Woods will ultimately be less than 200 square metres.

- 5.88 Further detail on the inclusion of common land is provided in the Statement of Reasons (document reference: 4.1).

Article 24 (Compulsory acquisition of land – incorporation of the mineral code)

- 5.89 This Article incorporates the ‘mineral code’ into the draft DCO. This exempts the existing minerals under land being automatically acquired pursuant to the exercise of compulsory acquisition. It also enables the undertaker to prevent a minerals owner from working 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.
- 5.90 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 25 (Compulsory acquisition of rights)

- 5.91 This Article is included to allow the compulsory acquisition of existing rights and the power to create and acquire compulsorily new rights and the benefit of restrictions over the land shown on the Land Plans (document series 2.20), described in the Book of Reference (document reference 4.3). The land in which new rights may be created is listed in Schedule 11 (Land in which new rights may be created).
- 5.92 The Article is permitted by section 120(4) and paragraphs 1⁵⁰ and 2 of Part 1 to Schedule 5 of the 2008 Act.
- 5.93 The Article is based on recently approved provisions in various DCOs.⁵¹ This approach ensures that compulsory purchase is limited only to the rights that are required.
- 5.94 The approach requires a modification to compulsory purchase and compensation provisions and these are dealt with in Schedule 12 (Modifications of compensation and compulsory purchase enactments for

⁵⁰ 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.

⁵¹ e.g. The York Potash Harbour Facilities Order 2016 (S.I. 2016 No. 772) (Article 24), The Triton Knoll Electrical System Order 2016 (S.I. No 2016 No. 880) (Article 18), The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014 No. 2384), (Article 29), The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) (Article 25), and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No 511) (Article 25).

creation of new rights and restrictive covenants), which is permitted by section 120(5)(a) of the 2008 Act.

Article 26 (Power to override easements and other rights)

- 5.95 This Article ensures that where the works permitted by the draft DCO interfere with existing easements or other rights (including restrictions as to the use arising by virtue of a contract), those rights shall not present an impediment to delivery. The Article is required to provide certainty that the carrying out of the authorised development will not be prevented as a result of any third party rights.
- 5.96 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 23 and 25 of the draft DCO and its inclusion is therefore necessary to give full effect to the draft DCO; it is therefore permitted by section 120(5)(c) of the 2008 Act.
- 5.97 This Article is based on provisions included in previously granted Orders such as The West Midlands Rail Freight Interchange Order 2020⁵², The Northampton Gateway Rail Freight Interchange Order 2019⁵³ and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016⁵⁴.

Article 27 (Time limit for exercise of authority to acquire land and rights compulsorily)

- 5.98 This Article imposes a time limit of five years from the date the draft DCO comes into force for the exercise of compulsory acquisition powers.
- 5.99 The time limit for exercising the compulsory acquisition powers under Part 1 of the Compulsory Purchase Act 1965 is disapplied by section 125(3)(a) of the 2008 Act. This Article therefore imposes a time limit which is linked to the time period in which the authorised development is required to commence (see requirement 1), in accordance with section 154(3) of the 2008 Act.
- 5.100 This Article mirrors Article 20 of the Model Provisions.

Article 28 (Private Rights)

- 5.101 This Article provides that all private rights and restrictions over land which is subject to compulsory acquisition (in respect of the freehold) are extinguished and in

⁵² S.I. 2020 No. 511 (Article 27)

⁵³ S.I. 2019 No 1358 (Article 27)

⁵⁴ S.I. 2016 No. 17 (Article 26)

respect of compulsory acquisition of rights, are extinguished to the extent that those rights are inconsistent with the rights required for the authorised development.

- 5.102 The inclusion of 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 23 and 25 and its inclusion is therefore necessary to give full effect to the draft DCO; it is therefore permitted by section 120(5)(c) of the 2008 Act.
- 5.103 This Article is based on Article 22 of the Model Provisions (although the draft DCO refers to ‘private rights and restrictions’ rather than ‘private rights of way’) and is also found in a similar form to that included here within West Midlands Rail Freight Interchange Order 2020⁵⁵ and the Northampton Gateway Rail Freight Interchange Order 2019⁵⁶ (which also refers to ‘private rights and restrictions’ and therefore mirrors the draft DCO providing precedent for this approach).

Article 29 (Rights under or over streets)

- 5.104 Article 29 provides the power to occupy land above or below streets (save those which are within the strategic road network) within the Order Limits without having to acquire that land. Compensation is payable for any loss or damage to structures along the relevant street.
- 5.105 This Article is required to enable the carrying out of the authorised development and it therefore permitted by section 120(3) of the 2008 Act.
- 5.106 This Article mirrors Article 27 of the Model Provisions.

Article 30 (Application and modification of the 1981 Act)

- 5.107 This Article is based on Article 23 of the Model Provisions and provides for the application of the vesting declaration procedure to the compulsory acquisition under the draft DCO. It also reflects the recently enacted amendments to the Compulsory Purchase (Vesting Declarations) Act 1981 made by the Housing and Planning Act 2016.
- 5.108 The application of the Compulsory Purchase (Vesting Declarations) Act 1981 is permitted by section 120(5)(a) of the 2008 Act.

Article 31 (Modification of Part 1 of the 1965 Act)

⁵⁵ S.I. 2020 No. 511 (Article 26)

⁵⁶ S.I. 2019 No 1358 (Article 26)

- 5.109 This Article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the draft DCO by section 125 of the 2008 Act. The modification of those provisions is permitted by section 120(5)(a) of the 2008 Act.
- 5.110 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 draft DCO.
- 5.111 This Article is in line with the equivalent provision found in other Orders such as The West Midlands Rail Freight Interchange Order 2020⁵⁷.

Article 32 (Temporary use of land for carrying out the authorised development)

- 5.112 This Article allows the occupation of the land specified in Schedule 10 (Land over which temporary possession may be taken) temporarily while the works are carried out, and also any of the land identified for permanent acquisition that has not yet been acquired.
- 5.113 The Article also makes provision for the time limit for return of the land, restoration and payment of compensation.
- 5.114 Paragraph (12) incorporates section 13 of the Compulsory Purchase Act 1965 and applies it to the temporary use of the land to which this Article applies. Section 13, which allows enforcement of possession, is automatically applied to the powers in Articles 23 to 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.
- 5.115 This Article is taken from Article 28 of the Model Provisions with a couple of minor modifications to include use of the land for the purposes of a working site with access in connection with the authorised development and to construct or carry out works (including mitigation works or operations) or the use of the land for the purpose of the authorised development. These modifications are the same as granted in the recent The Northampton Gateway Rail Freight Interchange Order 2019⁵⁸.

Article 33 (Temporary use of land for maintaining authorised development)

- 5.116 This Article allows the undertaker to take temporary possession of land within the Order Limits to maintain the authorised development during the five year

⁵⁷ S.I. 2020 No. 511 (Article 30)

⁵⁸ S.I. 2019 No 1358 (Article 34)

maintenance period (being the five years from when the relevant part of the development is first brought into use).

- 5.117 The Article follows Article 29 of the Model Provisions and its inclusion in the draft DCO 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 34 (Statutory Undertakers)

- 5.118 This Article allows, subject to the Protective Provisions, the acquisition of rights over any land within the Order Limits belonging to statutory undertakers. In addition it allows the construction of the authorised development in a way which may cross underneath or over apparatus belonging to a statutory undertaker. Finally it allows the extinguishment of rights of statutory undertakers and the replacement, renewal, repositioning, altering and/or supplementing of apparatus belonging to statutory undertakers within the Order Limits.
- 5.119 The inclusion of the Article is authorised by section 127(2) and (3) and section 138 of the 2008 Act.
- 5.120 TSH 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.
- 5.121 This Article is based on Article 31 of the Model Provisions with minor modifications to additionally allow the development to be constructed in such a way as to cross over or under apparatus belonging to statutory undertakers.

Article 35 (Apparatus and rights of statutory undertakers in stopped up streets)

- 5.122 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 draft DCO.
- 5.123 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 36 (Recovery of costs of new connections)

- 5.124 This Article provides that where any apparatus of a public utility undertaker or public communications provider is removed under Article 35, a person who is affected by interruption in supply is entitled to compensation for expenditure reasonably incurred in effecting an alternative supply.
- 5.125 The Article is linked to Article 35 and its inclusion is therefore authorised by section 120(3) of the 2008 Act.
- 5.126 This Article is taken from Article 33 of the Model Provisions.

