

Tritax Symmetry (Hinckley) Limited

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

The Hinckley National Rail Freight Interchange Development Consent Order

Project reference TR050007

Post hearing submission ISH1 and CAH1 [Appendix C Applicant's Updated Responses to the ExA's Initial Observations on Drafting of dDCO]

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Appendix C

Applicant's Updated Responses to the ExA's Initial Observations on Drafting of dDCO

This document is the updated version of the Applicant's Draft Responses to the ExA's Initial Observations on Drafting of dDCO (Annex B to the Applicant's Response to the Rule 6 Letter [PDA-021]) submitted to the Examining Authority (ExA) ahead of Issue Specific Hearing (ISH) 1 in respect of the draft Development Consent Order (dDCO). The Applicant's draft responses reflected much of the discussion at ISH1, and the updates to this document reflect the Applicant's additions to those draft responses made by oral submission at ISH. These additions are shown in tracked changes for ease of reference. Where the Applicant confirms it proposes to make amendments to the dDCO, those amendments will be included in the next version of the dDCO to be submitted at **Deadline 2**.

Abbreviations:

CA	Compulsory Acquisition	PA2008	Planning Act 2008
dDCO	Draft Development Consent Order [APP-085]	TP	Temporary Possession
EM	Explanatory Memorandum [APP-086]	TPR	Temporary Possession with Permanent Rights
ExA	Examining Authority		

General Matters

Matter	Provision	Issue or Question Raised	Applicant's Response
1.	Preamble	Could the Applicant please update the preamble as the Examining Authority panel consists of three members.	The Applicant will amend the dDCO accordingly following the appointment of the panel.

Matter	Provision	Issue or Question Raised	Applicant's Response
2. Drafting	Footnotes	There are various occasions within the dDCO where footnotes to amending legislation have not been included. Examples are Articles 28(5) and (6) with references to sections 152 and 138 of the PA2008, and Article 30. Could the whole document be comprehensively reviewed to ensure that it is correct.	This is noted. The Applicant will review and amend the dDCO accordingly.
	Precedents in EM	The Applicant relies heavily in the EM on the Model Order which has now be withdrawn. As there are now a significant number of made precedent Orders, could the Applicant please review the EM with a view to removing references to the Model Order and replacing them with references to made Orders.	<p>The Applicant is aware the Model Order has been repealed. However, as explained at paragraph 5.2 of the Explanatory Memorandum, the Model Order has been used as a starting point for the approach to the drafting of the dDCO as is the case with most DCOs. The Applicant has also considered many other recent made DCOs (particularly other rail freight DCO which are thought to be most relevant and appropriate). It is considered helpful still to refer to the Model Order since it explains the provenance the drafting.</p> <p>Although it is agreed that there are now a significant number of made precedent Orders, much of the drafting of these Orders are heavily based on the Model Order notwithstanding its repeal.</p> <p>The Applicant also notes the Government's current consultation on NSIP reforms¹ refers to the established practice of referring to the Model Order in explaining the approach to the drafting of dDCOs:</p> <p>Box 3 – the Model Provisions Order 2009</p>

¹ [Department for Levelling Up, Housing and Communities: Consultation on operational reforms to the Nationally Significant Infrastructure Project \(NSIP\) consenting process \(25 July 2023, closing 19 September 2023\).](#)

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			<p><i>The Model Provisions Order 2009 was intended as a guide for applicants in drafting the Development Consent Order rather than a rigid structure, but aided consistency, and assisted applicants in constructing a comprehensive set of lawful provisions. The Order included elements of a Development Consent Order which could be common to all NSIPs, others which relate to particular infrastructure development types, in particular railways and harbours, and model requirements. Whilst the Localism Act 2011 removed the statutory requirement to use the Model Provisions Order, it continues to be used by most applicants as the basis for the preparation of the draft Order, supplemented by the Planning Inspectorate's Advice Notes 13 and 15.</i></p> <p>However, if it is still considered necessary to remove references to the Model Order the Applicant will do so and submit a revised Explanatory Memorandum alongside the next version of the dDCO to be submitted. In any event, the Applicant will review the Explanatory Memorandum and update this to refer to additional made DCOs with similar provisions to the HNRFI dDCO.</p> <p>The Applicant confirmed at ISH1 that it would add to the Explanatory Memorandum references to more recently made DCOs, as well as retaining references to the Model Order, to ensure that the latest approved drafting is adopted.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
	Clarity	<p>a) There appears to be some inconsistency between the use the terms "relevant ... authority" (either highway or planning) and "local ... authority for the area". A single terminology may improve the clarity of the drafting.</p>	<p>a) The Applicant appreciates the need for clarity in the drafting and will review the dDCO in respect of each of these terms, however the terms "relevant highway authority", "relevant planning authority", are required because in each instance there are different bodies to which a provision might be referring.</p> <p>It is considered necessary to include the use of "relevant" because they have a particular meaning dependent upon their context. For example, in respect of the highway authority, some of the roads subject to highway works are strategic highways and so will be managed by Highways England rather than the local highway authority for that area.</p> <p>The Applicant agrees that clarity might be gained by removing the terms "local highway authority" but will review and consider this (particularly in terms of the protective provisions). The Applicant confirmed at ISH1 that it would undertake a detailed review. Any amendments to the dDCO to reflect these changes will be made in the next version of the dDCO to be submitted at Deadline 2.</p>
		<p>b) In the same way that the definition of "maintain" includes derivatives of that word, would including the same terminology improve clarity in respect of the definition of "owner"</p>	<p>This is noted. The Applicant will amend the dDCO accordingly.</p>

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		<p>c) In the definition of "public sewer or drain" there are a number of bodies referred to, that is the Environment Agency, an internal drainage board or a lead local flood authority or a sewerage undertaker. There should only be reference to those which exist within the Order land and have such apparatus</p>	<p>This is a standard definition however the point is noted and the Applicant currently proposes to amend the definition as follows:</p> <p><i>"public sewer or drain" means a sewer or drain which belongs to the Environment Agency, an internal drainage board or a lead local flood authority a relevant highway authority or a sewerage undertaker;</i></p>
		<p>d) Although "statutory utility" includes a communications provider as well as a "statutory undertaker", could the drafting be improved by combining the use of the terms</p>	<p>The approach to these separate definitions is commonplace in DCO and the separate term "statutory undertaker" is required to differentiate those provisions of the Order which are not intended to apply to communications providers.</p> <p>However, the Applicant notes that the term "statutory utility" is only used in Article 35 (this ensures that where communications providers have apparatus in stopped up streets, they have the benefit of the provisions of that Article) and the Applicant considers that the drafting could be improved or clarified and will do so in the next version of the dDCO to be submitted.</p>

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		<p>e) Article 13(6) refers to various level crossings. However, none of these are formally defined. To ensure clarity could these please be identified on a specific plan, which is then referred to in this sub-paragraph or by some other mark with the Order, such as Ordnance Survey reference</p>	<p>The level crossings are each identified on the Access and Rights of Way Plans (Document series 2.3 [PINS Ref APP-016 – APP-020]) and referred to in Part 1 of Schedule 5 of the dDCO as explained in paragraphs 5.41 – 5.50 of the Explanatory Memorandum, however the Applicant notes that those plans contain a lot of information and other points/references including to rights of way rather than specifically the level crossings. The Applicant agrees it would be beneficial to refer to a separate plan and will prepare a suitable plan, clearly identifying all of those level crossings and amend the dDCO accordingly.</p>
		<p>f) In Schedule 2, Part 1, Requirement 30 (Biodiversity net gain), the drafting is that net gain would be by each local planning authority, while the aim of the requirement is to achieve 10% net gain over the whole development. Could the Applicant please look at the drafting so that the aim is achieved¹.</p>	<p>The requirement is drafted so that the biodiversity net gain strategy is to be submitted to and approved by the relevant planning authority. The intention behind the drafting does is not mean that the net gain will be provided in each local authority's area, the net gain will be provided for the development as a whole.</p> <p>The Applicant will consider whether the wording of the requirement could be improved to clarify this.</p>

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	Typographic	<p>a) In Art 30(6) there is reference to Article 30. This should be to Article 27</p> <p>b) In Schedule 2 Part 1, it would appear that the word "any" has been omitted between "occupation of" and "warehouse".</p> <p>c) In Schedule 8, Part 3 – Speed limits: Derestricted highways, In the second row points P and Q are entirely on Document 2.7B (and not 2.7C). Could this please be corrected.</p>	<p>These typographical errors are noted and the Applicant will review and amend the dDCO where necessary.</p>

¹ There is a separate question as to whether the proposal would be able to deliver 10% Biodiversity Net Gain as set out in this provision. This will be explored elsewhere in the Examination.

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<p>3. Novel provisions</p>	<p>Articles 32 and 33 – temporary use of land for carrying out the authorised development and temporary use of land for maintaining the authorised development</p>	<p>Arts 32(3) & (8) and Art 33(9) appear to be novel provisions and the ExA would like to understand why they are proposed to be included in this particular case.</p>	<p>Article 32(3) and Article 33(9) follow the drafting in Article 33(3) and Article 34(4) of The Boston Alternative Energy Facility Order 2023 and are required to ensure that, in the event of a potential risk or safety alert, the Applicant has the ability to enter land to put right a danger without being required to give notice.</p> <p>The Applicant confirmed in ISH1 that it will review the relevant Articles in the Boston Alternative Energy Facility Order 2023 and consider any further amendments to the dDCO.</p> <p>Article 32(8) follows the drafting in Article 34(6) of West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511) and 34(6) of The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358) and is required to provide certainty as to the method of calculating such compensation.</p>
	<p>Articles 36 and 37 – recovery of costs of new connections and no double recovery</p>	<p>Neither of these provisions have been seen in recently made transport DCOs and the ExA would like to understand why they are proposed to be included in this particular case.</p>	<p>The Applicant has included article 36 (which has its provenance in article 33 of the Model Provisions) to cover the circumstance where a person's supply of utilities is interrupted. This article is increasingly included in DCOs (such as The A1 Birtley to Coal House Development Consent Order 2021 (S.I. 2021 No. 74) and The A57 Link Roads Development Consent Order 2022 (S.I. 2022 No. 1206)) and the Applicant considered it prudent to include the provision.</p>

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			<p>Article 37 is contained in many DCO and is based on drafting within both The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358) (Article 37) and The West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511) (Article 37) and is necessary to clarify and ensure that compensation is not payable in respect of the same loss or damage under both the draft DCO and other compensation regimes.</p> <p>The Applicant confirmed that it will review the drafting and, if still considered necessary, will provide justification as to why the relevant Article(s) is/are necessary in this particular dDCO.</p>
	<p>Article 38 – guarantees in respect of payment of compensation</p>	<p>a) The ExA would like to explore whether this provision should cover all matters relating to the implementation of any part of the DCO, if made, rather than just those cited.</p>	<p>As explained in the Explanatory Memorandum, this particular article is based on other DCO including East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016 17), Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358), West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511). It is specifically intended to apply to compensation for potential claims as a result of the exercise of compulsory acquisition or temporary possession powers. It is not considered necessary or appropriate for a guarantee or other form of security to be provided for any other provision or implementation of the DCO.</p>

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		<p>b) The ExA would like to explore whether the 15-year period after the date on which the relevant power is exercised appropriate, or should it be X years after the completion of the development. If that were to be the case, what would be an appropriate trigger and timescale?</p>	<p>It is considered that 15 years from the exercise of the relevant power is a reasonable time period for such a guarantee/security, and indeed this time period has been accepted in many recent DCOs (e.g. The Triton Knoll Electrical System Order 2016 (S.I. 2016 880), the Wrexham Gas Fired Generating Station Order 2017 (S.I. 2017 766), the Boston Alternative Energy Facility Order 2023 (S.I. 2023 778), The Boston Alternative Energy Facility Order 2023 (S.I. 2023 778), The Riverside Energy Park Order 2020 (S.I. 2020 419)). The Applicant's view is that it would be inconceivable that a claimant would legitimately take longer than 15 years from the exercise of the power to pursue a claim for compensation (of which that party will be aware), or for compensation to be resolved, even in the event that a compensation claim was referred to the Upper Tribunal.</p> <p>As confirmed at ISH1, the Applicant will review the drafting to ensure that, as currently drafted, the Article does not automatically prevent existing litigation to continue at the expiry of the 15 year period.</p> <p>The Applicant does not envisage that litigation will be ongoing at the 15 year period however, the Applicant will review and amend the dDCO accordingly, should amendments be considered necessary</p>

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4. Funding		<p>The ExA would like to explore whether there should be a single 'lead' approving authority for the whole funding rather than four different ones to provide simplicity and rigour. If this is the case, who should this be?</p>	<p>There are no proposed powers of compulsory acquisition or temporary possession within the District of Harborough or the Borough of Rugby, therefore the relevant authorities for the approval of the guarantee or other form of security would only be Blaby District Council and/or Hinckley and Bosworth Borough Council dependent upon the location of the land which is subject to the exercise of the relevant powers.</p> <p>The Applicant considered it appropriate that the authority in whose area the powers would be being exercised should approve the security necessary for the relevant land. The approach to the approval of the security follows Northampton Gateway, where there were two authorities.</p> <p>However, the Applicant would be willing to consider and accommodate alternative drafting where one authority is responsible for the approvals – this will require discussion with Blaby District and Hinckley & Bosworth Borough authorities.</p> <p><u>As discussed at ISH1, the Applicant will discuss with the relevant authorities and review the drafting in the dDCO, if a single authority approval mechanism can be agreed with the authorities.</u></p>

