

Tritax Symmetry (Hinckley) Limited

# **HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE**

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## **The Hinckley National Rail Freight Interchange Development Consent Order**

Project reference TR050007

### **Explanatory Memorandum**

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**Planning Act 2008**

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

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## 1. INTRODUCTION

- 1.1 This explanatory memorandum is submitted on behalf of Tritax Symmetry (Hinckley) Limited and forms part of the application for the Hinckley National Rail Freight Interchange Order 202[X] submitted to the Secretary of State pursuant to section 37 of the Planning Act 2008 (“the Application”). The Application seeks approval of the draft Development Consent Order (“DCO”) for a new rail freight interchange, warehousing and associated infrastructure near Junction 2 of the M69 Motorway near Hinckley in Leicestershire known as the Hinckley National Rail Freight Interchange (“HNRFI”).
- 1.2 This memorandum has been updated for Deadline 2 of the Examination of the DCO and explains the purpose and the effect of provisions in the updated draft DCO submitted at the same deadline (document reference: 3.1B), as required by Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>1</sup> (“the 2009 Regulations”), as amended and has been prepared taking into account the guidance set out in the Advice Note 13: Preparation of a Draft Development Consent Order and Explanatory Memorandum (version 3, republished in February 2019). The DCO has been prepared taking into account the guidance set out in Advice Note 15: Drafting Development Consent Orders (version 2, republished in July 2018).
- 1.3 The applicant is Tritax Symmetry (Hinckley) Limited, a special purpose vehicle set up to promote and develop HNRFI (“TSH”).
- 1.4 TSH has submitted a document called ‘Guide to Application’ (document reference: 1.4, Examination Library reference APP-004) which provides an overview of the Application and explains each of the documents submitted with the Application. The Application documentation is also itemised in the Electronic Application Index (document reference: 1.5).

## 2. THE SCOPE OF THE PROPOSED ORDER

### *NSIP Criteria*

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

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<sup>1</sup> S.I. 2009 No. 2264.

- 2.1.2 would be over 60 hectares in area;
  - 2.1.3 would be capable of handling consignments of goods from more than one consignor and to more than one consignee and at least 4 goods trains a day;
  - 2.1.4 would be part of the railway network in England;
  - 2.1.5 would include warehouses to which goods can be delivered from the railway network in England; and
  - 2.1.6 would not form part of a military establishment.
- 2.2 The purpose of the DCO is to authorise the construction and use of the rail freight interchange and associated development (see below).

#### *Scope of the proposed development*

- 2.3 The land on which HNRFI will be developed is referred to in the draft DCO as the order limits and is shown on the Order Limits Plan (document reference: 2.27, Examination Library reference: APP-084) (the “Order Limits”). Some powers, such as alteration of speed limits where no physical works are proposed, are sought outside of the Order Limits.
- 2.4 The draft DCO permits the works summarised below, which are described in more detail in Schedule 1 of the DCO. These works comprise the nationally significant infrastructure project and what is known as “associated development”. The inclusion of “associated development” in a DCO is authorised by s115 of the 2008 Act.
- 2.5 The Order has been updated to remove references to “Part 1” (the NSIP) and “Part 2” (Associated Development) following discussions at Issue Specific Hearing 1 (“ISH1”), since there are elements of what would constitute “associated development” listed alongside the previously separate Part 1.

#### *The Authorised Development*

- a) the demolition of Woodhouse Farm, Hobbs Hayes Farm, Freeholt Lodge and the existing bridge over the Leicester to Hinckley railway on Burbage Common Road;
- b) new rail infrastructure including points off the existing Leicester to Hinckley railway providing access to a series of parallel sidings at the HNRFI, in which trains would be unloaded, marshalled and loaded;