Article 37 (No double recovery)

- 5.127 This Article is based on other recent DCOs⁵⁹ and secures the established principle that a claimant in compulsory purchase is to be compensated for no more and no less than his loss. It ensures that compensation is not payable in respect of the same loss or damage under both the draft DCO and other compensation regimes.
- 5.128 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.

Article 38 (Guarantees in respect of payment of compensation)

- 5.129 This Article is included as security in respect of payment of compensation for any interests which are affected by the exercise of the relevant compulsory powers listed. 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 depending on which administrative area the proposed acquisition is situated in.
- 5.130 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.

⁵⁹ e.g. The Triton Knoll Electrical System Order 2016 (S.I. 2016 880) (Article 28), The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) (Article 37) and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No 511) (Article 37)

- 5.131 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 Orders⁶⁰.
- 5.132 This Article is similar to the equivalent provisions contained in, The Northampton Gateway Rail Freight Interchange Order 2019⁶¹ and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016⁶².

Article 39 (Crown Rights and special category land)

- 5.133 This Article is included to avoid prejudice to the Crown in respect of its estates, rights, powers, privileges, authorities or exemptions and prevents any interference by the undertaker with any of these items listed.
- 5.134 Paragraph 3 allows for consent to be given by the Crown where such interference is required which may be given unconditionally or subject to conditions.
- 5.135 This Article is similar to the equivalent provision contained in other DCOs such as The Southampton to London Pipeline Project⁶³.
- 5.136 The Article also includes the appropriate wording to reflect the inclusion in the DCO of the common land as mentioned above. It ensures that any rights attaching to the common are discharged for the purposes of the exercising of the powers for the bridleway connection.

PART 6

MISCELLANEOUS AND GENERAL

Article 40 (Operation and Use of Railways)

- 5.137 This Article is based on Article 41 contained within Schedule 2 of the Model Provisions (Model Provisions for Railways). It has been included as the authorised development includes 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

⁶⁰ e.g. The Triton Knoll Electrical System Order 2016 (S.I. 2016 880) (Article 37) The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) (Article 23) and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No 511) (Article 23).

⁶¹ S.I. 2019 No 1358 (Article 23)

⁶² S.I. 2016 No. 17 (Article 24)

⁶³ S.I. 2020 No.1099 (Article 32)

authorised development will not be used for passenger trains. The provision is included pursuant to sections 115 and 120(3) of the 2008 Act.

Article 41 (Operational land for the purposes of the 1990 Act)

5.138 This Article ensures that land within the Order Limits shall be treated as operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. The provision is included pursuant to sections 115 and 120(3) of the 2008 Act.

5.139 This Article mirrors Article 36 of the Model Provisions.

Article 42 (Charges)

5.140 This Article is based on Article 42 at Schedule 2 of the Model Provisions (Model Provisions for Railways). It allows the undertaker to levy charges for the carrying of items and goods on the railway, or for other services or facilities connected to its operation. Amendments from the Article contained in the Model Provisions have been included, 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 43 (Defence to proceedings in statutory nuisance)

5.141 This Article is based upon Article 7 in the Model Provisions and appears in other approved DCOs. It provides a defence to proceedings brought in relation to a nuisance in certain circumstances. The Article is included as authorised by section 158 of the 2008 Act. The Statutory Nuisance Statement (document reference: 14.1) provides an explanation of TSH's assessment of whether any nuisance would arise.

Article 44 (Felling or lopping of trees and removal of hedgerows)

5.142 This Article is based upon Article 39 in the Model Provisions. It enables the undertaker to fell or lop any tree hedgerow or shrub near the authorised development, or cut back its roots, where the undertaker reasonably believes that it is necessary to prevent the tree hedgerow or shrub from interfering with the authorised development. This power is subject to some exceptions and restrictions however (e.g. the provisions do not without the agreement of the relevant highway authority to any tree or hedgerow within a highway) . It is included pursuant to sections 120(3) and 120(4) and paragraph 13 of Part 1 to Schedule 5 of the 2008 Act.

5.143 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.

- 5.144 The Article also allows for the felling, lopping or cutting back of trees subject to a tree preservation order, with the consent of the relevant planning authority. The Article follows the guidance in paragraph 22 of Advice Note Fifteen: Drafting Development Consent Orders⁶⁴.

Article 45 (Protective Provisions)

- 5.145 The Article gives effect to the Protective Provisions which are contained in Schedule 13 (Protective Provisions) referred to further below.

Article 46 (Governance of requirements and governance of protective provisions relating to highway works)

- 5.146 The Article is included to ensure that the draft DCO provides flexibility for the detail of the authorised development to be approved pursuant to requirements (and in the case of the highway works, protective provisions) but to keep such detail within the scope of the authorised development as set out in the draft DCO and within the scope of what has been environmentally assessed.
- 5.147 Paragraph (1), highlights that all initial approvals under the requirements and Part 2 and 3 of Schedule 13 (Protective Provisions) are governed by Article 4. This paragraph prevents details being approved which would lead to a form of development outside the scope of that which has been assessed. Paragraph (2) in accordance with Advice Note Fifteen: Drafting Development Consent Orders⁶⁵ and makes it clear that approvals may subsequently be amended but any changes to approved details must not extend beyond the parameters of what has been assessed.
- 5.148 The flexibility that is allowed for is essential. If no provision is made for the subsequent approval of details (and variations within the constraints referred to) then the development would be significantly disadvantaged against other large scale distribution sites and its ability to compete with those sites for occupiers would be adversely affected.
- 5.149 This Article is based on similar articles in other granted orders such as The West Midlands Rail Freight Interchange Order 2020⁶⁶.

Article 47 (Disapplication, application and modification of legislative provisions)

⁶⁴ Drafting Development Consent Orders: (Version 2) Republished July 2018

⁶⁵ Drafting Development Consent Orders: (Version 2) Republished July 2018

⁶⁶ S.I. 2020 No. 511 (Article 43)

- 5.150 As permitted by section 120(5) of the 2008 Act, this Article incorporates and modifies legislative provisions which are necessary for carrying out the authorised development.
- 5.151 Article 47(1) removes the need for additional consents to make use of the “one stop shop” and avoid having to obtain a separate consent governing the same development.
- 5.152 Article 47(2) ensures that the provisions in the Neighbourhood Planning Act 2017 relating to temporary possession do not apply to the temporary possession of land under Articles 32 and 33 of the DCO. The provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and therefore it is considered appropriate to apply the temporary possession regime which has been included in previous DCOs and Orders made under the Transport and Works Act 1992 to date instead.
- 5.153 Article 47(3) provides that development carried out pursuant to a planning permission following implementation of the draft DCO would not be in breach of the draft DCO, removing the risk of criminal liability pursuant to section 161 of the 2008 Act. This also includes any development authorised by a general development order as well as an express planning permission. In addition the Article is designed to ensure that any implementation of a subsequent planning permission would not prevent the further construction, maintenance or use of the authorised development under the draft DCO. This wording is deemed prudent and necessary following the ruling in *Hillside Parks Ltd (Appellant) v Snowdonia National Park Authority*⁶⁷. This Article follows Article 5(2) of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016⁶⁸ except for the addition of the wording relating to the *Hillside* judgement which is without precedent as far as TSH are aware due to the recent nature of the judgment.
- 5.154 Article 47(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 Plans (document series: 2.12). Again, making use of the “one stop shop” approach, this removes the need to obtain a further consent for the advertisement boards required for the development. This approach has been included in previously granted orders including, The Northampton Gateway Rail Freight Interchange Order 2019⁶⁹ and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016⁷⁰.