Articles

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5. Definitions	Article 2	<p>a) The drafting of "Order land" could be interpreted as that it only applies to land the subject of proposed CA, TP or TPR. This has implications for the delivery of the Proposed Development and for the use of the term throughout the dDCO. Art 23(1) would seem to imply that CA could apply to all the land set out in Book of Reference and this goes beyond that identified for CA, TP or TPR.</p>	<p>The definition of "Order land" is intended to only relate to that land which may be subject to the powers in Part 5 of the dDCO as described in the book of reference, however the Applicant agrees that the definition may benefit from some clarity. The Applicant proposes to amend the definition as follows:</p> <p><i>"Order land" means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;</i></p>
		<p>b) It is not clear as to why the definitions of both "Order land" and "Order limits" has been included, and whether there is a need for the use of the two terms.</p>	<p>As above, the term "Order land" is intended to refer to land and interests which are subject to the powers of Part 5 of the dDCO as described in the book of reference and shown on the land plans.</p> <p>The term "Order limits" means the limits shown on the works plans represented by a red line within which the authorised development may be carried out – this is to cover all land <u>within which the development may be carried out, including the "Order land", but also other land which is not subject to Part 5 powers, such as including that</u> land in respect of which no compulsory acquisition or temporary possession powers are needed such as highway works.</p>

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		<p>c) In the same way that the definition of "maintain" includes derivatives of that word, would including the same terminology improve clarity in respect of the definition of "owner"?</p> <p>d) Could the Applicant please check that all abbreviations are fully and consistently defined, an example being "Working Days", and the abbreviations "No." and "Nos.".</p>	<p>The Applicant will review and consider whether other terminology may be more appropriate for clarity between the terms used but notes that both of these terms are used in most DCO.</p> <p>This is noted. The Applicant will amend the dDCO accordingly.</p> <p>This is noted. The Applicant will amend the dDCO accordingly.</p>
		<p>At the ISH the ExA queried whether, for highway works, the dDCO would provide the equivalent of a section 278 agreement under the Highways Act 1980 and whether the dDCO would be disapplying that act.</p>	<p>The Applicant confirmed that the equivalent of the section 278 agreements is intended to be covered by the protective provisions in Parts 2 and 3 of Schedule 13.</p> <p>The approach taken by the Applicant in respect of the protective provisions in the dDCO has been to follow the approach taken in the Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358) and West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511). This approach ensures consistency for the Applicant with regard to the types of provisions and approval</p>

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			<p><u>mechanisms it needs to go through with different authorities.</u></p> <p><u>Leicestershire County Council (LCC) requested that the Applicant considers inclusion of its standard form section 278 agreement in the dDCO.</u></p> <p><u>The Applicant confirmed it will consider LCC's standard form section 278 agreement for inclusion in the dDCO and is committed to engaging with LCC to agree the form of protective provisions to be included in the dDCO. The Applicant will review and update the provisions accordingly throughout the Examination.</u></p> <p><u>In addition to discussions with LCC, National Highways (NH) confirmed at ISH 1 that NH is also in discussions with the Applicant in respect of protective provisions. NH further stated that there would potentially need to be a level of flexibility within the protective provisions because of changes to the highway network over time.</u></p> <p><u>The Applicant considers that the protective provisions would give that flexibility and, in addition, the dDCO includes a mechanism that would enable further highway agreements to be entered into if details were not covered by the protective provisions.</u></p> <p><u>In addition to LCC and NH, the Applicant is also considering but, is yet to discuss, the detail of protective provisions with Warwickshire County Council (WCC), as there is one particular work area (Work No. 16) which could potentially involve the</u></p>

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			<p><u>three highway authorities (LCC, NH and WCC). It had originally been intended that there might be an arrangement between the local highway authorities and NH that one authority would approve the detail of the highway works for Work No. 16 but the Applicant notes from discussions with the authorities that this may no longer be the case. The Applicant is conscious therefore of the potential for practical issues in trying obtain the approval of the three authorities of the highway works. The Applicant confirmed it may therefore need to also include protective provisions with WCC, but the Applicant needs to first understand how the mechanism for approval and adoption of the relevant works will work.</u></p> <p><u>The Applicant confirmed it is committed to engage with the relevant authorities to agree the form of protective provisions to be included in the dDCO.</u></p> <p><u>The protective provisions approach is well established in DCOs and ensure a "one stop shop" type approach to enable developments to proceed without applicants having to enter into further agreement but, also ensuring relevant protections are in place and agreed with the relevant authorities.</u></p>
<p>6. Permanent stopping up of streets</p>	<p>Articles 11 and 13 and Schedule 4</p>	<p>a) Under the terms of Article 11 various streets are to be stopped up. As drafted the Order does not make provision for an alternative route for Smithy Lane which would be stopped up to the northwest of junction 2 of the M69. It would appear that alternative</p>	<p>a) The section of Smithy Lane (an all-purpose highway) being stopped up by the dDCO is a section which provides vehicular access to the private means of access to Hobbs Hayes Farm only and this private means of access will be removed, and the buildings are to be removed as part of the development. This section of Smithy Lane, also serves all other users of</p>

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		<p>bridleway arrangements (effectively points 18 to 17 to 14 to 37 to 16 of the Access and Rights of Way Plan (2.3D)) would provide such a route. Should this be rather a diversion and thus should this be provided before Smithy Lane is stopped up under Art 11.</p> <p>b) Could the Applicant also consider whether this aligns with the provisions in Article 13 in relation to bridleway V29/7?</p>	<p>the V29/7 bridleway, but it is only the bridleway elements that need to be diverted, not the vehicular access. The ExA is correct that the new bridleway proposals between 18 – 17 – 14 – 37 – 16 are the replacement/substitute arrangements for the V29/7 bridleway. The replacement bridleway will be provided before the stopping up of Smithy Lane and bridleway V29/7 – this is secured through article 13, however, the Applicant will review the articles and consider whether clarity could be added to article 11 so that Smithy Lane is not stopped up until the replacement bridleway has been provided.</p> <p>b) As above.</p>
<p>7. Temporary closure of streets</p>	<p>Article 12</p>	<p>Sub-paragraphs (4) of the dDCO states that the undertaker will be a street authority. This is normally a statutory body rather than a private company. The ExA would therefore like to examine this, particularly to understand whether there are any precedents for such a provision and the implications for self-approval under sub-paragraph (7).</p>	<p>It is intended that the estate roads will remain private and therefore that the undertaker will be the street authority for those roads.</p> <p>The article is based on Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358), West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511) which A similar provision is set out in Article 14(4) (<i>Temporary alteration, diversion, prohibition and restriction of the use of streets</i>) of The A57 Link Roads Development Consent Order 2022.</p> <p>The Applicant confirmed it will review the article and consider whether additional wording might be appropriate requiring the approval of the relevant</p>

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			<p>authority in respect of the estate roads and amend the dDCO accordingly.</p>
<p>8. Public rights of way - creation, substitution, stopping up and closure of level crossings</p>	<p>Article 13</p>	<p>The drafting allows for temporary closure of public rights of way. If a route is to be temporarily closed then this period should cease either after a period, or at an event. The ExA would like to explore whether an indicator should be specified within the dDCO.</p>	<p>The Applicant agrees this would be a helpful addition to the provision and proposes that a further column is added to Part 4 of Schedule 5 to set out the trigger for which the temporary closure must cease. The Applicant proposes that the trigger would be "Completion of Work No. 6".</p> <p>The Applicant confirmed it will consider whether a defined term for completion is required or whether the relevant trigger should be aligned to relevant works being completed or carried out pursuant to the management plans through the Requirements.</p> <p>The Applicant will amend the dDCO accordingly.</p>

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<p>9. Private rights</p>	<p>Articles 28 and 44</p>	<p>The drafting of sub-paragraphs (9) in Article 28 and (a) in Article 44 would appear to relate to land outside the Order lands. Given the statutory notification requirements of the PA2008, could the Applicant show that those who may be affect are so aware. This concern relates to Human Rights Act issues.</p>	<p>The provisions of these articles are frequently found in other DCOs (The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358), The West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511), The A47 Wansford to Sutton Development Consent Order 2023 (S.I. 2023 218), The M25 Junction 28 Development Consent Order 2022 (S.I. 2022 573) and The Boston Alternative Energy Facility Order 2023 (S.I. 2023 778)) and ensure that, in the case of article 28(9), private rights do not prevent the delivery of the authorised development. In respect of persons outside the order land who have a relevant right that is interfered with under that article will, so far as they have been identified following diligent enquiry be listed in the Book of Reference (Doc Ref 4.3 [PINS Ref APP-090]) and consulted pursuant to sections 42 and 44 PA2008.</p> <p>In the case of article 44(1)(a) as above, this provision is in many DCO and specifically the distance of 15 metres follows Northampton Gateway. It is necessary to ensure the undertaker is able to remove obstruction or interference with the authorised development. Some DCO do not specify a particular distance and simply refer to trees, shrubs or hedgerows "near" the Order limits.</p> <p>Both of these provisions were included in the draft DCO which was consulted upon as part of the Applicant's pre-application statutory consultation in 2022. There were no objections to these provisions.</p>

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		<p>It is noted that the extension to land outside the Order limits in Article 28(9) does not occur in the precedents cited in the EM.</p>	<p>The drafting at Article 28(9) is consistent with both the A47 Wansford to Sutton Development Consent Order 2023 and the M25 Junction 28 Development Consent Order 2022 at Article 29(9). The Applicant will update the Explanatory Memorandum to refer to these DCOs.</p>
<p>10. Rights under or over streets</p>	<p>Article 29</p>	<p>Because of the drafting, particularly in relation to the definition of "Order lands" and "Order limits", this provision would allow the non-strategic highway to be adversely affected, and effectively blocked by an above ground, or overhanging, obstruction. Could this provision please be looked at again.</p>	<p>Please see response to Q5 above in respect of "Order land" and "Order limits".</p> <p>This article follows other DCOs and is based on the Applicant's understanding that it is not appropriate for the power to relate to the strategic road network. However, the power is relevant for other streets in the Order limits because it enables the undertaker to use and work within those streets, including the lawful interference/obstruction of the passage along a street (such as oversailing or installing apparatus) without needing to acquire the land.</p> <p>The Applicant confirmed it will review the dDCO and seek to include further clarity in this article, potentially confirming that any interference / obstruction shall be temporary, rather than permanent.</p>
<p>11. Temporary use of land for carrying</p>	<p>Article 32</p>	<p>a) Article 32(1) provides for greater effect than that provided for in the Northampton Gateway Rail Freight Interchange Order 2019 DCO cited.</p>	<p>a) The powers listed in paragraph (c) are considered a necessary addition and clarification of the types of works and activities that the land will be needed for. The inclusion of bridges is important because the</p>

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<p>out the authorised development</p>		<p>Could The ExA wishes to understand why additional powers in paragraph (c), for example for the temporary construction of haul roads, fencing and other means of enclosure, bridges and structures, are necessary in this case.</p> <p>The ExA is particularly interested in relation to bridges and how these powers may affect access rights on both road and rail.</p> <p>b) In addition, the ExA wishes to understand why sub-paragraph (1)(e) is required, if this is for permanent works. The Applicant is asked to provide an example as to why this provision is required.</p>	<p>authorised development includes the erection of two bridges over the railway, one being part of the A47 link road and the other being the new footbridge in place of the Outwoods level crossing, and the land adjoining those areas will be required for the construction of the bridges. The Applicant considers the specific reference to bridges to be helpful, to be absolutely clear that the relevant land may be used to construct those bridges. Interaction with the railway network will be governed and The the installation of the bridges will be carried out in accordance with the protective provisions in the Order and with a framework agreement with Network Rail (for the Outwoods bridge) and a tri-partite agreement with the local highway authority and Network Rail (for the A47 link road bridge).</p> <p>b) The inclusion of this wording is necessary so that the type of activity that may be undertaken is clear. The Applicant considers it a reasonable power for the land to be used to carry out mitigation works (such as at the Outwoods and Thorney Fields Farm level crossings) and further to simply specify that the land may be used for the purpose of the authorised development.</p> <p>In addition to the specific parcels of land identified in Schedule 10, the article authorises the temporary possession of any Order land in respect of which the compulsory acquisition powers have not yet been exercised, so that there is no undue delay in being able to carry out works or use the land. The ability to do</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p>this allows the undertaker to use some land and potentially reduce the scope of permanent acquisition required for example in respect of highway works, which is considered an appropriate use of the powers. It is also considered that this approach would benefit the owner since it could ultimately limit or reduce the permanent land take where highway works limits of deviation are lesser than the full extent of the works area identified, which wouldn't be known until the works had been finalised.</p>
<p>12. Operational land</p>	<p>Article 41</p>	<p>Could the Applicant please explain, why the whole of the Order lands should be considered "operational"? The ExA appreciates the reasons for the road and rail elements, but would like explanation for the rest. When clarified this should be set out in the EM.</p>	<p>It is considered prudent for this provision to relate to all land within the Order limits (please refer to the Applicant's response to Q5 above in respect of "Order land") particularly given the Rochdale envelope and limits of deviation approach to defining the authorised development. This provision is included so that statutory undertakers have the ability to carry out any necessary works within their statutory responsibility within the full extent of the Order limits. For example, it is likely that the spatial extent of rail related land would not simply be confined to the area of the tracks themselves.</p> <p><u>Notwithstanding the above, the Applicant confirmed it will consider whether all of the Order Limits should be considered 'operational' land or whether it should be limited to certain land.</u></p>