- c) an intermodal freight terminal or 'railport' capable of accommodating up to 16 trains up to 775m in length per day, with hard-surfaced areas for container storage and HGV parking and cranes for the loading and unloading of shipping containers from trains and lorries;
- d) up to 850,000 square metres (gross internal area or GIA) of warehousing and ancillary buildings with a total footprint of up to 650,000 square metres and up to 200,000 square metres of mezzanine floorspace, including the potential for some buildings to be directly rail connected if required by occupiers. These buildings might incorporate ancillary data centres to support the requirements of HNRFI occupiers and operators. They would also incorporate roof-mounted photovoltaic arrays with a generation capacity of up to 42.2 megawatts (MW), providing direct electricity supply to the building or exporting power to battery storage in the energy centre;
- e) a new road ('the A47 Link Road') from the modified M69 Junction 2 to the B4668 / A47 Leicester Road with a new bridge over the railway, providing vehicular access to the proposed HNRFI from the strategic highway network. The A47 Link Road would be intended for adoption as a public highway under the Highways Act 1980;
- f) an energy centre incorporating an electricity substation connected to the local electricity distribution network and a gas-fired combined heat and power plant (designed to be ready for 100% hydrogen in the grid gas supply) with an electrical generation capacity of up to 5 megawatts (MW). Total electricity generation capacity would therefore be 47.4MW;
- g) a lorry park with welfare facilities for drivers and HGV fuelling facilities;
- h) a site hub building, providing office, meeting space and marketing suite for use in connection with the management of the HNRFI and ancillary car parking;
- i) terrain remodelling, hard and soft landscape works, water course diversion, amenity water features and planting;
- j) noise attenuation measures, including acoustic barriers up to six metres in height;
- k) habitat creation and enhancement and the provision of publicly accessible amenity open space at the south-western extremity of the HNRFI near Burbage Wood and to the south of the proposed A47 Link Road between the railway and the B4668/A47 Leicester Road;

- l) pedestrian, equestrian and cycle access routes and infrastructure, including a new dedicated route for pedestrians, cyclists and horse riders from a point south of Elmesthorpe to Burbage Common;
- m) utility compounds, plant and service infrastructure;
- n) security and safety provisions inside the HNRFI including gatehouses, fencing and lighting;
- o) drainage works including surface water retention ponds, underground attenuation tanks and swales;
- p) works to M69 Junction 2 comprising the reconfiguration of the existing roundabout and its approach and exit lanes, the addition of a southbound slip road for traffic joining the M69 motorway and the addition of a northbound slip road for traffic leaving the M69 motorway at Junction 2;
- q) modifications to the junction at Hinckley Road and Stanton Lane, junction of the A47 Normandy Way with A47 Ashby Road, junction of A47 Normandy Way with the B4668 Leicester Road, junction of the B4114 Coventry Road with Croft Road, works to the Cross in Hand roundabout, junction of the B4114 Coventry Road with the B518 Broughton Road, and amendments to Traffic Regulation Orders on the local road network in response to the different traffic flow pattern resulting partly from the trips generated by the HNRFI development and principally from the change in movements as a result of the M69 Junction 2 upgrade;
- r) installation of a new foul rising main;
- s) earthworks to create screening bunds, soft landscaping works surrounding the development, basins for water attenuation, noise attenuation, amenity open space, provision of a new turning head;
- t) works affecting existing pedestrian level crossings on the Leicester to Hinckley railway at Outwoods, Thorney Fields Farm north-west of Sapcote, at Elmesthorpe. In addition, pedestrian level crossings serving footpaths that connect Burbage Common Road to Earl Shilton and Barwell are proposed for closure with the associated footpaths being diverted; ); and
- u) off-site (outside the proposed Order Limits) railway infrastructure including signals, signage and electricity connections.



## Consideration of Highway NSIP

- 2.6 TSH has given consideration as to whether any of the highway works would constitute a highway NSIP in their own right.
- 2.7 In particular Work No. 8 and Work No. 16 may have had the potential to be highway NSIPs (as the relevant highway authority for these parcels is the Secretary of State or a strategic highways company – a qualifying requirement).
- 2.8 The other work parcels consisting of highway works did not have the potential to meet the qualifying criteria as the relevant highway authority for the highway areas affected was not the Secretary of State or a strategic highways company.