⁶⁷ [2022] UKSC 30

⁶⁸ S.I. 2016 No. 17

⁶⁹ S.I. 2019 No 1358 (Article 45)

⁷⁰ S.I. 2016 No. 17(Article 8)

- 5.155 Article 47(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 DCOs.⁷¹
- 5.156 Article 47(6) - Schedule 15 refers to miscellaneous 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 Water Utilities Limited (Thames Tideway Tunnel) Order 2014⁷² and many subsequent DCOs.
- 5.157 Article 47(7) ensures that anything permitted as a result of the provisions of Article 46 does not prevent the operation of the 2017 EIA Regulations, in accordance with Advice Note 15: Drafting Development Consent Orders⁷³.
- 5.158 This Article has the same effect as equivalent Articles in orders such as in The West Midlands Rail Freight Interchange Order 2020⁷⁴, The Northampton Gateway Rail Freight Interchange Order 2019⁷⁵.

Article 48 (Certification of plans and documents)

- 5.159 This Article specifies with reference to Schedule 15 (Miscellaneous controls) the plans and documents that must be certified under the Order.
- 5.160 This Article is taken from Article 41 of the Model Provisions.

Article 49 (Service of Notices)

- 5.161 This Article departs from the Model Provisions. Its inclusion allows 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. The Article is similar however to the equivalent provision in The West Midlands Rail Freight Interchange Order 2020⁷⁶ and The Northampton Gateway Rail Freight Interchange Order 2019⁷⁷.

Article 50 (Arbitration)

⁷¹ See for example The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (Schedule 19), and National Grid Hinckley Point C Connection (Article 9)

⁷² SI 2014 No. 2384 (Schedule 19)

⁷³ Drafting Development Consent Orders: (Version 2) Republished July 2018

⁷⁴ S.I. 2020 No. 511 (Article 44)

⁷⁵ S.I. 2019 No 1358 (Article 45)

⁷⁶ S.I. 2020 No. 511 (Article 46)

⁷⁷ S.I. 2019 No 1358 (Article 47)

5.162 This Article is included in case of any dispute regarding the provisions of this Order, except where it is 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.

5.163 This Article is similar to Article 42 of the Model Provisions.

SCHEDULES

Schedule 1 (Authorised Development)

5.164 This schedule describes the authorised development for which the draft DCO is sought, including associated development.

5.165 The Works are as follows:

NSIP

Work Number	Description
1	<p>The construction of new railway lines from the rail freight terminal (Work No. 2) to connect with the existing Leicester to Hinckley railway line, the general arrangement of which is shown on the Railport General Arrangement Plans (document series 2.25) including—</p> <ul style="list-style-type: none"> (a) construction of a new railway track and associated rail infrastructure; (b) formation of new railway embankments and all necessary earthworks and drainage; (c) construction of railway improvements including— <ul style="list-style-type: none"> (i) the alteration of the existing railway infrastructure including points and signals; (ii) railway signage and warning lights; (d) new arrival and departure rail tracks adjacent to the existing railway; (e) the alteration of existing tracks, signalling and associated plant; (f) works to accommodate the demolition of the Burbage Common Road bridge over Felixstowe to Nuneaton railway line;

Work Number	Description
	<p>(g) works to accommodate the construction of new vehicular, pedestrian and cycleway bridge to cross the Felixstowe to Nuneaton railway line and all necessary superstructures and substructures including footings, abutments and wingwalls to be provided as part of Works No. 7;</p> <p>(h) a headshunt;</p> <p>(i) work to stop up the lengths of footpaths V23/1 and U50/3 shown on the access and rights of way plans and work associated with the closure of the existing Barwell level crossing and Earl Shilton level crossing;</p> <p>(j) works to accommodate a revised public right of way from Burbage Common Road underneath the rail corridor to be provided as part of Work No. 6;</p> <p>(k) works to accommodate a new foul rising main within Burbage Common Road underneath the rail corridor to be provided as part of Work No. 18;</p> <p>(l) the closure of existing private accesses shown on the access and rights of way plans; and</p> <p>(m) the stopping up of the length of Burbage Common Road shown on the Access and Rights of Way Plans (document series 2.3).</p>
2	<p>The construction of a rail freight terminal to connect with the rail infrastructure described in Work No. 1, the general arrangement of which is shown on the Railport General Arrangement Plans (document series 2.25) including—</p> <p>(a) construction of an intermodal freight loading/unloading terminal including but not exclusively</p> <ul style="list-style-type: none"> (i) railway sidings to load/unload freight and cripple sidings; (ii) gantry cranes, crane rails, reach stackers and freight dock platforms; (iii) freight and container storage areas; <p>(b) earthworks to achieve a terminal plateau;</p>

Work Number	Description
	<ul style="list-style-type: none"> (c) railway infrastructure including gantry signals and signs; (d) rail freight terminal refuelling and minor maintenance areas; (e) terminal entrance and exit gateways, loading lanes, internal roads, gatehouses and parking areas; (f) rail freight terminal administrative building including staff and visitor welfare facilities; (g) works to accommodate the demolition of the Burbage Common Road bridge over Felixstowe to Nuneaton railway line; (h) works to accommodate the construction of new vehicular, pedestrian and cycleway bridge to cross the Felixstowe to Nuneaton railway line and all necessary superstructures and substructures including footings, abutments and wingwalls to be provided as part of Works No. 7; (i) storage and workshop buildings; (j) security fencing and lighting; (k) drainage; (l) the stopping up of the lengths of footpaths U52/6 and U52/7 shown on the access and rights of way plans; (m) the closure of the existing private accesses shown on the access and rights of way plans; and (n) the stopping up of the length of Burbage Common Road shown on the Access and Rights of Way Plans (document series 2.3)
3	<p>The construction of a new railway line to serve the warehousing to be constructed within Works No. 5 on land identified as zones B3, D1, D2, E1 and E2 on the Parameters Plans (document reference 2.12).</p>
4	<p>The construction of on-site highway infrastructure including—</p> <ul style="list-style-type: none"> (a) principal on-site private access roads and associated junctions including roundabouts;

Work Number	Description
	<ul style="list-style-type: none"> (b) roundabout junctions; (c) footways; (d) cycle tracks; (e) bridleways shown on the access and rights of way plans; (f) footpaths shown on the access and rights of way plans; (g) bus stop lay-bys, shelters and signage; (h) street lighting and signage; (i) demolition of existing buildings; (j) works to accommodate a revised public right of way from Burbage Common Road to be provided as part of Work No. 6; (k) the closure of existing private accesses shown on the access and rights of way plans; and (l) the stopping up of the length of Burbage Common Road shown on the Access and Rights of Way Plans (document series 2.3)
5	<p>The construction of rail served warehousing including—</p> <ul style="list-style-type: none"> (a) construction of development plateaux; (b) demolition of existing buildings; (c) warehouses and ancillary buildings including estate management office and gatehouses; (d) on-plot drainage, swales, bunding, landscape and planting works; (e) vehicle, cycle, equestrian and pedestrian access routes and signage; (f) roof mounted photovoltaics; (g) external plant; (h) vehicle maintenance, service yards, washing and refuelling facilities, weighbridges and electric vehicle charging units; (i) hardstandings and container storage;

Work Number	Description
	<ul style="list-style-type: none"> (j) parking for off-plot HGV's and other vehicles (including cycles) and driver welfare facilities and HGV fuelling area; (k) energy centre; (l) works to accommodate a revised public right of way from Burbage Common Road to be provided as part of Work No. 6; (m) the stopping up of the lengths of footpaths U35/2, U50/2, U50/3, U53/1, V29/6 and V29/7 shown on Access and Rights of Way Plans (document series 2.3); (n) the closure of existing private accesses shown on the Access and Rights of Way Plans (Document series 2.3); (o) the stopping up of the length of Burbage Common Road shown on the Access and Rights of Way Plans (Document series 2.3); and (p) primary electricity substation.
6	<p>The provision of hard and soft landscape works including—</p> <ul style="list-style-type: none"> (a) demolition of existing buildings; (b) earthworks to create screening bunds (c) soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements; (d) basins for surface water attenuation (including flood alleviation related drainage infrastructure); (e) new and diverted footpaths, bridleways and cycle tracks; (f) wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest; (g) amenity open space; (h) noise attenuation including acoustic fencing or landscape screening including earthworks to create screening bunds;