Matter	Provision	Issue or Question Raised	Applicants Response
<p>13. Statutory nuisance</p>	<p>Article 43</p>	<p>Given the recent Supreme Court case in <i>Fearn and others v Board of Trustees of the Tate Gallery</i> [2023] UKSC 3 the ExA would like to explore whether there any implications for the Proposed Development or the drafting utilised.</p>	<p>Article 43 of the draft DCO provides for defences to proceedings brought under section 82(1) of the Environmental Protection Act 1990 ("EPA") in relation to statutory nuisances falling within section 79(1) of that Act. Paragraphs (a)-(d) sets out the terms of those defences. Causing a statutory nuisance is a criminal offence. The classes of statutory nuisance as set out in section 79(1) are:</p> <p>" ...the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—</p> <p>(a) any premises in such a state as to be prejudicial to health or a nuisance;</p> <p>(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;</p> <p>(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;</p> <p>(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;</p> <p>(e) any accumulation or deposit which is prejudicial to health or a nuisance;</p> <p>(ea) any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance;</p> <p>(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;</p> <p>(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;</p> <p>(faa) any insects emanating from premises and being prejudicial to health or a nuisance;</p> <p>(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p><i>(fba) artificial light emitted from—</i> <i>(i) premises;</i> <i>(ii) any stationary object,</i> <i>so as to be prejudicial to health or a nuisance;</i> <i>(g) noise emitted from premises so as to be</i> <i>prejudicial to health or a nuisance;</i> <i>(ga) noise that is prejudicial to health or a</i> <i>nuisance and is emitted from or caused by a vehicle,</i> <i>machinery or equipment in a street [or in Scotland,</i> <i>road];</i> <i>(h) any other matter declared by any enactment</i> <i>to be a statutory nuisance;”</i></p> <p>In the case of <u>Fearn and Others v Board of the Tate Gallery</u> (“<u>Fearn</u>”), the Supreme Court was not concerned with a statutory nuisance but whether an actionable common law nuisance could be established. The creation of a common law nuisance is not a criminal offence but a civil law tort for which the remedy will normally be the grant of an injunction to stop the continuation of the nuisance and/or the award of damages.</p> <p>By their nature, common law nuisances are not the subject of statutory definition but are governed by principles established in decided cases. Broadly a private, common law nuisance, is one which, firstly, interferes with a person's use or enjoyment of land or of some right connected with land and, secondly, represents a substantial and unreasonable interference having regard to various factors such as the nature of the locality and the need for “give and take” between neighbouring uses of land. The principles are set out in paragraphs 9-47 of Lord Leggat’s judgment. The facts of the Fearn case</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p>concerned the issue as to whether the intrusive viewing of residential flats located close to Tate Modern's viewing gallery could represent an actionable private, common law, nuisance. The Court held that it could.</p> <p>The defences contained in article 43 of the dDCO are not available in respect of common law nuisance. However, it is a long and well established principle of common law nuisance that there is the defence of statutory authority to claims for such a nuisance. Paragraph 192 of Halsbury's Laws (2018) explains the scope of the principle:</p> <p><i>"Although the Crown cannot grant to a person a right to commit a public nuisance, an act or omission may have been specifically authorised by statute, and may, therefore, not be actionable either as a public or as a private nuisance. For the defence of statutory authority to be successfully raised, however, it must be shown that the act was within the powers conferred by the statute.</i></p> <p><i>If a nuisance is the inevitable consequence of what has been authorised the defence will be available by necessary implication even if the statute does not expressly authorise the commission of a nuisance in so many words. If, on the other hand, the statute authorises a particular act only if no nuisance is caused, statutory authority will be no defence to a claim in nuisance. But a body acting under a statutory duty, as distinct from a mere power, will not be liable for nuisance, even if such liability is expressly preserved by the statute, unless the nuisance was caused negligently.</i></p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p><i>A grant of planning permission under statutory powers must not be confused with statutory authority, since such a grant cannot license nuisances”.</i></p> <p>The Applicant does not consider that the Fearn case has implications for the Proposed Development or the drafting utilised. Firstly, the case was concerned with whether the overlooking of residential property by vast numbers of people in the course of a year (note the estimate cited by Lord Leggat in paragraph 1 of the judgment the number of annual visitors to the viewing platform was between 500,000 and 600,000). The Proposed Development has no such feature. Secondly, there is nothing in the judgment which is considered to expand the general principles of common law nuisance in a way that might affect the Proposed Development. Thirdly, the Applicant considers that the long established principle of statutory authority would apply as a defence as the statutory authorisation would be supplied by the DCO, which is a statutory instrument. It should be noted that the common law defence of statutory authority would not apply to a statutory nuisance under the EPA and therefore it was necessary that the provisions of article 43 of the dDCO should include such a defence.</p>
<p>14. Disapplication of provisions</p>	<p>Article 27</p>	<p>The ExA would like to explore explicitly and precisely why each provision should be amended as set out. When clarified this should be set out in the EM.</p>	<p>It is understood that this question relates to article 47.</p> <p>The Explanatory Memorandum seeks to explain the rationale for the inclusion of these provisions at paragraphs 5.150 - 5.158 however the Applicant</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p>notes the ExA would like to explore this in more detail and any amendments thought necessary will be included in the next updated Explanatory Memorandum to be submitted. In addition, as discussed at the ISH, the Applicant has prepared the schedule appended to this document at Appendix 1 which sets out each relevant provision and the Applicant's reasoning / justification for the amendments.</p> <p>The Applicant has noted that some wording intended to be included as explained in paragraph 5.153 of the Explanatory Memorandum in relation to the <i>Hillside</i> case has been omitted from the dDCO – this will be added to the next version.</p>
<p>15. Certification of plans and details of requirements</p>	<p>Article 48 and Schedule 2</p>	<p>Recent transport DCO, such as the M54 to M6 link and A47 Wansford to Sutton have included within that the documents should be published on a website to show the details and make them available to the public. The ExA would like to explore whether this should be provided for this Proposed Development. Additionally, this provision sometimes makes provision for a register of requirements. Alternatively, provision could be made within Schedule 2</p>	<p>The Applicant notes that National Highways, a public body with a statutory function, has proposed to add electronic versions of certified documents on a website. However, the Applicant does not consider the permanent retention of documents on a private website would be proportionate. The Applicant considers this might be appropriate perhaps for a local authority or Planning Inspectorate website.</p> <p>Following the ISH, the Applicant and the relevant authorities have discussed the most appropriate way of making certified documents available to the public electronically. The relevant local authorities have agreed that certified documents will be made available to the public on Blaby District Council's website. The Applicant is awaiting confirmation from</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p>Blaby District Council of the website address to insert and will update the dDCO as soon as the necessary information has been received.</p>
<p>16. Human remains and protection of buildings</p>	<p>Potential additional articles</p>	<p>Many made transport DCOs have provisions relating to human remains and the protection of buildings. The ExA would like to explore whether they are required in this case.</p>	<p>With regard to human remains, the Applicant notes that not all DCO include such a provision, however the Applicant is content to add such a provision for completeness and will insert a new article dealing with this in the next draft of the DCO to be submitted.</p> <p>Relating to human remains provisions, and following discussions at the ISH, the Applicant has considered whether it is necessary to disapply section 25 of the Burial Act 1857, which creates an offence of removing such body.</p> <p>The Applicant's believes that there is no requirement to seek consent from the Ministry of Justice to disapply section 25 of the Burial Act 1857.</p> <p>The disapplication of section 25 of the Burial Act 1857 is well precedented and there are many primary and secondary pieces of legislation which authorise the removal of human remains, and which disapply section 25 of the Burial Act 1857. In respect of DCOs the article is based on Model Provision 17(14).</p> <p>The Applicant's position is that the proposed disapplication correctly replaces the consenting procedures pursuant to section 25 with an alternative procedure, which provides satisfactory alternative protection, for managing the removal of any human</p>

Matter	Provision	Issue or Question Raised	Applicants Response
			<p>remains disturbed during the course of carrying out authorised development.</p> <p>The Applicant will amend the dDCO to include the disapplication of the section 25 of the Burial Act 1857.</p> <p>With regard to the protection of buildings, it was not considered that this was necessary, however, the Applicant accepts that this may be a sensible provision to include and would propose that an article dealing with protective works to buildings and structures is inserted to the next draft of the dDCO to be submitted.</p>

Schedule 1 – Works

Matter	Provision	Issue or Question Raised	Applicant's Response
17.	Works 1 to 7	The ExA would like to explore whether there is a logical inconsistency as to the way elements of Part 1 have been drafted. For example, Work 1(g) and (j). These are to provide as part of the main NSIP something which is ancillary to the associated development. Philosophically, can something in an NSIP be ancillary to associated development?	The Applicant's approach to the drafting of Schedule 1 has followed other DCO and specifically other rail freight DCO, and has sought to separate the NSIP and Associated Development as appropriate. The approach to the drafting has been to seek to include a comprehensive list of the works that will be undertaken within a particular works package, so where works that might be considered "ancillary" take place within a package, they are noted in that package, regardless of whether it falls within what is defined as the NSIP and what is defined as Associated Development.

Matter	Provision	Issue or Question Raised	Applicant's Response
		The ExA would look for precedent or legal justification for this, or a potential redrafting of Parts 1 and 2 of Schedule 1 so as to ensure that the main NSIP development and the associated development have the appropriate logical relationship.	The Applicant is undertaking a review of the Schedule and has noted some improvements and amendments that need to be made. The Applicant will also consider as part of this review whether amendments ought to be made to address the question raised by the ExA, particularly whether the separation of Part 1 and Part 2 is indeed needed .
18.	Work 9	None of the Masterplans show a "dedicated left-turn slip road into the main site" from the B4669 to the west of Junction 2 of the M69 nor is it shown on the highway plans (Doc 2.4D). The ExA would like to clarify whether such a slip road is proposed. The highway drawings indicate a route, but as this is not separate from the main roundabout it could not be described as "dedicated".	This is an error in the description of the works, there is no proposed dedicated left-turn slip road into the main site, only a new arm onto the Junction 2 roundabout. The Applicant will correct this in the next version of the dDCO to be submitted.
19.	Work 20	The ExA would like to confirm whether that the footbridge would be accessible to all, including those using wheelchairs and buggies, and is concerned as to whether the plans show sufficient land to indicate the maximum size to accommodate this usage. If such a provision for access for all is proposed how is this to be secured	The proposal is to close an existing level crossing and to provide a footbridge as a replacement. The current level crossing provision is from a public right of way through a field which is not easily accessible to those using wheelchairs and buggies. It is understood that the current level crossing is understood to have stepped access to the railway. The highway authority has not raised any concern with regard to accessibility proposals, or as to whether or not it should be a ramped bridge . The design of the proposed overbridge is currently under discussion with Network Rail and several potential options for the

Matter	Provision	Issue or Question Raised	Applicant's Response
			<p>structure are being considered. The Applicant has ensured that there is sufficient land available on both sides of the railway to provide a ramped bridge if this were to be required.</p> <p>The Applicant confirmed it would continue to liaise with the highway authority in respect of the bridge crossing.</p>

Schedule 2 – Requirements

Matter	Provision	Issue or Question Raised	Applicant's Response
<u>Part 1</u>			
20.	General matters	<p>a) Please could the Applicant ensure that all requirements have implementation clauses within them. There are a number which while requiring submission and approval of relevant matters do not require the approved matters to be actually implemented. Examples are requirements 13 and 18. There are many others. Requirement 34 deals with amendments and, for reasons set out below may not meet the tests for requirements.</p>	<p>a) The Applicant is aware that the draft requirements do not all specifically include implementation provisions. It was intended that implementation of all plans/schemes/details and relevant matters was covered by requirement 34(1). Should As discussed at the ISH, on the basis that the ExA consider that the requirements <u>should</u> each need <u>have</u> their own implementation wording, the Applicant will review and amend the dDCO accordingly.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>b) No requirement should have within it a tailpiece of the type deprecated in the cases of <i>Midcounties Co-operative Ltd v Wyre Forest DC</i> [2009] EWHC 964 and <i>Hubert v Carmarthenshire CC</i> [2015] EWHC 2327 (Admin). That is "or as may be agreed in writing by the relevant local planning authority" (or similar wording). Examples where it has been used are requirements 5 and 6. See also Advice Note 15, paragraph 17.4. Please delete.</p> <p>c) Could The Applicant please check all the requirements for technical terms which should be defined. An example being "Qbar" in requirement 14.</p> <p>d) After the 'definitions' requirement, could the requirements please be re-ordered over time, that being pre-construction, construction, operation.</p>	<p>b) The drafting in the draft DCO is consistent with the drafting in recently made DCOs - The M54 to M6 Link Road Development Consent Order 2022 (S.I. 2022 475), The A47 Wansford to Sutton Development Consent Order 2023 (S.I. 2023 218) and The Boston Alternative Energy Facility Order 2023 (S.I. 2023 778). The Applicant considers that the tailpieces referred to relate to the triggers, rather than the matters covered by the relevant requirements, such as those which might relate to the timing for provision of highway works where the ability to agree variations is necessary and appropriate for the safe co-ordination of the operation of the highway network, and also when replacement planting should be provided e.g. variations around planting seasons.</p> <p>c) The Applicant proposes that "Qbar" is deleted since the requirement is clear without this.</p> <p>d) The Applicant's approach was to list requirements by topic rather than particular trigger dates, given that most contain a pre-commencement trigger, however the Applicant will look to amend the drafting to re-order where possible.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>e) As a general rule, requirements should not reference external standards or documents as they often change and may lead to the Proposed Development not being constructed to the latest standards. Examples are requirements 14 and 27. Please redraft as necessary.</p>	<p>This is noted. The Applicant will consider amendments to the dDCO accordingly.</p>
		<p>f) Discharging of requirements should be by each local planning authority rather than different elements being approved by other bodies. The local planning authorities can consult where appropriate. There may be wider issues than a single subject that should be co-ordinated. For example, requirement 25 deals with more than highway safety.</p>	<p>The Applicant will review this, however it is noted that s120(2) PA2008 states that requirements may in particular include requirements corresponding to conditions which could have been imposed on the grant of a permission, consent or authorisation, or the giving of any notice, and a requirement to obtain the approval of the Secretary of State <u>or any other person</u> (our emphasis). The Applicant cannot see that the Act nor any guidance precludes the approval and discharge of requirements by bodies other than the local planning authorities. Indeed, the Government's guidance on the pre-application process refers under the heading "Drafting the Development Consent Order" (paragraphs 97 - 105) refers to the inclusion of requirements in respect of other statutory bodies and "<u>any necessary requirements, along with the mechanisms for discharging these, including the responsible authority and any appeal mechanisms</u>" (our emphasis).</p> <p>The Applicant also notes that other DCO such as Northampton Gateway and West Midlands Interchange have also adopted this approach and allow for the discharge of requirements by other</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
			<p>bodies such as National Highways and the local highway authority.</p> <p><u>Notwithstanding the above, the Applicant confirmed it will review the current drafting and seek to add further clarification, particularly where a relevant planning authority is responsible for discharging a requirement, where consultation with the relevant highway authority may be needed. The Applicant will also update the and include further detail in the Explanatory Memorandum.</u></p>
<p>21.</p>	<p>R4 – Detailed design approval</p>	<p>Sub-paragraph (2) needs the following clarifications:</p> <ul style="list-style-type: none"> • “passive provision” needs to be defined; • “electrical charging” should it be “electric vehicle charging”; <p>the minimum rating for both the electric vehicle charging and passive provisions should be included in kilowatts hours (kWh).</p>	<p>This is noted. The Applicant will review and amend the dDCO accordingly.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
22.	R5 – Design and phasing of highway works	<p>The ExA would like to explore the situation of Works 16 and 17 having been commenced, but not completed in relation to the effect of the Proposed Development on the highway network. What arrangements can be put in place to prevent the Proposed Development having harmful effects should the Proposed Development become operational, but these works are not completed.</p>	<p>It is considered that if the third party has commenced the works shown coloured green on the relevant highway plans, the s278 agreements pursuant to which those works are being carried out will govern the completion of those works including the situation where they are commenced but not completed including the ability for the highway authority to step in and complete the works and recover the costs for doing so from the relevant developer. The Applicant understood that these works are required to mitigate other developments and so should reasonably be provided by those developers, however the Applicant has built into the dDCO the potential for the Applicant to carry out those same works but under the DCO in the event that the developers haven't started to undertake those works at the stage by which, the Applicant acknowledges, the works should be commenced and will be required to be in place.</p> <p>In respect of Work No. 16, the Applicant now understands that the position with regard to the works coloured green on the highway plans is that those works are no longer proposed or required for the Magna Park development. The Applicant has therefore re-reviewed these works and the dDCO will be amended to remove requirement 5(3) so that the Applicant will deliver the works pursuant to requirement 5(1). The relevant highway plan will also be amended to remove the green works.</p> <p>The Applicant confirmed, in response to a query from Leicestershire County Council, that the Applicant's position with regard to Work No. 17 remains as per the Application submission.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		Equally the RR from Gazeley UK Limited (GLP) [RR-0410] indicates it is unclear how any future mitigation to the Cross in Hand Roundabout would be delivered given works to the A5 that are being implemented.	Please see above.
23.	R6 – Public rights of way and level crossing closures	<p>a) See matter 2 e) above relating to definitions</p> <p>b) Given nature of works and crossings, the ExA would like to explore whether any of the level crossings should be closed earlier than "operation"? Does operation include testing? If so, this should be clear. Would an earlier closure be possible and practicable?</p> <p>c) Could this requirement be combined with requirement 26 (public rights of way strategy)?</p>	<p>a) This is noted. The Applicant will amend the dDCO accordingly.</p> <p>b) Commercial operation is referring to the first time a train would be entering the terminal and therefore might have the potential to extend down the rail track to the level crossing. The Applicant confirmed that the intention of the requirement is to ensure there is an absolute backstop for those level crossings to be closed. It may be the case that as part of the other public footpath closures and diversions that may need to be in place earlier than this backstop date, the level crossings would have to be closed before that pursuant to other provisions in the dDCO such as the public rights of way strategy (requirement 26). The Applicant and Network Rail are in ongoing discussions with regards to the level crossing.</p> <p>The Applicant will consider whether the drafting of the requirement could be improved to more clearly reflect this.</p> <p>c) The Applicant will review and consider this as part of the request to re-order the requirements in Q20 d) above.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
<p>24.</p>	<p>R7 – Construction Environmental Management Plan, R23 – Site waste and materials management plan and R24 – Construction traffic management plan</p>	<p>a) The ExA would like to explore why there would be a Construction Environmental Management Plan, a Site waste and materials management plan and a Construction Traffic management plan for each phase? Could they not be combined given the duplications and interactions between the three.</p>	<p>a) It is common for schemes of this nature to have separate management plans dealing with these matters and this is also partially to assist with clarity in terms of matters approved by the discharging authority. The consultation and discharge of these matters is also considered to be more efficient and constructive if they are dealt with separately, as opposed to consideration of what could be potentially lengthy documents. This approach also follows other SRFI DCOs.</p> <p><u>The Applicant also noted that the local authorities themselves will be used to receiving separate plans and combining this extent of information into one plan might also be quite unwieldy in itself. Further, in the event that plans / schemes are conjoined and there were to be anything objectionable in a plan / scheme, the practicalities of actually discharging those requirements and the publication of documents would be more difficult and onerous. Some elements of these plans may take longer and involve more negotiation than others and it is easier for all parties to pursue and approve those in isolation rather than as part of a much larger document, which, if iterations of it then need to be made and resubmitted, needs to be changed as an entire entity rather than a separate plans.</u></p> <p><u>Notwithstanding the above, and on the basis of discussions at the ISH, the Applicant will explore with the relevant authorities whether or not conjoining plans / schemes might be possible.</u></p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>b) The ExA would like to explore whether any updates to the (combined) Construction Management Plan be subject to approval by the relevant local planning authority by way of submission?</p>	<p>a) b) The Applicant agrees that the drafting of the requirement could be clarified to ensure that as the CEMP is kept under review that review <u>and any updates are</u> is to be with the approval of the relevant planning authority.</p>
<p>25.</p>	<p>R8 – Travel Plan</p>	<p>The ExA would like to ask the Applicant to explain why a five-year period has been chosen for the travel plan given the traffic and transport implications of the development will remain for the whole of the life of the Proposed Development?</p>	<p>There is an error in the drafting of this requirement – it is intended that the occupier travel plans are to be complied with for the lifetime of the occupation of the unit. Reference to five years refers to active monitoring of the travel plans. A five year monitoring period following meaningful occupation of each unit has been proposed as is typical in developments of this nature. This is generally to manage the new impacts on the local transport network and engrain positive travel habits from the earliest occupation.</p> <p>The Applicant will amend the requirement and this will be reflected in the next version of the dDCO to be submitted.</p>
<p>26.</p>	<p>R12 – Archaeology and buildings recording</p>	<p>a) See matter 16 above.</p> <p>b) The ExA would like to explore what arrangements are in place for any analysis, reporting, publication or archiving required as part of the works to be secured?</p> <p>c) The ExA would like to explore what arrangements are in place to deal with any archaeological remains not previously identified which are revealed</p>	<p>b) and c) The Applicant agrees that the requirement needs further detail to cover these matters and proposes to add wording along the lines of the A47 Wansford to Sutton DCO similar to:</p> <p><i>"No part of the authorised development is to commence until for that part a written scheme of investigation ("WSI") of areas of archaeological interest, reflecting the relevant mitigation measures set out in the AMS, has been submitted</i></p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>when carrying out the Proposed Development</p> <p>The Applicant may wish to consider the drafting of recently made transport DCOs, for example the A47 Wansford to Sutton.</p>	<p><i>to and approved in writing by the relevant planning authority"</i></p> <p><i>A copy of any analysis, reporting, publication or archiving required as part of the WSI must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the WSI.</i></p> <p><i>"Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported by way of a notice to the relevant planning authority, as soon as reasonably practicable from the date they are identified."</i></p>
<p>27.</p>	<p>R15 – Contaminated land</p>	<p>The ExA would like to explore why this relates to controlled waters only, and not to potentially contaminated land which may be used, say, for recreational purposes.</p>	<p>The Applicant had utilised the drafting sought by the Environment Agency for this requirement but agrees this should relate to all land and not only controlled waters. This will be amended in the next version of the dDCO.</p>
<p>28.</p>	<p>R18 – Energy Strategy and R29 – Combined heat and power</p>	<p>The ExA would like to explore whether it would be possible to combine these requirements given the overall use of energy within the site. In any event, the ExA would like to explore whether requirement 29 meets the tests for requirements and particularly the test of necessity.</p>	<p>The Applicant notes the ExA's comments and will be ready to discuss this at the ISH.</p> <p>R18 – As mentioned at Item 3b of the Applicant's Post Hearing Submissions (page 5), the Applicant has prepared the note relating to the discussion held at the ISH in respect of energy generation addressing the ExA's questions and this note is included at Appendix B of the Applicant's Post Hearing Submissions (ISH1 and CAH1).</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
			<p>R29 – The Applicant's position is that Requirement 29 seeks to limit the operating hours of any CHP provided as part of the energy centre. This is to accord with the basis of the assessment that's set out in the air quality chapter (chapter 9 of the Environmental Statement Document 6.1.9 [PINS Ref APP-118]).</p>
<p>29.</p>	<p>R20 – Landscape Ecological Management Plan, R21 – Ecological mitigation management plan, R22 – Landscape scheme and R33 - Woodland Access management plan</p>	<p>a) The ExA would like to explore why there would be a Landscape Ecological Management Plan, Ecological mitigation management plan, Landscape scheme and Woodland access management plan for each phase? Could they not be combined given the duplications and interactions between them.</p> <p>b) The ExA would like to explore whether any updates to the (combined) Landscape and Ecology Management Plan be subject to approval by the relevant local planning authority by way of submission?</p>	<p>a) It is common for schemes of this nature to have separate management plans dealing with these matters and this is also partially to assist with clarity in terms of matters approved by the discharging authority. The consultation and discharge of these matters is also considered to be more efficient and constructive if they are dealt with separately, as opposed to consideration of what could be potentially lengthy documents. This approach also follows other SRFI DCOs.</p> <p>Please see response at Q.24 above which applies equally to this question, on the basis of discussions at ISH 1, the Applicant will explore with the relevant authorities whether or not conjoining plans / scheme might be possible.</p> <p>a)b) There is no specific drafting dealing with updates to these plans but the Applicant is content to discuss at the ISH. The Applicant agrees that the drafting of the requirement could be clarified to ensure that as the LEMP is kept under review that review and any updates are to be with the approval of the relevant planning authority</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		c) There are also typographic errors in requirement 33	c) This is noted. The Applicant will amend the dDCO accordingly.
30.	R34 – Amendments to approved details	As a matter of legal principle, requirements should be complete within their terms; see matter 20 f). If an applicant wishes to change a proposal following an approval, the appropriate procedure is to submit fresh details pursuant to the requirement. The ExA would like to explore how this requirement complies with the legal principle set out.	<p>This is noted. It is considered sensible for the DCO to contain a mechanism for amendments and this principle is covered in other DCO although perhaps not in a requirement. The Applicant's approach was to seek to include this in the relevant schedule, but the Applicant notes this could be covered perhaps elsewhere in the dDCO. The Applicant notes that the principle of changes or variations, so long as they do not give rise to materially greater environmental effects, are provided for in most DCO and this is an established principle. Examples are: The Able Marine Energy Park Order 2014 (S.I. 2014 No. 2935 (requirement 6)), The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No. 1358 (article 44), and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511 (article 43)).</p> <p><u>The Applicant confirmed it will review and consider whether the mechanism for amendments needs to be included as a Requirement, or whether it could be dealt with elsewhere in the dDCO.</u></p>
Part 2			