Work Number	Description
	<ul style="list-style-type: none"> (i) a revised public right of way from Burbage Common Road underneath the rail corridor (Work No. 1); (j) the stopping up of the lengths of footpaths U35/2, U50/2, U52/6, U53/1, V29/6 and V29/7 shown on the Access and Rights of Way Plans (document series 2.3); (k) signage and totems located within the areas indicated on the Parameters Plan (document 2.12); (l) a new bridleway connection into Burbage Common as shown on the Access and Rights of Way Plans (document series 2.3).
7	<p>The A47 link road the general arrangement of which is shown on the Highway Plans (document series 2.4) including—</p> <ul style="list-style-type: none"> (a) connection into a new access arm onto junction 2 of the M69 motorway (Work No. 9); (b) construction of a new three arm roundabout on the B4668 Leicester Road; (c) roundabouts and other junctions; (d) a new bridge over the Felixstowe to Nuneaton railway; (e) works comprising the interface with Work No. 4; (f) a new private access to Bridge Farm; (g) the closure of existing private accesses shown on the Access and Rights of Way Plans (document series 2.3); (h) the stopping up of the lengths of footpaths U35/2, U50/2, U52/6, U52/7 and V29/7 shown on the Access and Rights of Way Plans (Document series 2.3); (i) bus stops and laybys; (j) street lighting and signage; (k) footways and cycleways; (l) drainage and attenuation structures; and (m) demolition of the existing bridge over the Felixstowe to Nuneaton railway.

Associated Development

Work Number	Description
8	<p>Works to junction 2 of the M69 motorway within the strategic road network the general arrangement of which is shown on the Highway Plans comprising (document series 2.4)—</p> <ul style="list-style-type: none"> (a) construction of a new slip road for southbound traffic joining the M69 and construction of a new slip road for northbound traffic leaving the M69 and junction 2; (b) construction of surface water attenuation basins; (c) temporary construction laydown sites and stock piling areas for topsoil and subsoil material and construction of temporary haul roads; (d) roadside landscape works and planting, to include structural tree planting and landscape bunds; (e) associated earthworks as to enable slip road construction; (f) signage and lighting; (g) improvements to bridleway V29/6; and (h) diversion of existing services.
9	<p>Works to junction 2 of the M69 motorway within the local highway authority network the general arrangement of which is shown on the Highway Plans (Document series 2.4) comprising—</p> <ul style="list-style-type: none"> (a) realignment of the B4669 Hinckley Road to the west of M69 junction 2 to include a dedicated left-turn slip road into the main site; (b) realignment of the B4669 Hinckley Road to the east of M69 junction 2 to include a dedicated southbound merge slip road; (c) widening and realignment of approaches to the junction; (d) footways and cycleways; (e) lighting and signage;

Work Number	Description
	<ul style="list-style-type: none"> (f) temporary construction laydown sites and stock piling areas for topsoil and subsoil material and construction of temporary haul roads; and (g) closure of existing private accesses and provision of new private accesses as shown on the access and rights of way plans.
<p>10</p>	<ul style="list-style-type: none"> (a) the provision of improvements to the footpath along the B4669 Hinckley Road; (b) a temporary construction compound and associated access; (c) alterations to the junction at Hinckley Road and Stanton Lane; and (d) signage.
<p>11</p>	<p>Works to Hinckley Road in Stoney Stanton the general arrangement of which is shown on the Highways Plans (Document series 2.4) including—</p> <ul style="list-style-type: none"> (a) gateway feature at the entrance to Stoney Stanton; (b) the provision of formal parking bays; (c) conversion of the mini roundabout to a signalised junction; and (d) signage.
<p>12</p>	<p>Works to the B4669 Hinckley Road in Sapcote the general arrangement of which is shown on the Highways Plans (Document 2.4) including—</p> <ul style="list-style-type: none"> (a) gateway feature at the entrance to Sapcote from the B4669 Leicester Road; (b) kerb realignments; (c) relocation of bus stop; and (d) public realm scheme including seating and planting.
<p>13</p>	<p>Works to the junction of the A47 Normandy Way with A47 Ashby Road the general arrangement of which is shown on the Highways Plans (Document 2.4) including—</p>

Work Number	Description
	<ul style="list-style-type: none"> (a) lane widening; (b) pedestrian crossing; and (c) signage.
14	<p>Works to the junction of the A47 Normandy Way with B4668 Leicester Road the general arrangement of which is shown on the Highways Plans (Document 2.4) including—</p> <ul style="list-style-type: none"> (a) lane widening; (b) extension of the flare; and (c) signage.
15	<p>Within the area of land described on the works plans as Work No. 15 works to the junction of the B4114 Coventry Road with Croft Road the general arrangement of which is shown on the Highways Plans (Document 2.4) including—</p> <ul style="list-style-type: none"> (a) extension of the flare; and (b) signage
16	<p>Works to the Cross in Hand roundabout at the A5, A4303, Coal Pit Lane and B4027 Lutterworth Road the general arrangement of which is shown on the Highways Plans (Document 2.4) including—</p> <ul style="list-style-type: none"> (a) lane widening; and (b) signage
17	<p>Works to the B4114 Coventry Road with the B518 Broughton Road the general arrangement of which is shown on the Highways Plans (Document 2.4) including—</p> <ul style="list-style-type: none"> (a) additional lane; (b) signalling; (c) amended layout to the access to the existing public house; and (d) signage.
18	<p>The installation of a new foul rising main within Burbage Common Road.</p>

Work Number	Description
<p>19</p>	<ul style="list-style-type: none"> (a) earthworks to create screening bunds and a bund to the north of the railway (Work No. 1); (b) soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements; (c) basins for surface water attenuation (including flood alleviation related drainage infrastructure); (d) new and diverted footpaths, bridleways and cycle tracks; (e) wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest; (f) amenity open space; (g) noise attenuation including acoustic fencing or landscape screening; (h) a new public right of way connecting to Burbage Common Road; (i) connection into the existing ditch at Burbage Common; (j) connection of a new bridleway into Burbage Common; (k) the stopping up of the length of Burbage Common Road shown on the Access and Rights of Way Plans (Document Series 2.3); (l) the reinstatement of agricultural land; and (m) the provision of a new turning head.
<p>20</p>	<p>the closure of the Outwoods level crossing and the diversion of public footpath U8/1 comprising the construction of a new footbridge over the Felixstowe to Nuneaton railway line to connect into existing footpath U52/3 as shown on the Access and Rights of Way Plans (document Series 2.3), including access and temporary construction compounds.</p>
<p>21</p>	<p>The closure of the Thorney Fields level crossing and the diversion of public footpath U17/2 along the route shown on the Access and Rights of Way Plans (document Series 2.3)</p>

Work Number	Description
	including temporary access and temporary construction compounds.
22	The closure of the Elmesthorpe level crossing and the diversion of public footpath T89/1 to the extent shown on the Access and Rights of Way Plans (document Series 2.3).

5.166 Schedule 1 also includes “**Further Works**” 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 because the development will be subject to more detailed engineering design, or are items where their location may change, such as parking facilities, charging points etc. The approach is included in several made DCOs including The Northampton Gateway Rail Freight Interchange Order 2019⁷⁸ and The West Midlands Rail Freight Interchange Order 2020⁷⁹.

5.167 All of the “Further Works” are subject to the provisos contained in the schedule including the test of “significant adverse environmental effects” pursuant to paragraph 13 of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017⁸⁰.

Schedule 2 (Requirements)

Part 1 – Requirements

5.168 Schedule 2 (Requirements) contains the requirements pursuant to section 120(1) of the 2008 Act. Section 120(2) states that requirements “*may in particular include*”:

- (a) requirements which are akin to conditions which could have been imposed on the grant of a permission or consent which would have been required for the development, were it not required to be authorised by the draft DCO; or
- (b) requirements to obtain the approval of the Secretary of State or any other person, if they do not fall within (a) above.