Matter	Provision	Issue or Question Raised	Applicant's Response
31.	General provision	Although it is implied, the ExA would like to explore whether an additional provision explicitly giving the local planning authority the power to determine applications for approval of requirements is required. Section 70(1) of the Town and Country Planning Act 1990 (as amended) may provide outline drafting.	The drafting of this Schedule follows Appendix 1 to PINS Advice Note 15: Drafting the Development Consent Order. <u>However, The—the Applicant confirmed it does not have any particular objection to building in some clarity around that particular power, potentially in Article 63 to explicitly refer to the relevant local authorities having the power to discharge. The Applicant also noted that Article 46(3) gives effect and confirms that Part 2 of Schedule Two applies and Part 2 then sets out the procedure. consider such an amendment to be necessary but will review this and is content to discuss at the ISH.</u>
32.	R4 – Appeals	a) The Applicant has cited the Northampton Gateway DCO as precedent in the EM. However, in the equivalent provision to sub-paragraph (3) there is no timetable for the Secretary of State (or the appointed person) to make a decision. The ExA would like to explore why such a provision is justified in this case?	The inclusion of a timeframe for making a decision mirrors the drafting in Schedule 2, Part 3, paragraph 45(3) of West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511) to ensure that a decision is taken promptly and within a clear timeframe to avoid delays to the Proposed Development. This is considered necessary to ensure there are no undue delays to the delivery of the nationally significant infrastructure project. <u>The Applicant confirmed it will review and provide justification as to why a 20 day period is considered reasonable and justified, as opposed to 'as soon as reasonably practicable'.</u>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>b) Sub-paragraph (8) could be seen as fettering the discretion of the decision maker and thus being against the rules of Natural Justice. The ExA would like to explore why such a provision is justified in this case?</p>	<p>The wording follows the Appendix in PINS Advice Note 15: Drafting the Development Consent Order and is included in many DCO. It is included in Schedule 2, Part 3, paragraph 45(8) of The West Midlands Rail Freight Interchange Order 2020. The drafting allows for extensions of time where it appears to the decision maker that such an extension is justified and should therefore prevent parties from being unfairly prejudiced where there is a good reason for late submission.</p> <p>However, the Applicant confirmed it would consider whether this ought to be amended.</p>
		<p>c) The ExA would like to explore whether sub-paragraph (11) is designed to allow the discharging authority to continue to make a decision after an appeal has been lodged. If this is the case the ExA would like to explore whether there is a precedent for such a provision has been made or otherwise explore why this is justified in this case. If not, whether this should be made clearer.</p>	<p>The wording follows the Appendix in PINS Advice Note 15: Drafting the Development Consent Order and is included in many DCO. It is included in Schedule 2, Part 3, paragraph 45(11) of The West Midlands Rail Freight Interchange Order 2020.</p> <p>The Applicant understands that it is intended to allow the discharging authority to confirm the wording in writing as may be referred to in any requirement requiring them to do so to evidence that it has issued a decision but makes it clear that it is not necessary for them to do so for the determination to have effect as discharging the requirement.</p> <p>The Applicant accepted at the ISH however that further clarity is required and is considering whether the drafting could be improved.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>d) The ExA would like to explore whether sub-paragraph (13) should be amended so that the appointed person is able to award costs on their own initiative.</p>	<p>The Applicant does not have a concern with such a change, however would simply note that the wording follows the Appendix in PINS Advice Note 15: Drafting the Development Consent Order and is included in many DCO. It is also included wording in Schedule 2, Part 3, paragraph 45(13) of The West Midlands Rail Freight Interchange Order 2020.</p>
<p>33.</p>	<p>R5 – Fees</p>	<p>a) The ExA would like to explore whether this proposal as set out is appropriate.</p>	<p>The wording follows the drafting in Schedule 2, Part 3, paragraph 46 of The West Midlands Rail Freight Interchange Order 2020 and the Applicant considers this to be a reasonable approach. The drafting does also allow for agreement between the parties in respect of such fees.</p>
		<p>b) There is no reference to “requirements” in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (the Fee Regulations). This would therefore lead to uncertainty and the ExA will want to explore alternative drafting.</p>	<p>The wording follows the drafting in Schedule 2, Part 3, paragraph 46 of The West Midlands Rail Freight Interchange Order 2020.</p> <p>However, the Applicant confirmed that ExA's concern is understood and the Applicant would be open to will consider alternative drafting if this is considered necessary for clarification.</p>
		<p>c) The Fee Regulations has a refund if a decision is not made within 12 weeks in respect of an application to discharge a condition. The ExA would like to explore why the 42-day period has been chosen and whether it is justified in this case.</p>	<p>The wording follows the Appendix in PINS Advice Note 15: Drafting the Development Consent Order and is included in many DCO. It is included in Schedule 2, Part 3, paragraph 46(2) of The West Midlands Rail Freight Interchange Order 2020.</p> <p>The Applicant confirmed it will review the drafting and, in the event that 42 days is considered appropriate, the Applicant will provide justification for the relevant timeframe.</p>

Remaining Schedules

Matter	Provision	Issue or Question Raised	Applicant's Response
34.	Schedule 8 – Speed limits and Schedule 9 – Clearways and no waiting	In each case, the 'event' is said to be on "completion". This term is not defined. The ExA would like to explore whether, if defined, this term is appropriate or whether alternative drafting, such as "open for traffic" is more appropriate.	The drafting is consistent with the drafting of other DCO schedules but is content to consider whether the term could be clarified and agrees that wording such as "open to traffic" might be appropriate. The Applicant will review this and amend the dDCO accordingly.
35.	Schedule 12 - Modifications of compensation and compulsory purchase enactments for creation of new rights	The ExA would like to explore whether there are precedents for these provisions. When clarified this should be set out in the EM.	<p>The drafting is consistent with other DCO schedules, for example The West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 511) (Schedule 12) and The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 1358) (Schedule 12), The M25 Junction 28 Development Consent Order 2022 (S.I. 2022 573) (Schedule 7)</p> <p>The Applicant confirmed it will amend the Explanatory Memorandum accordingly</p>
36.	Schedule 13 – Protective provisions	a) The ExA would like to explore the current situation in respect of protective provisions.	<p>This is noted. The Applicant confirmed in the ISH the position at that time with regard to the protective provisions, as set out below:</p> <p>Network Rail</p> <p>The Applicant has made detailed and significant progress on technical matters with Network Rail. The Applicant is continuing to pursue and progress the detail of the protective provisions to be included in the dDCO and anticipates that there will not be any issue</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
			<p>with agreeing protective provisions Network Rail in shortly and certainly within the time of the Examination.</p> <p>National Highways</p> <p>The Applicant received a detailed section 42 consultation response from NH, containing detailed comments on particular articles of the dDCO and on the proposed protection provisions. The Applicant has since engaged with NH in respect of both technical discussions and on the dDCO articles and protective provisions. Discussions continue to take place with NH in respect of the dDCO including protective provisions in parallel with the technical discussions.</p> <p>Leicestershire County Council</p> <p>Protective provisions benefitting LCC are currently included in the dDCO. LCC have since requested that their standard section 278 agreement provisions are considered by the Applicant. The Applicant is committed to engaging with LCC in respect of the protective provisions and has confirmed it will consider LCC's request in this regard. The Applicant has also held technical discussions with LCC, in parallel with the protective provisions.</p> <p>Cadent Gas</p> <p>The Applicant has made good progress with Cadent. There are a few outstanding points but, the Applicant</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
			<p>is hopeful that they will be resolved in the coming weeks.</p> <p>Severn Trent Water</p> <p>The Applicant is awaiting a response from Severn Trent Water on the current drafting. The protective provisions in the dDCO are based on Severn Trent Water's standard provisions and other water authorities standard protection provisions. The Applicant does not therefore anticipate any issues or concerns in agreeing the protective provisions.</p>
			<p>General electricity undertakers provisions</p> <p>The Applicant has included standard protective provisions in the dDCO, which have been included in many made DCOs. Separate provisions for NGED and NGET are to be included and the Applicant is engaged in discussions and does not anticipate any concerns or issues in finalising and agreeing such provisions.</p> <p>General Electronic Communications Code Operators</p> <p>The Applicant confirmed these are standard provisions included in most DCO and is aware that they have been accepted by BT Openreach on other schemes. The Applicant hasn't had any detailed comment from BT Openreach but continues to seek confirmation that the included provisions are agreed.</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
		<p>b) Given that National Grid Electricity Distribution (East Midlands) plc has its own Part (Part 8) the ExA would like to explore whether this should be specifically 'carved out' from Part 6. Various made transport DCOs (for example, M54 to M6 Link Road) have such provisions.</p>	<p>This is noted and agreed. The Applicant will amend the dDCO accordingly.</p>
		<p>c) In Part 7, the ExA would like to explore why, given the drafting set out, there are different definitions for "electronic communications code operator" and "operator"? Could these definitions be combined, and the necessary amendments made?</p>	<p>This is noted, however, the provisions are based on standard provisions applied in many DCO and required by such operators, such as Openreach. The Applicant has had no formal comment from Openreach on the drafting but, the Applicant is aware that the form of protective provisions have been included in other made DCOs. The Applicant does not anticipate any concerns or issues with Openreach.</p> <p>The Applicant will however consider this and if appropriate, amend the dDCO accordingly.</p>
37.	Schedule 14 – Miscellaneous controls	<p>The ExA would like to explore the reasoning for each and every one of the proposed modifications and exclusions of statutory provisions and why they are necessary in this case. When clarified this should be set out in the EM.</p>	<p>This is noted and the Applicant will be ready to discuss at the ISH.</p> <p>The Applicant confirmed it would provide a detailed schedule setting out each relevant provision and the Applicant's reasoning / justification for the amendments. The schedule is appended to this document at Appendix 1.</p> <p>The Applicant also confirmed it would review the wording mentioned by the ExA in the A38 Derby</p>

Matter	Provision	Issue or Question Raised	Applicant's Response
			<p data-bbox="1285 280 1984 344">Junctions DCO in respect of the Land Compensation Act 1961.</p> <p data-bbox="1285 384 1995 448">The Applicant will review and amend the Explanatory Memorandum accordingly.</p>

Deadline 1

Applicant's Post Hearing Submissions (ISH1)

Applicant's Updated Responses to the ExA's Initial Observations on Drafting of dDCO

APPENDIX 1

Schedule of Applicant's comments on proposed modifications and exclusions of statutory provisions

Hinckley National Rail Freight Interchange

Appendix 1

Schedule of Applicant's comments on proposed modifications and exclusions of statutory provisions

This document is provided as part of the Applicant's Post Hearing Submissions in respect of ISH1 in response to the ExA's initial observations on the drafting of the dDCO (questions 14 and 37), as discussed at the ISH.

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)			
dDCO provision		Relevant Legislation	Applicant's Justification
Article 47(1)(a)	Disapplication of byelaws made under Paragraphs 5, 6 and 6a of Schedule 25 to the Water Resources Act 1991	N/A - Generic provision relating to any byelaws made under the Water Resources Act 1991	The disapplication of byelaws including future byelaws is sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made. Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Scheme. The development has been assessed within the Environmental Statement accompanying the DCO application and the powers to carry out the development conferred under the DCO will have only be conferred on the applicant following a close examination of those powers (and of the accompanying ES). However, the terms of a byelaw made under the relevant provisions of the 1991 Act could still operate to fetter those powers if granted. The Applicant considers that any byelaws are therefore required to be disappplied under the DCO in their application to the development authorised under it. This is consistent with many other made DCOs for example the recently made Longfield Solar Farm Order 2023 (S.I. 2023 No. 734).