5.169 The matters covered by the requirements are set out below:

⁷⁸ S.I. 2019 No 1358

⁷⁹ S.I. 2020 No 511

⁸⁰ S.I.2017 No 571

Requirement (No. and Topic)	Explanation
2 (Time limits)	This provides that the authorised development must commence no later than the expiration of five years beginning with the date on which the Order comes into force. This is based on the model provisions as per requirement 2.
3 (Phasing of Development)	This requires a phasing scheme setting out all of the phases of the authorised development to be submitted and approved in writing by the relevant planning authority prior to the commencement of construction works. This is based on the model provisions as per requirement 3, save that it must be submitted prior to the commencement of construction works which is defined in paragraph 1 of Schedule 2 and which excludes archaeological investigation, ecological mitigation and site investigation. As these investigative works do not form part of the final, built authorised development and given the scale of the authorised development, it is considered appropriate for such works to be carried out prior to approval on phasing.
4 (Detailed design approval)	<p>Requirement 4 provides that construction works shall not commence on any phase until details of that phase have been submitted and approved by the relevant planning authority. Detailed design will not be settled at the time the Order is made, therefore it is necessary for such details to be approved prior to construction works on the relevant phase commencing. This follows model requirement 4, save that the details are to be approved prior to the commencement of construction works.</p> <p>This requirement also requires that a minimum of 20% of the total number of car parking spaces shall be equipped with electrical charging points.</p>
5 (Design and phasing of highway works)	This requirement addresses the timing for completion of specific highway works. The works must be completed by the stage specified in the requirement or such later stage as agreed by National Highways and/or Leicestershire County Council (as relevant).

Requirement (No. and Topic)	Explanation
	<p>Paragraph 2 of this requirement provides that the undertaker shall not be obliged to undertake Work No. 17 if a third party has commenced construction of the works shown coloured green on Sheet 8C of the highways plans prior to the stage of development specified in column (3) of the requirement.</p> <p>Similarly, paragraph 3 provides that the undertaker shall not be obliged to undertake that part of Work No. 16 shown coloured green on sheet 8D of the highways plans if a third party has commenced construction of those works prior to the stage of development specified in column (3).</p> <p>Requirements 5(2) and 5(3) are necessary because those works shown coloured green on the respective highway plans are already committed by other developers, and the Applicant need only be compelled to carry out those works in the event that those works have not already been carried out.</p>
<p>6 (Public right of way and level crossing closure)</p>	<p>The first part of this requirement requires the undertaker to stop up the public rights of way identified in the table no later than the stage of authorised development specified in that table, or such later stage as agreed with Leicestershire County Council.</p> <p>For the reasons of safety, the second part of this requirement provides that the rail freight terminal forming part of Work No. 2 must not commence commercial operation until the specified level crossings have been closed. The undertaker may therefore not benefit from the rail freight terminal forming part of the authorised development until it has complied with this requirement.</p>
<p>7 (Construction Environmental Management Plan)</p>	<p>This requirement provides that prior to the commencement of construction works on each phase, a detailed construction environment management plan must be approved by the relevant planning authority.</p>

Requirement (No. and Topic)	Explanation
	<p>The plan must be in accordance with the principles of the CEMP which will be a certified document for the purposes of Schedule 15.</p>
<p>8 (Travel plan)</p>	<p>In accordance with this requirement, the undertaker must at all times comply with the framework site wide travel plan.</p> <p>Prior to the occupation of an individual warehouse unit, an occupier-specific travel plan must be approved by the relevant planning authority. This plan must be in accordance with the framework travel plan, thereby ensuring uniformity across the authorised development where possible and ensuring that the principles on which the framework site wide travel plan is based are carried through to individual units.</p>
<p>9 (Sustainable transport strategy)</p>	<p>This requirement provides that the sustainable transport strategy must be complied with following the first occupation of any warehouse floorspace. This is to ensure that the objectives identified in the strategy are followed by individual occupiers.</p>
<p>10 (Rail)</p>	<p>This requirement prohibits more than 105,000 square metres of warehouse floorspace from being occupied until the rail freight terminal (which is capable of handling a minimum of four 775m trains per day) and any associated rail infrastructure has been completed. This will permit some initial occupation, but the majority of occupation will therefore only be able to take place once the rail terminal can become operational.</p>
<p>11 (Container stack height)</p>	<p>This requirement limits the height of any stack of containers to specified heights within the container storage area and the returns area. This is to mitigate the visual impact pending the establishment of planting.</p>
<p>12 (Archaeology and building recording)</p>	<p>This requirement prohibits the commencement of a phase until a written scheme of investigation for that</p>

Requirement (No. and Topic)	Explanation
	<p>phase based on the provisions of the archaeological mitigation strategy has been submitted to and approved in writing by the relevant planning authority.</p> <p>This draws from model requirement 16 but goes further by requiring that no part of the authorised development on the main site shall commence until a level 3 record of the building historic interest identified in the archaeological mitigation strategy has been undertaken. A level 3 record is reference to the recording levels as recommended by Historic England.</p>
13 (Sustainable drainage)	<p>This requirement requires a sustainable drainage strategy to be approved by the relevant planning authority for each phase prior to the commencement of that phase. This strategy is to be based on the drainage strategies submitted as part of the application, insofar as they are relevant for that phase. This is based on model requirement 14.</p>
14 (Surface water)	<p>This requirement requires a surface water drainage scheme for each phase to be submitted and approved by the relevant planning authority prior to the commencement of that phase.</p> <p>The requirement also provides that no phase shall be occupied until details of the long-term maintenance of the surface water drainage system within a phase have been approved by the relevant planning authority. This is considered appropriate in order to ensure that the risk of flooding is managed long-term.</p>
15 (Contaminated land)	<p>This requirement prohibits the commencement of a phase until a remediation strategy to deal with the risks of contamination of controlled waters has been submitted and approved by the relevant planning authority following consultation with the Environment Agency. This is based on model requirement 15.</p>
16 (Construction hours)	<p>This requirement provides for construction hours and no construction on Sundays or bank holidays.</p>

Requirement (No. and Topic)	Explanation
	<p>However, this restriction does not apply to the specified works listed in the requirement, including works approved by the relevant planning authority, emergency works and highway works. It is considered necessary to exclude some works from the restriction on hours to allow certain element of the projects to be constructed outside of those hours where continuous working is required, or working outside of those hours would mitigate effects (e.g. on the operational rail or highway networks), or where there are no likely significant environmental effects associated with particular works.</p>
17 (Electricity generation cap)	<p>This requirement provides that the development must not generate more than 49.9 megawatts of electricity. Pursuant to section 15 of the 2008 Act, a generating station falls within section 14 (and therefore requires development consent) if its capacity is more than 50 megawatts. It is therefore considered appropriate to apply a requirement which restricts electricity generation to the level below that in the 2008 Act.</p>
18 (Energy strategy)	<p>This requirement provides that no phase of the authorised development may be occupied until a detailed energy strategy for that phase has been submitted and to and approved in writing by the relevant planning authority. The strategy must be in accordance with the energy strategy which will be a certified document pursuant to Schedule 15.</p>
19 (HGV route management plan and strategy)	<p>This requirement provides that the HGV route management plan and strategy must be complied with at all times following the first occupation of warehouse floorspace.</p>
20 (Landscape Ecological Management Plan)	<p>This requirement prohibits commencement of the authorised development until a landscape and ecological management plan (“LEMP”) has been submitted and approved by the relevant planning authority. Following implementation, it will reviewed on the 5th anniversary of commencement and at five</p>

Requirement (No. and Topic)	Explanation
	yearly intervals thereafter. This is in accordance with model requirement 17, save that the review provisions have been added to ensure that the content of the LEMP remains appropriate for achieving the objectives therein.
21 (Ecological mitigation management plan)	Where a phase includes ecological mitigation or management, this requirement prohibits commencement of that phase until a detailed ecological mitigation and management plan has been submitted. This plan will set out the ecological mitigation strategies to be employed to ensure that protected species and habitats are safeguarded during site clearance and construction.
22 (Landscape scheme)	This requirement provides that no phase shall commence until a written landscaping scheme for that phase has been submitted and approved by the relevant planning authority. This scheme must be in accordance with illustrative landscape strategy, thereby ensuring that each landscaping scheme aligns with the overall strategy.
23 (Site waste and materials management plan)	This requirement provides for the submission of a detailed site waste and materials management plan for each phase prior to the commencement of construction works on that phase. The plan must be approved by the relevant planning authority.
24 (Construction traffic management plan)	In accordance with this requirement, a detailed construction management plan must be submitted to and approved by the relevant planning authority for each phase prior to the commencement of construction work on that phase. This is based on model provision 22 but goes further by specifying details which must be included in the plan.
25 (Temporary highway accesses)	This requirement provides that prior to commencement of construction works on any phase, details of the siting, design and layout of any new or modified temporary means of access shall be

Requirement (No. and Topic)	Explanation
	submitted to and approved by the relevant highway authority.
26 (Public rights of way strategy)	This requirement provides that prior to the commencement of construction works on any phase, a detailed public rights of way strategy for that phase must be submitted and approved by the relevant highway authority. The detailed strategy must be in accordance with the principles set out in the public rights of way strategy to be certified as part of Schedule 15.
27 (Control of operational noise)	In accordance with this requirement, details of all mechanical and ventilation plant and any other noisemaking machinery or mobile plant to be used within the main site, must be approved in writing by the relevant planning authority prior to their installation.
28 (Acoustic barriers)	This requirement provides that any acoustic barriers to be provided as part of any phase in accordance with requirement 4 must be completed prior to first occupation of that phase.
29 (Combined heat and power)	This requirement prohibits the combined heat and power plant from operating for more than 30% of the hours in a calendar year. It is intended that the plant is used for back-up purposes only, therefore it is considered appropriate to limit its operation.
30 (Biodiversity net gain)	This requirement provides that the authorised development must not commence until a biodiversity net gain strategy to achieve a 10% biodiversity net gain (in accordance with the principles set out in the biodiversity impact assessment) has been approved by the relevant planning authority.
31 (Lighting)	This requirement prohibits occupation of a phase until a scheme for all permanent external lighting to be installed on that phase has been approved by the relevant planning authority. Each scheme must accord with the lighting strategy submitted with the

Requirement (No. and Topic)	Explanation
	application and which is to be certified and listed in Schedule 15.
32 (Employment and skills)	This requirement prohibits commencement of a phase until an employment and skills strategy has been approved by the relevant planning authority. This requirement specifies what the strategy must include, including matters such as details of apprenticeships and work placements.
33 (Woodland access management plan)	In accordance with this requirement, no phase shall commence until a detailed woodland access management has been submitted to and approved by the relevant planning authority. This plan must be in accordance with the principles in the woodland access management plan.

Part 2 – Procedure for Approvals etc Under Requirements

5.170 This part deals with the procedure for approvals and appeals under the requirements. It is based on appendix 1 to Advice Note 15⁸¹. However it has been modified in that rather than inserting a specific fee to be paid when an application is made to the discharging authority it instead refers to the fee that would have been payable had the fee been determined under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.⁸² This approach was authorised in The Northampton Gateway Rail Freight Interchange Order 2019⁸³ and is therefore considered to be an acceptable principle.

Schedule 3 (Streets subject to Street Works)

5.171 This Schedule lists the streets within the Order Limits which are to be subject to the street works pursuant to Article 9.

Schedule 4 (Streets to be permanently stopped up for which no substitute is to be provided)

⁸¹ Drafting Development Consent Orders: (Version 2) Republished in July 2018

⁸² S.I. 2012/2920, amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/2026, S.I. 2015/643, S.I. 2017/1314 and S.I. 2019/1154.

⁸³ S.I. 2019 No 1358 (Schedule 2 Part 2)

- 5.172 This Schedule lists the extent of streets to be stopped up pursuant to Article 11 with reference to the Access and Rights of Way Plans (document series 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

- 5.173 This Part details the public rights of way which are to be stopped up with substitute to be provided pursuant to Article 13 with reference to the Access and Rights of Way Plans (document series: 2.3).

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

- 5.174 This Part sets out the public rights of way to be stopped up where no substitute is to be provided pursuant to Article 13 with reference to Access and Rights of Way Plans (document series: 2.3).

Part 3 – New Public Rights of Way to be Created

- 5.175 This Part sets out the new public rights of way to be provided pursuant to Article 13 with reference to Access and Rights of Way Plans (document series: 2.3).

Part 4 –Public Rights of Way to be temporarily closed

- 5.176 This Part sets out the public rights of way to be temporarily closed pursuant to Article 13 with reference to Access and Rights of Way Plans (document series: 2.3).

Schedule 6 (Private Means of Access)

Part 1 – Private Means of Access to be Replaced

- 5.177 This Part sets out the private means of access which are to be closed and replaced pursuant to Article 14 with reference to the Access and Rights of Way Plans (document series: 2.3).

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

- 5.178 This Part details the private means of access to be stopped up pursuant to Article 14 and not replaced, with reference to the Access and Rights of Way Plans (document series: 2.3).

Part 3 – New private means of Access Created

- 5.179 This Part sets out the new private means of access to be provided with reference to the Access and Rights of Way Plans (document series: 2.3).

Schedule 7 (Classification of Highways)

Part 1 – New Highways

- 5.180 This Part details the classification of the new lengths of highways created as a result of the highway works (Article 16).

Schedule 8 (Speed Limits)

Part 1 – Existing Orders

- 5.181 This Part deals with the necessary amendments to existing traffic regulation orders (Article 17 (1)).

Part 2 – Highways subject to 40 mph speed limit

- 5.182 This Part sets out the new 40 mph speed limit which will apply following the completion of the works (Article 17(2)).

Part 3 – Derestricted Highways

- 5.183 This Part sets out the highways which will be subject to a derestricted speed limit apply following the completion of the works (Article 17(3)).

Schedule 9 (Clearways and no waiting)

Part 1 (Clearways)

- 5.184 This Part describes the lengths of road to be subject to a new order for clearways (Article 19(1))

Part 2 (No Waiting At Any Time)

- 5.185 This Part sets out the lengths of highway which will be subject to no waiting orders required as a result of the highway works (Article 19(2)).

Schedule 10 (Land of which temporary possession may be taken)

- 5.186 This Schedule sets out the land of which temporary possession may be taken as referred to in Article 32.

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

- 5.187 This Schedule lists the parcels of land in which new rights may be created (Article 25(2)).

Schedule 12 (Modification of compensation and compulsory purchase enactments for creation of new rights)

- 5.188 This Schedule modifies provisions for compensation following the creation of new rights (Article 25(3)).

Schedule 13 (Protective provisions)

- 5.189 Schedule 13 includes provisions to protect the interests of various bodies whose assets may be affected by HNRFI (Article 44).

- 5.190 These Protective Provisions include:

- Part 1: Protection of Railway Interests
- Part 2: Protection of National Highways
- Part 3: Protection of the Local Highway Authority
- Part 4: Cadent Gas Limited (as Gas Undertaker)
- Part 5: Severn Trent Limited 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
- Part 8: National Grid Electricity Distribution (East Midlands) Plc (as electricity provider)

- 5.191 The Protective Provisions are subject to ongoing negotiation and consultation with the relevant stakeholders and as such subject to refinement. The Applicant is awaiting specific protective provisions from National Grid Electricity Transmission and is liaising with NGET in that regard. For the time being, NGET are aware that the Applicant has included the standard protective provisions for Electricity Undertakers in Part 6 of Schedule 13, which are similar to those included in the version of the DCO subject to statutory consultation.