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)			
dDCO provision	Relevant Legislation	Applicant's Justification	
Article 47(1)(b)	Disapplication of section 23 of the Land Drainage Act 1991 in relation to watercourses for which Leicestershire County Council is the drainage board concerned	<p>23 Prohibition on obstructions etc in watercourses</p> <p>(1) No person shall—</p> <p>(a) erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or</p> <p>[(b) erect a culvert in an ordinary watercourse, or</p> <p>(c) alter a culvert in a manner that would be likely to affect the flow of an ordinary watercourse,]</p> <p>without the consent in writing of the drainage board concerned.</p> <p>[(1A) Consent under this section may be given subject to reasonable conditions.</p> <p>(1B) An internal drainage board or lead local flood authority must consult the [appropriate agency] before carrying out work within subsection (1)(a), (b) or (c) if the board or authority is "the drainage board concerned" for the purposes of this section.</p> <p>(1C) The drainage board concerned must have regard to any guidance issued by the [appropriate supervisory body] about the exercise of the board's functions under this section.]</p>	<p>The Applicant proposes to disapply this provision to make use of the 'one stop shop' approach and avoid the need to secure future consents, as is permitted by s120(5) of the PA2008.</p> <p>The dDCO includes at article 21 provisions relating to the discharge of water and the Applicant also proposes to include an additional paragraph within this article relating to the need to obtain consent. This new paragraph follows wording in the Northampton Gateway Rail Freight Interchange Order 2019 No. 1358 and would deal with the obtaining of consent under the article, rather than outside of the DCO. The proposed addition is a new paragraph (6) to article 2 as follows:</p> <p><i>"(6) The undertaker must not work on, over, under or near an ordinary watercourse (within [distance to be discussed with LLFA] metres of the landward toe of the bank), make changes to any structure that helps control water or discharge any water into any watercourse except with the approval of the lead local flood authority, and such approval may be given subject to such terms and conditions as the lead local flood authority may reasonably impose but must not be unreasonably withheld."</i></p>

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>(2) The drainage board concerned may require the payment of an application fee by a person who applies to them for their consent under this section; and the amount of that fee shall be £50 or such other sum as may be [prescribed] [and the amount of the fee shall be determined in accordance with a prescribed charging scheme].</p> <p>(3) Where an application is made to the drainage board concerned for their consent under this section—</p> <p>(a) the consent is not to be unreasonably withheld; and</p> <p>(b) if the board fail within two months after the relevant day to notify the applicant in writing of their determination with respect to the application, they shall be deemed to have consented.</p> <p>(4) In subsection (3) above "the relevant day", in relation to an application for a consent under this section, means whichever is the later of—</p> <p>(a) the day on which the application is made; and</p> <p>(b) if at the time when the application is made an application fee is required to be paid, the day on which the liability to pay that fee is discharged.</p>	

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>(5) If any question arises under this section whether the consent of the drainage board concerned is unreasonably withheld, that question shall be referred to a single arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party.</p> <p>(6) Nothing in this section shall apply—</p> <p>(a) to any works under the control of a navigation authority, harbour authority or conservancy authority; or</p> <p>(b) to any works carried out or maintained under or in pursuance of any Act or any order having the force of an Act.</p> <p>(7) The power of the Ministers to make an order under subsection (2) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.</p> <p>[(7A) In subsection (2) above “prescribed” means specified in, or determined in accordance with, an order made by the Ministers; and any such order may make different provision for different cases, including different provision in relation to different persons, circumstances or localities.]</p> <p>(8) Subject to section 8 above, references in this section and [sections 24 and 25] below to the drainage board concerned—</p>	

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)					
dDCO provision		Relevant Legislation		Applicant's Justification	
		<p>(a) in relation to a watercourse in an internal drainage district, are references to the drainage board for that district; and</p> <p>[(b) in relation to a watercourse in an area outside an internal drainage district, are references to the lead local flood authority for the area].</p> <p>[(9) Lead local flood authority" has the meaning given by section 6 of the Flood and Water Management Act 2010.]</p>			
Article 47(1)(c)	Disapplication of Section 32 of the Land Drainage Act 1991	<p>32 Variation of awards</p> <p>(1) Where any award made under any public or local Act contains any provision which in any manner affects or relates to the drainage of land, including any provision affecting the powers or duties of any drainage body or other person with respect to the drainage of land, the [appropriate agency]—</p> <p>(a) may submit to the appropriate Minister for confirmation a scheme for revoking, varying or amending that provision; and</p> <p>(b) shall submit such a scheme if it is directed to do so by the appropriate Minister on an application under subsection (2) below.</p> <p>(2) An application may be made to the appropriate Minister for such a direction as is mentioned in subsection (1)(b) above by any person who is under any obligation imposed by the award or by any internal drainage board.</p>		This section is disapplied due to the disapplication of section 23 and the applicable provision relating to land drainage being the DCO and not the LDA.	

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>(3) An application under subsection (2) above shall not be entertained unless—</p> <p>(a) the applicant has requested the [appropriate agency] to submit a scheme under this section; and</p> <p>(b) the [appropriate agency] has either refused to do so or failed to do so within six months or has submitted a scheme different from that which was requested.</p> <p>(4) A scheme under this section with respect to any award may—</p> <p>(a) provide for commuting, on the basis on which the obligations to which section 33 below relates are to be commuted, the obligation of any person under the award to repair or maintain any drainage works;</p> <p>(b) contain such incidental, consequential or supplemental provisions as are necessary or proper for the purposes of the scheme;</p> <p>(c) be revoked or varied by a subsequent scheme under this section.</p> <p>(5) The appropriate Minister may by order made by statutory instrument confirm any scheme submitted to him under this section, either with or without modifications.</p>	

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)			
dDCO provision		Relevant Legislation	Applicant's Justification
		<p>(6) Schedule 3 to this Act shall apply with respect to an order confirming a scheme under this section.</p> <p>(7) An order confirming a scheme under this section may contain provisions with respect to the persons by whom all or any of the expenses incurred by the appropriate Minister or other persons in connection with the making or confirmation of the order, or the making of the scheme, are to be borne.</p> <p>(8) In this section "the appropriate Minister"—</p> <p>(a) in relation to England, means the Minister; and</p> <p>(b) in relation to Wales, means the Secretary of State.</p>	
Article 47(1)(d)	Disapplication of Byelaws made under Section 66 of the Land Drainage Act 1991	N/A - Generic provision relating to any byelaws made under the Land Drainage Act 1991	The disapplication of byelaws including future byelaws is sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made. Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Scheme. The development has been assessed within the Environmental Statement accompanying the DCO application and the powers to carry out the development conferred under the DCO will have only be conferred on the applicant following a close examination of

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)			
dDCO provision		Relevant Legislation	Applicant's Justification
			those powers (and of the accompanying ES). However, the terms of a byelaw made under the relevant provisions of the 1991 Act could still operate to fetter those powers if granted. The Applicant considers that any byelaws are therefore required to be disapplied under the DCO in their application to the development authorised under it. This is consistent with many other made DCOs for example the recently made Longfield Solar Farm Order 2023 (S.I. 2023 No. 734).
Article 47(1)(e)	Disapplication of section 28E of the Wildlife and Countryside Act 1981	<p>[28E Duties in relation to sites of special scientific interest]</p> <p>[(1) The owner or occupier of any land included in a site of special scientific interest shall not while the notification under section 28(1)(b) remains in force carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless—</p> <p>(a) one of them has, after service of the notification, given [Natural England] notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out; and</p> <p>(b) one of the conditions specified in subsection (3) is fulfilled.</p> <p>(2) Subsection (1) does not apply to an owner or occupier being an authority to which section 28G applies acting in the exercise of its functions.</p> <p>(3) The conditions are—</p>	The Applicant requires the disapplication of this provision to ensure certainty that the DCO authorises the works and that any notification under this provision wouldn't apply, since Natural England's approval for relevant works would be secured pursuant to the DCO.

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>(a) that the operation is carried out with [Natural England's] written consent;</p> <p>(b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act[, section 15 of the 1968 Act or section 7 of the Natural Environment and Rural Communities Act 2006] [, section 7 of the Natural Environment and Rural Communities Act 2006 or section 16 of the Environment (Wales) Act 2016];</p> <p>(c) that the operation is carried out in accordance with a management scheme under section 28J or a management notice under section 28K.</p> <p>(4) A consent under subsection (3)(a) may be given—</p> <p>(a) subject to conditions, and</p> <p>(b) for a limited period,</p> <p>as specified in the consent.</p> <p>(5) If [Natural England] do not consent, they shall give notice saying so to the person who gave the notice under subsection (1).</p> <p>(6) [Natural England] may, by notice given to every owner and occupier of any of the land included in the site of special scientific interest, or the part of it to which the consent relates—</p>	

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)		
dDCO provision	Relevant Legislation	Applicant's Justification
	<p>(a) withdraw the consent; or</p> <p>(b) modify it (or further modify it) in any way.</p> <p>(7) The following—</p> <p>(a) a consent under subsection (3)(a) granting consent subject to conditions or for a limited period, and</p> <p>(b) a notice under subsection (5) or (6),</p> <p>must include a notice of [Natural England's] reasons for imposing the conditions, for the limitation of the period, for refusing consent, or for withdrawing or modifying the consent, and also a notice of the matters set out in subsection (8).</p> <p>(8) The matters referred to in subsection (7) are—</p> <p>(a) the rights of appeal under section 28F;</p> <p>(b) the effect of subsection (9); and</p> <p>(c) in the case of a notice under subsection (6), the effect of section 28M.</p> <p>(9) A withdrawal or modification of a consent is not to take effect until—</p> <p>(a) the expiry of the period for appealing against it; or</p> <p>(b) if an appeal is brought, its withdrawal or final determination.</p>	

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)			
dDCO provision		Relevant Legislation	Applicant's Justification
		(10) [Natural England] shall have power to enforce the provisions of this section.]	
Article 47(2)	The disapplication of the Neighbourhood Planning Act 2017 in so far as it relates to the temporary possession of land under articles 32 (temporary use of land for carrying out the authorised development) and 33 (temporary use of land for maintaining the authorised development).	N/A	As explained in paragraph 5.152 of the Explanatory Memorandum (Document 3.2, APP-086), the provisions and relevant Regulations 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, including The A428 Black Cat to Caxton Gibbet Development Consent Order 2022 No. 934 (article 3), The Boston Alternative Energy Facility Order 2023 No. 778 (article 40) and The M25 Junction 28 Development Consent Order 2022 No. 573 (article 47).
Article 47(3)	Provision to ensure that any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the Town and Country Planning Act 1990 (express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been	N/A	As explained in paragraph 5.153 of the Explanatory Memorandum, the Applicant requires the inclusion of this wording to ensure that development carried out pursuant to a planning permission following implementation of the DCO would not be in breach of the DCO, removing the risk of criminal liability pursuant to section 161 of the PA2008. 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

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)		
dDCO provision	Relevant Legislation	Applicant's Justification
<p>committed under the provisions of sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the PA2008.</p>		<p>or use of the authorised development under the draft DCO.</p> <p>This wording is deemed prudent and necessary following the ruling in Hillside Parks Ltd (Appellant) v Snowdonia National Park Authority. This Article follows Article 5(2) of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 except for the addition of the wording relating to the Hillside judgement which is without precedent as far as the Applicant is aware due to the recent nature of the judgment.</p> <p>As explained in ISH1 and in the Applicant's Updated Responses to the ExA's Initial Observations on Drafting of dDCO (Q14), the Applicant has noted that the intended drafting to address the Hillside position was omitted from the dDCO and the Applicant will insert this missing wording in the next draft to be submitted at Deadline 2. The omitted proposed wording is noted in red below for ease of reference:</p> <p><i>"(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order shall be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (development without development consent) and 161 (breach</i></p>

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)					
dDCO provision		Relevant Legislation		Applicant's Justification	
				<i>of terms of order granting development consent) of the 2008 Act(g) and such development or planning permission shall not at any time be construed as preventing the further construction, maintenance or use of the authorised development (or any part of it) in accordance with this Order."</i>	
Article 47(4)	Disapplication of Regulation 4 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007	<p>4 Requirement for consent</p> <p>(1) Subject to paragraph (2), no advertisement may be displayed unless consent for its display has been granted—</p> <p>(a) by the local planning authority or the Secretary of State on an application in that behalf (referred to in these Regulations as "express consent"); or</p> <p>(b) by regulation 6 (referred to in these Regulations as "deemed consent").</p> <p>(2) An advertisement to which, by virtue of regulation 1(3), Parts 2 and 3 of these Regulations do not apply may be displayed without express consent or deemed consent.</p> <p>(3) In determining an application for consent for the display of advertisements, the local planning authority may have regard to any material change in circumstances likely to occur within the period for which the consent is requested.</p>		The Applicant seeks to disapply the need for advertisement consent for any advertisement which is located in the areas identified on the parameters plans. This makes use of the "one stop shop" approach, and the Applicant considers it is reasonable to remove the need to obtain a further consent outside of the DCO for the advertisement boards required for the development. This approach has been included in previously granted rail freight orders where similar signage is be needed including, The Northampton Gateway Rail Freight Interchange Order 2019 and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016.	
Article 47(5)	This Order shall not constitute a planning permission for the purpose of	<p>5 Meaning of "planning permission"</p> <p>For the purposes of Part 11 of PA 2008, "planning permission" means—</p>		The Applicant requires the disapplication of CIL to the development to ensure that the CIL provisions to ensure there are no unforeseen	

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)		
dDCO provision	Relevant Legislation	Applicant's Justification
Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within article 5 of the 2010 Regulations (meaning of planning permission).	<p>(a) planning permission granted by a local planning authority under section 70, 73 or 73A of TCPA 1990;</p> <p>(b) planning permission granted by the Secretary of State under the provisions mentioned in sub-paragraph (a) as applied by sections 76A(10), 77(4) and 79(4) of TCPA 1990 (including permission so granted by a person appointed by the Secretary of State in accordance with regulations made under Schedule 6 to TCPA 1990);</p> <p>(c) planning permission granted or modified under section 177(1) of TCPA 1990 (grant or modification of planning permission on appeals against enforcement notices);</p> <p>(d) modification of a planning permission under section 97 or 100 of TCPA 1990;</p> <p>(e) planning permission granted by an order made under section 102 or 104 of TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works);</p> <p>(f) development consent granted by an order made under section 114(1)(a) of PA 2008; or</p> <p>(g) a general consent.</p> <p>(2) But planning permission does not include planning permission granted for a limited period.</p>	liabilities on the undertaker arising from any CIL yet to be introduced (there is no applicable CIL currently in place in respect of the development). It is common for CIL to be dis-applied in DCOs and it is reasonable and justifiable for the Applicant to ensure that it is aware of its financial commitments under the DCO. Similar provisions are included in the Northampton Gateway Rail Freight Interchange Order 2019 No. 1358 (article 45), the West Midlands Rail Freight Interchange Order 2020 No. 511 (article 44) and The Boston Alternative Energy Facility Order 2023 No. 40 (article 40).

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)					
dDCO provision		Relevant Legislation		Applicant's Justification	
		<p>(3) In paragraph (1)(g) "general consent" means—</p> <p>(a) planning permission granted—</p> <p>(i) by a development order made under section 59 of TCPA 1990,</p> <p>(ii) by a local development order adopted under section 61A of TCPA 1990,</p> <p>[(iia) by a neighbourhood development order made under section 61E [or 61Q (community right to build orders)] of TCPA 1990,]</p> <p>(iii) by a simplified planning zone scheme within the meaning of sections 82 and 83 of TCPA 1990,</p> <p>(iv) in accordance with section 90 of TCPA 1990 (development with government authorisation), or</p> <p>(v) by an enterprise zone scheme adopted under Schedule 32 to the Local Government, Planning and Land Act 1980; or</p> <p>(b) development authorised by an Act of Parliament or an order approved by both Houses of Parliament which designates specifically the nature of the development authorised and the land on which it may be carried out.</p>			
Article 47(6)	Disapplication of the various legislative provisions	See separate table below		See separate table below (note: the Applicant has noted the typographical error referring to	

Article 47: Disapplication, application and modification of legislative provisions (only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act)

<i>dDCO provision</i>		<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	contained in Schedule 14 (see separate table below)		Schedule 15 in this paragraph and this will be corrected in the next version of the dDCO to be submitted at Deadline 2).

Schedule 14: Miscellaneous Controls			
dDCO provision	Relevant Legislation	Applicant's Justification	
<p>Schedule 14 Paragraph 2</p>	<p>Section 141 of the Highways Act 1980</p>	<p>141 Restriction on planting of trees etc in or near carriageway (1) Subject to sections 64 and 96 above and section 142 below, no tree or shrub shall be planted in a made-up carriageway, or within 15 feet from the centre of a made-up carriageway. (2) If a tree or shrub is planted in contravention of this section the highway authority for the highway or, in the case of a highway maintainable by reason of tenure, enclosure or prescription, the person liable to maintain the highway, may by notice given either to the owner or to the occupier of the land in which the tree or shrub is planted require him to remove it within 21 days from the date of service of the notice. (3) If a person fails to comply with a notice under subsection (2) above he is guilty of an offence and liable to a fine not exceeding [level 1 on the standard scale] and if the offence is continued after conviction he is guilty of a further offence and liable to a fine not exceeding 50p for each day on which the offence is so continued.</p>	<p>The Applicant has sought to disapply these provisions because the details and provisions are dealt with in the DCO (including the protective provisions) and its associated plans. There is potential for landscaping within 15 feet of some carriageways (which would be delivered and managed pursuant to the DCO) and the Applicant considers it prudent to disapply these statutory provisions.</p>
	<p>Section 167 of the Highways Act 1980</p>	<p>167 Powers relating to retaining walls near streets (1) This section applies to any length of a retaining wall, being a length— (a) any cross-section of which is wholly or partly within 4 yards of a street; and (b) which is at any point of a greater height than 4 feet 6 inches above the level of the ground at the boundary of the street nearest that point; but does not apply to any length of a retaining wall erected on land belonging to any transport undertakers so long as that land is used by them primarily for the purpose of their undertaking or to any length of a retaining wall for the maintenance of which a highway authority are responsible.</p>	<p>This provision is disapplied because, as above, the details and provisions are dealt with in the DCO (including the protective provisions) and its associated plans. There are proposed retaining walls as part of the development, for example as part of the junction 2 southbound slip road works near the existing NGET pylon. The DCO will deal with the necessary approvals in this regard and the statutory provision is therefore to be disapplied to ensure that only one approval mechanism is required.</p>

Schedule 14: Miscellaneous Controls		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>(2) No length of retaining wall, being a length which when erected will be a length of retaining wall to which this section applies, shall be erected otherwise than in accordance with plans, sections and specifications approved by the local authority in whose area the street is situated; and before giving such approval that authority, if they are not the highway authority for the street, shall consult the highway authority.</p> <p>(3) Any person aggrieved by the refusal of a local authority to approve any plans, sections and specifications submitted to them under this section may appeal to a magistrates' court.</p> <p>(4) If a person erects a length of retaining wall in contravention of this section, he is guilty of an offence and liable to a fine not exceeding [level 3 on the standard scale].</p> <p>(5) If a length of retaining wall to which this section applies is in such condition (whether for want of repair or some other reason) as to be liable to endanger persons using the street, the local authority in whose area the street is situated may, by notice served on the owner or occupier of the land on which that length of wall is, require him to execute such works as will obviate the danger.</p> <p>(6) Where the power conferred by subsection (5) above is exercisable in relation to a length of wall and has not been exercised by the local authority empowered to exercise it, then, if that authority are not the highway authority for the street in question, the highway authority may request the local authority to exercise the power; and if the local authority refuse to comply with the request or fail within a reasonable time after the request is made to them to do so, the highway authority may exercise the power.</p> <p>(7) Subsections (2) to (7) of section 290 of the Public Health Act 1936 (appeals against and the enforcement of, certain notices</p>	

Schedule 14: Miscellaneous Controls		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>under that Act) apply to any notice served under subsection (5) above as they apply to such notices as are mentioned in subsection (1) of that section, but subject to the following modifications:—</p> <p>(a) references to the local authority are to be construed as including references to the highway authority;</p> <p>(b) for paragraph (f) of subsection (3) there is substituted the following paragraph—</p> <p>“(f) that some other person ought to contribute towards the expense of executing any works required by the notice”.</p> <p>(8) Sections 300 to 302 of the Public Health Act 1936 (supplementary provisions relating to appeals under the said section 290) apply, with the necessary modifications, to appeals brought by virtue of subsection (7) above.</p> <p>(9) In this section “retaining wall” means a wall, not forming part of a permanent building, which serves, or is intended to serve, as a support for earth or other material on one side only.</p>	
<p>Schedule 14 Paragraph 3</p>	<p>Section 56(1) and (1A) of the New Roads and Street Works Act 1991</p> <p>56 Power to give directions as to timing of street works</p> <p>(1) If it appears to the street authority—</p> <p>(a) that proposed street works are likely to cause serious disruption to traffic, and</p> <p>(b) that the disruption would be avoided or reduced if the works were carried out only at certain times [or on certain days (or at certain times on certain days)],</p> <p>the authority may give the undertaker such directions as may be appropriate as to the times [or days (or both)] when the works may or may not be carried out.</p>	<p>Article 9 and paragraph 4 of parts 2 and 3 of Schedule 13 (protective provisions) deal with the detail and approvals relating to notices and road space booking. These provisions are therefore disapplied to ensure only one approval mechanism is needed.</p>

Schedule 14: Miscellaneous Controls		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>[(1A) Where it appears to a street authority—</p> <p>(a) that subsisting street works are causing or are likely to cause serious disruption to traffic, and</p> <p>(b) that the disruption would be avoided or reduced if the works were to continue to be carried out only at certain times or on certain days (or at certain times on certain days),</p> <p>the authority may give the undertaker such directions as may be appropriate as to the times or days (or both) when the works may or may not continue to be carried out.]</p>	
Section 56A of the New Roads and Street Works Act 1991	<p>[56A Power to give directions as to placing of apparatus]</p> <p>[(1) Where—</p> <p>(a) an undertaker is proposing to execute street works consisting of the placing of apparatus in a street ("street A"),</p> <p>(b) placing the apparatus in street A is likely to cause disruption to traffic, and</p> <p>(c) it appears to the street authority that—</p> <p>(i) there is another street ("street B") in which the apparatus could be placed, and</p> <p>(ii) the conditions in subsection (2) are satisfied,</p> <p>the authority may by direction require the undertaker not to place the apparatus in street A (but may not require him to place the apparatus in street B).</p> <p>(2) The conditions referred to in subsection (1)(c) are that—</p> <p>(a) disruption to traffic would be avoided or reduced if the apparatus were to be placed in street B;</p> <p>(b) placing the apparatus in street B would be a reasonable way of achieving the purpose for which the apparatus is to be placed; and</p> <p>(c) it is reasonable to require the undertaker not to place the apparatus in street A.</p>	Article 9 and parts 2 and 3 of Schedule 13 (protective provisions) deal with the detailed highway design which will include arrangements relating to placing or apparatus. These provisions are therefore disapplied to ensure only one approval mechanism is needed.

Schedule 14: Miscellaneous Controls			
dDCO provision		Relevant Legislation	Applicant's Justification
		<p>(3) A direction under this section may be varied or revoked by a further such direction.</p> <p>(4) The procedure for giving a direction under this section shall be prescribed by the Secretary of State.</p> <p>(5) The Secretary of State may by regulations make provision for appeals against directions under this section, including provision as to the persons who may determine appeals and the procedure to be followed on an appeal.</p> <p>(6) An undertaker who executes works in contravention of a direction under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.</p> <p>(7) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, his failure is attributable to a direction under this section.</p> <p>(8) The Secretary of State may issue or approve for the purposes of this section a code of practice giving practical guidance as to the exercise by street authorities of the power conferred by this section; and in exercising that power a street authority shall have regard to the code of practice.]</p>	
	Section 58(1) of the New Roads and Street Works Act 1991	<p>58 Restriction on works following substantial road works</p> <p>(1) Where it is proposed to carry out substantial road works in a highway, the street authority may by notice in accordance with this section restrict the execution of street works during the [prescribed period] following the completion of those works. For this purpose substantial road works means works for road purposes, or such works together with other works, of such description as may be prescribed.</p>	The Applicant considers the disapplication of this provision necessary to ensure the deliver of the development is not frustrated, for example, the Applicant may need to carry out works where other works may have been recently completed.
	Section 61(1) of the New Roads and Street Works Act 1991	<p>61 Protected streets</p> <p>(1) The consent of the street authority is required for the placing of apparatus by an undertaker in a protected street, except as mentioned below.</p> <p>The following are "protected streets" for this purpose—</p>	This provision is disappled to ensure that the Applicant is able to divert apparatus placed in a special road (e.g. the M69). The DCO will deal with any such necessary approvals.

Schedule 14: Miscellaneous Controls		
dDCO provision	Relevant Legislation	Applicant's Justification
	<p>(a) any highway or proposed highway which is a special road in accordance with section 16 of the Highways Act 1980, and</p> <p>(b) any street designated by the street authority as protected.</p>	
Section 62(2) of the New Roads and Street Works Act 1991	<p>62 Supplementary provisions as to designation of protected streets</p> <p>(2) Where a street has been designated as protected the street authority may direct an undertaker to remove or change the position of apparatus placed in the street at a time when it was not so designated.</p> <p>The authority shall indemnify the undertaker in respect of his reasonable expenses in complying with such a direction.</p>	The Applicant considers this provision should be disapplied to ensure that any apparatus placed in, for example, the M69 junction 2 slip roads, will not then be directed to be moved, since the placing of them will have been agreed under the DCO.
Section 62(4) of the New Roads and Street Works Act 1991	<p>62 Supplementary provisions as to designation of protected streets</p> <p>(4) Where a designation is made or withdrawn the street authority may give such directions as they consider appropriate with respect to works in progress in the street when the designation comes into force or ceases to have effect.</p>	The Applicant considers that the protective provisions and DCO should properly deal with the designation of any streets and therefore the statutory provision should not apply.
Section 63(1) of the New Roads and Street Works Act 1991	<p>63 Streets with special engineering difficulties</p> <p>(1) The provisions of Schedule 4 have effect for requiring the settlement of a plan and section of street works to be executed in a street designated by the street authority as having special engineering difficulties.</p>	Detailed design is covered through the DCO including the protective provisions and therefore the statutory provision is disapplied to ensure only one governing mechanism.
Section 73A(1) of the New Roads and Street Works Act 1991	<p>73A Power to require undertaker to re-surface street</p> <p>(1) In prescribed circumstances, the street authority for a street may by notice (a "re-surfacing notice") require an undertaker within subsection (2) to execute such re-surfacing works in the street as may be specified in the notice.</p>	The Applicant notes that this provision is not yet in force and proposes to delete reference to this from the Schedule. In any event, the DCO and protective provisions deal with maintenance of the streets.