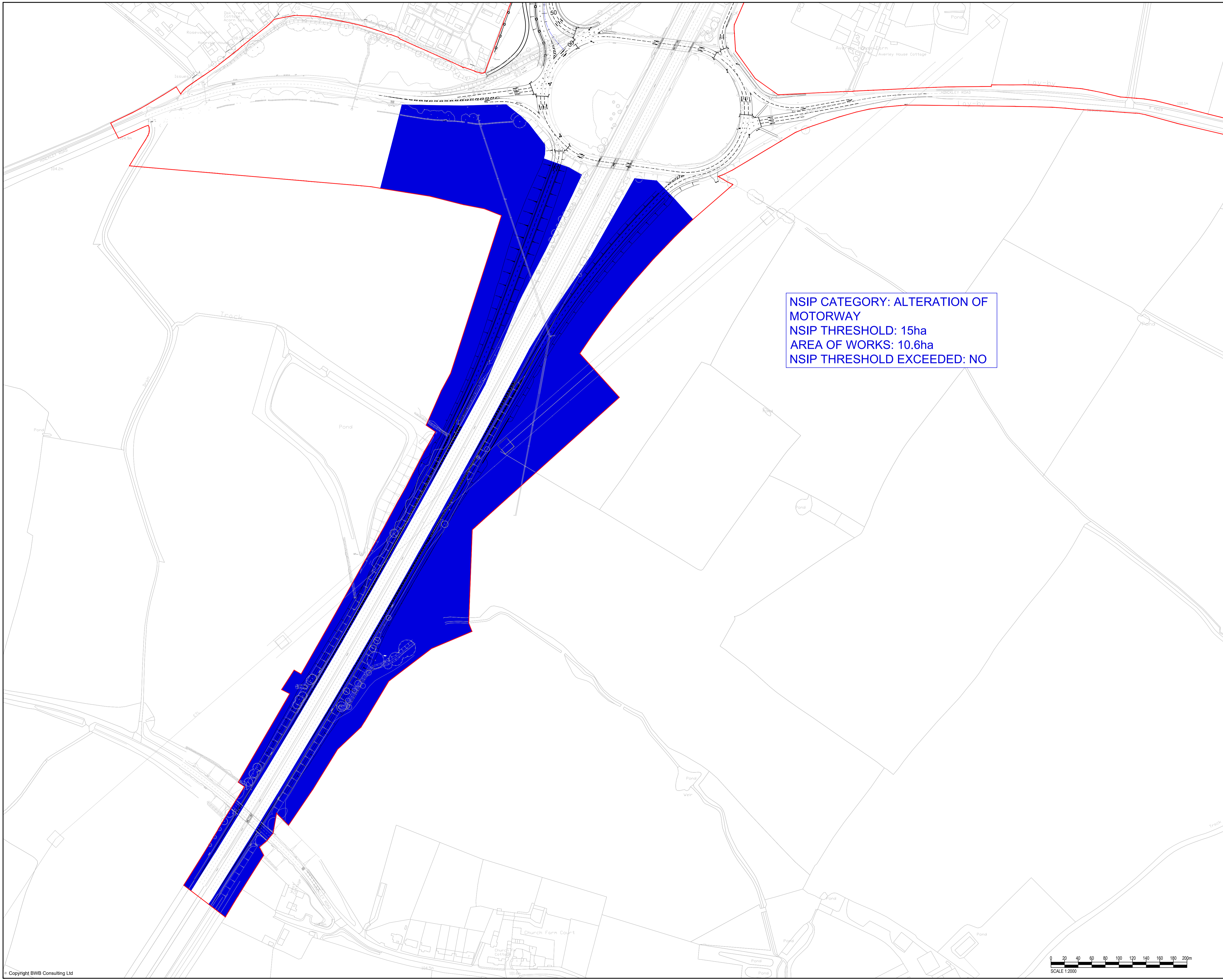
Schedule 14 (Miscellaneous Controls)

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

Schedule 15 (Certification of Plans and Documents)

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

APPENDIX 1



NSIP CATEGORY: ALTERATION OF MOTORWAY
 NSIP THRESHOLD: 15ha
 AREA OF WORKS: 10.6ha
 NSIP THRESHOLD EXCEEDED: NO

Notes

1. Do not scale this drawing. All dimensions must be checked/ verified on site. If in doubt ask.
2. This drawing is to be read in conjunction with all relevant architects, engineers and specialists drawings and specifications.
3. All dimensions in millimetres unless noted otherwise. All levels in metres unless noted otherwise.
4. Any discrepancies noted on site are to be reported to the engineer immediately.

Legend

Order Limits

P04	20.10.22	Updated based on NH review	DF	SC	SC
P03	08.07.22	Areas Amended	DF	SC	SC
P02	09.12.21	Areas Amended	DF	SC	SC
P01	17.09.21	Preliminary Issue	DF	SC	SC
Rev	Date	Details of issue / revision	Drw	Chg	Apv

Issues & Revisions

Client



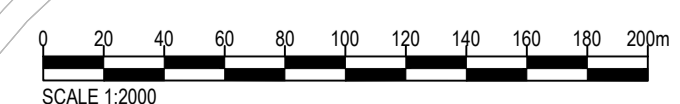
Project Title
HINKLEY NATIONAL RAIL FREIGHT INTERCHANGE

Drawing Title
DEVELOPMENT CONSENT ORDER NSIP CALCULATIONS: M-WAY ALTERATION

Regulation:	5(2) (o)	Document:	-
Drawn:	D.Fraser	Checked:	S.Carter
Approved:		Date:	17.09.21
BWB Ref:	NTT2814	Scale@A1:	1:2000

Project - Originator - Functional Breakdown - Spatial Breakdown - Form - Discipline - Number
HRF-BWB-GEN-XX-SK-CH-SK058

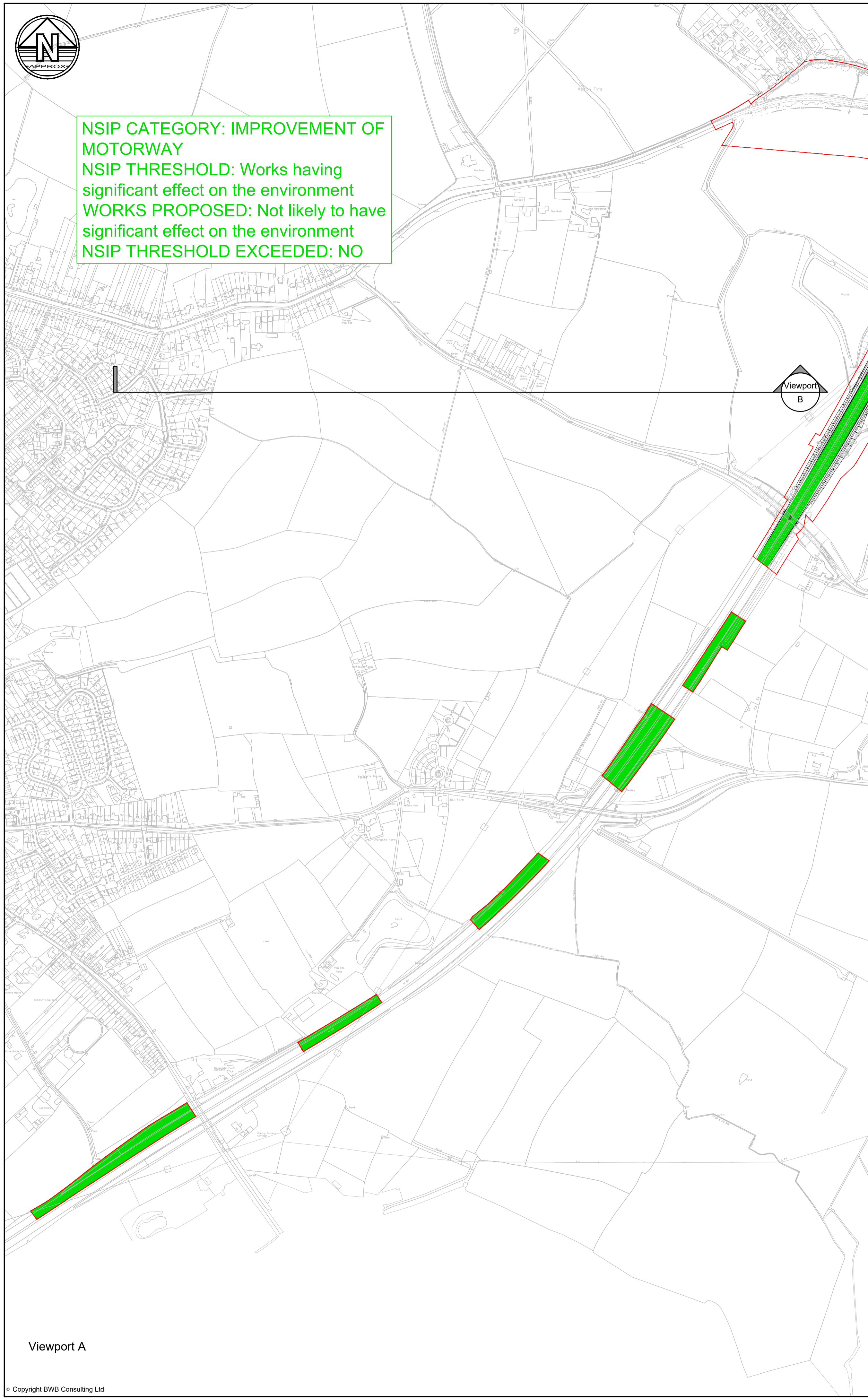
Drawing Status
S2 - FOR INFORMATION Rev
P04



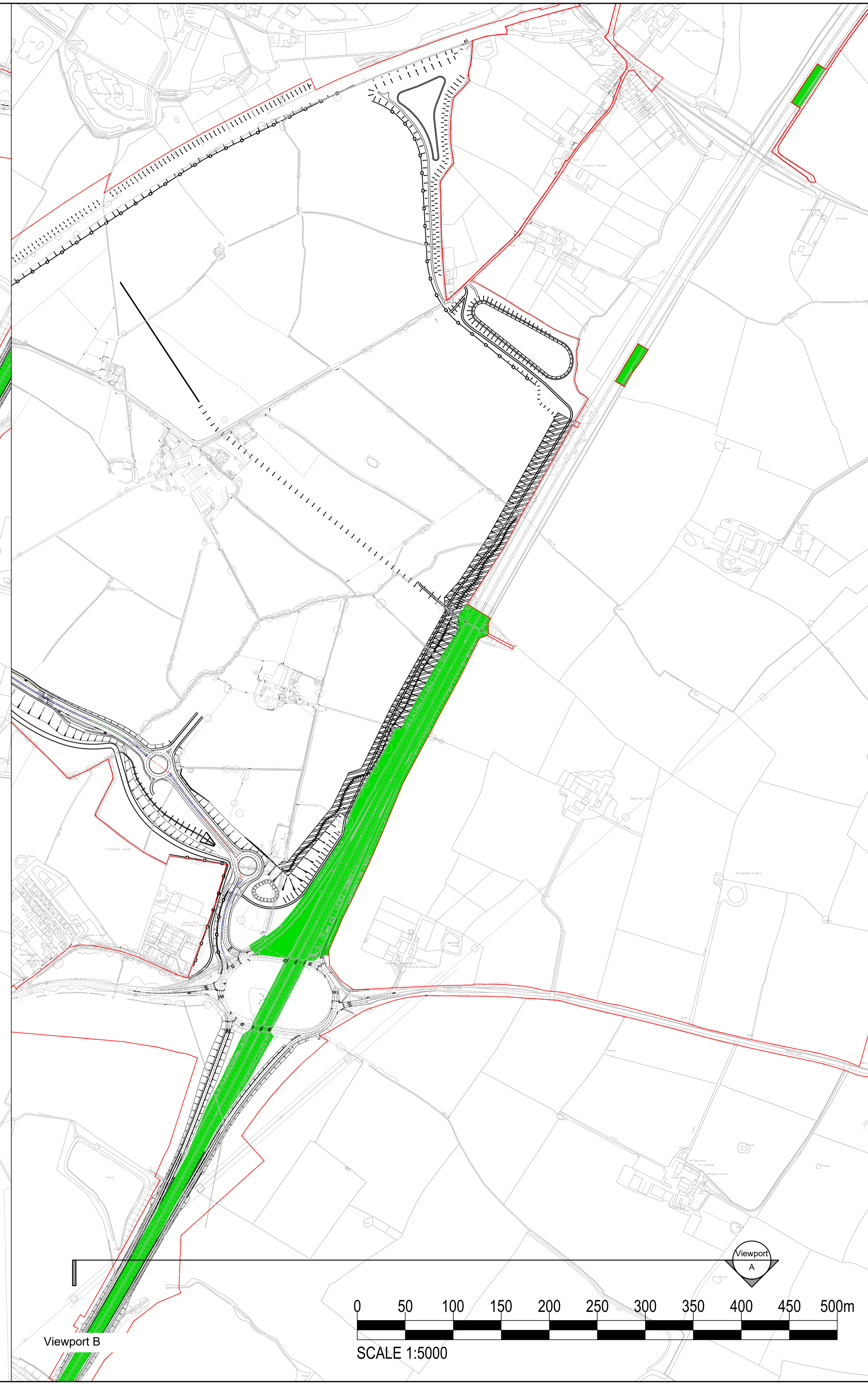
APPENDIX 2



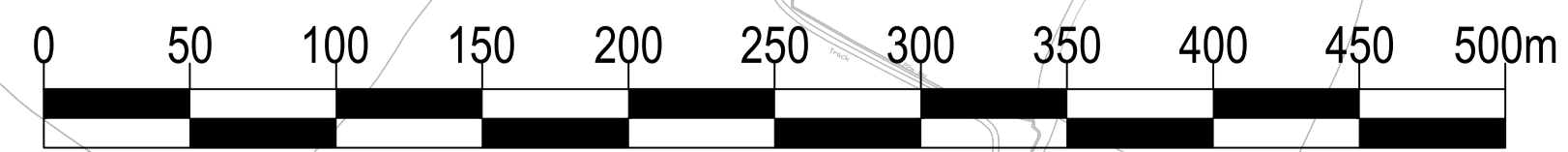
NSIP CATEGORY: IMPROVEMENT OF MOTORWAY
 NSIP THRESHOLD: Works having significant effect on the environment
 WORKS PROPOSED: Not likely to have significant effect on the environment
 NSIP THRESHOLD EXCEEDED: NO



Viewport A



Viewport B



SCALE 1:5000

Notes

1. Do not scale this drawing. All dimensions must be checked/ verified on site. If in doubt ask.
2. This drawing is to be read in conjunction with all relevant architects, engineers and specialists drawings and specifications.
3. All dimensions in millimetres unless noted otherwise. All levels in metres unless noted otherwise.
4. Any discrepancies noted on site are to be reported to the engineer immediately.

Legend

Order Limits

P02	20.10.22	Updated based on NH review	DF	SC	SC
P01	20.06.22	Preliminary Issue	DF	SC	SC
Rev	Date	Details of issue / revision	Drw	Ch'd	App

Issues & Revisions

Client

Project Title

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

Drawing Title

DEVELOPMENT CONSENT ORDER NSIP CALCULATIONS: M-WAY IMPROVEMENT

Regulation:	5(2) (o)	Document:	-
Drawn:	D.Fraser	Checked:	S.Carter
Approved:	S.Carter	Date:	20.06.22
BWB Ref:	NTT2814	Scale@A1:	1:5000

Project - Originator - Functional Breakdown - Spatial Breakdown - Form - Discipline - Number

HRF-BWB-GEN-XX-SK-CH-SK068

Drawing Status	Rev
S2 - FOR INFORMATION	P02

APPENDIX 3



Notes

1. Do not scale this drawing. All dimensions must be checked/ verified on site. If in doubt ask.
2. This drawing is to be read in conjunction with all relevant architects, engineers and specialists drawings and specifications.
3. All dimensions in millimetres unless noted otherwise. All levels in metres unless noted otherwise.
4. Any discrepancies noted on site are to be reported to the engineer immediately.

Legend

Order Limits

NSIP CATEGORY: ALTERATION OF HIGHWAY OTHER THAN A MOTORWAY - SPEED LIMIT >50mph
 NSIP THRESHOLD: 12.5ha
 AREA OF WORKS: 1.6ha
 NSIP THRESHOLD EXCEEDED: NO

P01	20.06.22	Preliminary Issue	DF	SC	SC
Rev	Date	Details of issue / revision	Drw	Cr'd	App

Issues & Revisions

Client



Project Title
HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

Drawing Title
DEVELOPMENT CONSENT ORDER NSIP CALCULATIONS: OTHER HWAY ALTERATION

Regulation:	5(2) (o)	Document:	-
Drawn:	D.Fraser	Checked:	S.Carter
Approved:	S.Carter	Date:	20.06.22
BWB Ref:	NTT2814	Scale@A1:	1:1000

Project - Originator - Functional Breakdown - Spatial Breakdown - Form - Discipline - Number
HRF-BWB-GEN-XX-SK-CH-SK069

Drawing Status	Rev
S2 - FOR INFORMATION	P01