Schedule 14: Miscellaneous Controls		
dDCO provision	Relevant Legislation	Applicant's Justification
<p>Section 78A(1) of the New Roads and Street Works Act 1991</p>	<p>[78A Contributions to costs of re-surfacing by undertaker] [(1) Where a street authority has given a re-surfacing notice to an undertaker (A)— (a) the authority shall pay to A a proportion, calculated in the prescribed manner, of the costs reasonably incurred by A in executing the works specified in the notice; (b) an undertaker to whom subsection (2) applies shall pay to A a proportion, calculated in the prescribed manner, of those costs.</p>	<p>The Applicant notes that this provision is not yet in force and proposes to delete reference to this from the Schedule. In any event, the DCO and protective provisions deal with maintenance of the streets.</p>
<p>Section 74 of the New Roads and Street Works Act 1991</p>	<p>74 Charge for occupation of the highway where works unreasonably prolonged (1) The Secretary of State may make provision by regulations requiring an undertaker executing street works in a maintainable highway to pay a charge to the highway authority where— (a) the duration of the works exceeds such period as may be prescribed, and (b) the works are not completed within a reasonable period. (2) For this purpose "a reasonable period" means such period as is agreed by the authority and the undertaker to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable, for completion of the works in question. In default of agreement, the authority's view as to what is a reasonable period shall be acted upon pending the decision of the arbitrator. [(2A) The regulations may prescribe exemptions from the requirement to pay charges.] (3) The regulations may provide that if an undertaker has reason to believe that the duration of works will exceed the</p>	<p>The timeframe/schedule for the carrying out and completion of the works is to be governed by the DCO and protective provisions and therefore this provision needs to be disapplied to ensure that only the DCO is the appropriate governing mechanism.</p>

Schedule 14: Miscellaneous Controls		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>prescribed period he [shall give to the authority, in such manner as may be prescribed, notice containing] an estimate of their likely duration—</p> <p>(a) in the case of works in connection with the initial placing of apparatus in the street in pursuance of a street works licence, together with his application for the licence,</p> <p>(b) in the case of other works (not being emergency works), together with his notice under section 55 (notice of starting date) [or notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works)], or</p> <p>(c) in the case of emergency works, as soon as reasonably practicable after the works are begun,</p> <p>and that the period stated in an estimate [contained in a notice given to an authority in such manner] shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.</p> <p>(4) The regulations may also provide that if it appears to the undertaker that by reason of matters not previously foreseen or reasonably foreseeable the duration of the works—</p> <p>(a) is likely to exceed the prescribed period,</p> <p>(b) is likely to exceed the period stated in his previous estimate, or</p> <p>(c) is likely to exceed the period previously agreed or determined to be a reasonable period,</p> <p>he [shall give to the authority, in such manner as may be prescribed, notice containing] an estimate or revised estimate accordingly, and that if he does so any previous estimate,</p>	

Schedule 14: Miscellaneous Controls		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.</p> <p>(5) The amount of the charge shall be determined in such manner as may be prescribed by reference to the time taken to complete the works and the extent to which the surface of the highway is affected by the works.</p> <p>Different rates of charge may be prescribed according to the place and time at which the works are executed and such other factors as appear to the Secretary of State to be relevant.</p> <p>[(5A) The regulations may—</p> <p>(a) prescribe more than one rate of charge in respect of the same description of works, and</p> <p>(b) provide that charges are to be paid in respect of any works of that description at the rate which appears to the highway authority to be appropriate in relation to those works.</p> <p>(5B) The regulations may make provision for the determination of the duration of works for the purposes of the regulations.</p> <p>(5C) And they may, in particular, make provision for works to be treated as beginning or ending on the giving of, or as stated in, a notice given by the undertaker to the highway authority, in the prescribed manner, in accordance with a requirement imposed by the regulations.]</p> <p>(6) The regulations may make provision as to the time and manner of making payment of any charge.</p>	

Schedule 14: Miscellaneous Controls		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>(7) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a [charge—</p> <p>(a) in any particular case,</p> <p>(b) in such classes of case as they may decide or as may be prescribed, or</p> <p>(c) in all cases or in all cases other than a particular case or such class of case as they may decide or as may be prescribed].</p> <p>[(7A) The regulations may make provision as to—</p> <p>(a) the application by [strategic highways companies or] local highway authorities of sums paid by way of charges, and</p> <p>(b) the keeping of accounts, and the preparation and publication of statements of account, relating to sums paid by way of charges.</p> <p>(7B) The regulations may create in respect of any failure to give a notice required by the regulations a criminal offence triable summarily and punishable with a fine not exceeding [level 4] on the standard scale.]</p> <p>(8) The first regulations for the purposes of this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.</p>	
Section 74A of the New Roads and Street Works Act 1991	<p>[74A Charge determined by reference to duration of works]</p> <p>[(1) The Secretary of State may make provision by regulations requiring an undertaker executing street works in a maintainable highway to pay to the highway authority a charge determined, in the prescribed manner, by reference to the duration of the works.</p>	As above, the timeframe/schedule for the carrying out and completion of the works is to be governed by the DCO and protective provisions and therefore this provision needs to be disapplied to

Schedule 14: Miscellaneous Controls		
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>
	<p>(2) The regulations shall not require charges to be paid to [a strategic highways company or] a local highway authority unless the Secretary of State has approved it for the purposes of the regulations by order made by statutory instrument.</p> <p>(3) The regulations may prescribe exemptions from the requirement to pay charges.</p> <p>(4) The regulations may prescribe different rates of charge according to—</p> <p>(a) the extent to which the surface of the highway is affected by the works,</p> <p>(b) the place and time at which the works are executed, and</p> <p>(c) such other factors as appear to the Secretary of State to be relevant.</p> <p>(5) The regulations may—</p> <p>(a) prescribe more than one rate of charge in respect of the same description of works, and</p> <p>(b) provide that charges are to be paid in respect of any works of that description at the rate which appears to the highway authority to be appropriate in relation to those works.</p> <p>(6) The regulations may make provision for the determination of the duration of works for the purposes of the regulations.</p> <p>(7) And they may, in particular, make provision for works to be treated as beginning or ending on the giving of, or as stated in, a notice given by the undertaker to the highway authority, in the prescribed manner, in accordance with a requirement imposed by the regulations.</p> <p>(8) The regulations may make provision as to the time and manner of making payment of charges.</p> <p>(9) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a charge—</p> <p>(a) in any particular case,</p> <p>(b) in such classes of case as they may decide or as may be prescribed, or</p> <p>(c) in all cases or in all cases other than a particular case or such class of case as they may decide or as may be prescribed.</p> <p>(10) The regulations may make provision as to—</p>	<p>ensure that only the DCO is the appropriate governing mechanism.</p>

Schedule 14: Miscellaneous Controls		
dDCO provision	Relevant Legislation	Applicant's Justification
	<p>(a) the application by [strategic highways companies or] local highway authorities of sums paid by way of charges, and</p> <p>(b) the keeping of accounts, and the preparation and publication of statements of account, relating to sums paid by way of charges.</p> <p>(11) The regulations may create in respect of any failure to give a notice required by the regulations a criminal offence triable summarily and punishable with a fine not exceeding [level 4] on the standard scale.</p> <p>(12) The regulations may require disputes of any prescribed description to be referred to an arbitrator appointed in accordance with the regulations.</p> <p>(13) The first regulations under this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.]</p>	
<p><i>Schedule 3A to the New Roads and Street Works Act 1991 where a notice under section 54 (advance notice of certain works) or 55 (notice of starting date of works) of that Act(b) is given in respect of the authorised development</i></p>		
<p>No notice under paragraph 2(1)(d) of Schedule 3A to the New Roads and Street Works Act 1991 shall have effect to require the notification of works proposed to be carried out in the course of the authorised development.</p>	<p>[SCHEDULE 3A Restriction on Works Following Substantial Street Works]</p> <p>Notice by authority of proposed restriction</p> <p>(1) The street authority may publish a notice— (d) requiring any other undertakers who propose to execute street works in that part of the highway, and who have not already done so, to notify the authority of their proposed works within the period specified in the notice ("the notice period").</p>	<p>The Applicant disapplies these provisions because the DCO, including protective provisions, cover carrying out of the works and it is prudent to ensure that there is no additional, separate statutory provision.</p>

Schedule 14: Miscellaneous Controls		
dDCO provision	Relevant Legislation	Applicant's Justification
No directions under paragraph 3 of Schedule 3A to the New Roads and Street Works Act 1991 may be issued to the undertaker.	<p>[SCHEDULE 3A Restriction on Works Following Substantial Street Works] Completion of notified works</p> <p>3 (1) After the expiry of the notice period the street authority may issue directions to—</p> <p>(a) the undertaker proposing to execute the substantial street works,</p> <p>(b) any undertakers who have given notice under paragraph 2 in respect of works they propose to execute, and</p> <p>(c) any undertakers who have previously given notice of works they propose to execute in the part of the highway specified under paragraph 2(1)(c).</p> <p>(2) A direction to an undertaker under this paragraph is a direction as to the date on which he may begin to execute the works proposed by him.</p> <p>(3) Where—</p> <p>(a) a direction is given to an undertaker under this paragraph as respects the date on which he may begin to execute the works proposed by him, and</p> <p>(b) he begins to execute those works before that date, he is guilty of an offence.</p> <p>(4) After the expiry of the notice period, any undertaker who, before completion of the works referred to in sub-paragraph (1)(a) to (c), executes any other street works in the part of the highway specified under paragraph 2(1)(c), commits an offence.</p> <p>(5) Sub-paragraph (4) does not apply—</p> <p>(a) where an undertaker executes emergency works; or</p> <p>(b) in such other cases as may be prescribed.</p> <p>(6) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.</p>	The Applicant disapplies these provisions because the DCO, including protective provisions, cover carrying out of the works and it is prudent to ensure that there is no additional, separate statutory provision.
(13) Paragraph 3(4) of Schedule 3A to the New Roads and Street Works Act	<p>[SCHEDULE 3A Restriction on Works Following Substantial Street Works] Completion of notified works</p>	The Applicant disapplies these provisions because the DCO, including protective provisions, cover carrying out of the works and it is prudent to ensure that

Schedule 14: Miscellaneous Controls			
<i>dDCO provision</i>	<i>Relevant Legislation</i>	<i>Applicant's Justification</i>	
	1991 shall not apply in relation to the execution of works in the course of the authorised development.	(4) After the expiry of the notice period, any undertaker who, before completion of the works referred to in sub-paragraph (1)(a) to (c), executes any other street works in the part of the highway specified under paragraph 2(1)(c), commits an offence.	there is no additional, separate statutory provision.
	Paragraph 5(1) of Schedule 3A to the New Roads and Street Works Act 1991 shall not apply in relation to the execution of works in the course of the authorised development	[SCHEDULE 3A Restriction on Works Following Substantial Street Works] Effect of direction imposing restriction 5 (1) Where a direction under paragraph 4 is in force, an undertaker may not during the period specified in the direction execute street works in the part of the highway to which the restriction relates.	The Applicant disapplies these provisions because the DCO, including protective provisions, cover carrying out of the works and it is prudent to ensure that there is no additional, separate statutory provision.
Schedule 14 Paragraph 4	Section 42 of the Local Government (Miscellaneous Provisions) Act 1976	42 Certain future local Acts etc to be subject to the planning enactments etc except as otherwise provided (1) An Act or order to which this section applies shall have effect subject to— (a) the provisions of the enactments relating to town and country planning; (b) the provisions of the enactments relating to historic buildings and ancient monuments; (c) . . . [(d) Part II of the Food and Environment Protection Act 1985 (which relates to deposits in the sea)], except so far as the Act or order expressly provides otherwise. (2) This section applies to an Act or order which is— (a) a local Act passed after or in the same Session as this Act;	This provision is disapplied to ensure certainty so that no unknown future enactment restricts the authorised development.

Schedule 14: Miscellaneous Controls			
dDCO provision		Relevant Legislation	Applicant's Justification
		<p>(b) a provisional order confirmed by an Act so passed; or</p> <p>(c) an order which is made in the exercise of powers conferred by an Act and comes into force after the passing of this Act or in the same Session as this Act,</p> <p>and which authorises the carrying out on land specified in the Act or order of works of a kind so specified.</p>	
Schedule 14 Paragraph 5	No order, notice or regulation under the Town and Country Planning Act 1990 Act in relation to the preservation of trees, has effect in relation to the authorised development.	Sections 197 – 214D of the Town and Country Planning Act 1990	The Applicant has reviewed and considered this provision and considers that its disapplication should be removed. This is because article [] deals with the felling of trees including those subject to preservation orders. This will be removed in the next version of the DCO to be submitted at Deadline 2.
Schedule 14 Paragraph 6	No order, notice or regulation under the Environment Act 1995 in relation to the preservation of hedgerows, has effect in relation to the authorised development.	Sections 97 – 99 Environment Act 1995	This provision needs to be disapplied to ensure that the Hedgerow Regulations don't apply to those hedgerows which are authorised to be removed under the DCO.