## Qualifying Criteria

- 2.9 Section 14(h) of the 2008 Act confirms that highway-related development will be an NSIP in the event it meets the relevant criteria.
- 2.10 The relevant criteria are contained within section 22 of the 2008 Act. There are three categories of highway-related development which could constitute NSIPs, they are:
- 2.10.1 **construction** of a highway;
- 2.10.2 **alteration** of a highway; and
- 2.10.3 **improvement** of a highway.
- 2.11 Each category has its own qualifying requirements. Taking each in turn:

### 2.11.1 Construction

- 2.11.1.1 the highway will (when constructed) be wholly in England;
- 2.11.1.2 the Secretary of State or a strategic highways company<sup>2</sup> will be the highway authority for the highway; and
- 2.11.1.3 the area of development will be greater than the relevant limit set out in subsection (4) of section 22 (see paragraph 2.12 below).

### 2.11.2 Alteration

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

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<sup>2</sup> Such as National Highways

- 2.11.2.2 the Secretary of State or a strategic highways company will be the highway authority for the highway; and
- 2.11.2.3 the area of development will be greater than the relevant limit set out in subsection (4).

### **2.11.3 Improvement**

- 2.11.3.1 the highway will (when constructed) be wholly in England;
- 2.11.3.2 the Secretary of State or a strategic highways company will be the highway authority for the highway; and
- 2.11.3.3 the improvement is likely to have a significant effect on the environment.

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

- 2.12.1 in relation to the *construction* of a motorway: 15 hectares;
- 2.12.2 in relation to the *alteration* of a motorway: 15 hectares;
- 2.12.3 in relation to the *construction* of a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour or greater: 12.5 hectares;
- 2.12.4 in relation to the *alteration* of a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour or greater: 12.5 hectares;
- 2.12.5 in relation to the *construction* of any other highway: 7.5 hectares, and
- 2.12.6 in relation to the *alteration* of any other highway: 7.5 hectares.

### **Application of the criteria to HNRFI**

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

### *Work No. 8 – J2 M69 motorway*

- 2.14 TSH have agreed with National Highways that the relevant category of section 22 applicable to the highway works proposed as Work No. 8 in the DCO is the **alteration of a motorway**. This is because the proposed works are to an existing junction of the M69 motorway. Furthermore, TSH have agreed with National Highways that the relevant area to consider for the calculation of this Work area is as shown coloured dark blue on the plan at **Appendix 1**. This area includes the physical alteration works to the motorway for which National Highways is the responsible highway authority as well as land to be used temporarily in connection with those works (for example, for a construction compound). As is clear from the plan at **Appendix 1**, this area is **10.6** hectares and therefore falls below the threshold of 15 hectares to qualify as a highway NSIP pursuant to section 22 of the 2008 Act.
- 2.15 National Highways agree with TSH that the remaining element of Work No. 8 should not be classified as alteration works, rather these are minor improvement works (such as new signage) and are shown shaded green on the plan attached at **Appendix 2**.

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

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

### *Ancillary Matters*

- 2.18 The draft DCO also deals with some ancillary matters – i.e. provisions which are not development, as permitted by section 120 of the 2008 Act.
- 2.19 The 2008 Act allows a DCO to contain various powers, so long as those powers are related to or ancillary to HNRFI. Section 120 of the 2008 Act sets out what a DCO may contain:

- Section 120(1) permits the inclusion of “*requirements in connection with the development for which consent is granted*”. Further consideration of the imposition of requirements is set out at paragraph 5.168 below.
- Section 120(3) of the 2008 Act permits the inclusion in the DCO of a provision “*relating to, or to matters ancillary to, the development for which the consent is granted.*” This power is wide ranging and is limited only by the fact that a provision must be related to the authorised development for it to be included in DCO. TSH has indicated in this Explanatory Memorandum where a matter included in the draft DCO is considered to fall within this section and also where a matter is covered by one or more of the other sub-sections in section 120 of the 2008 Act.
- Section 120(4) sets out (together with Part 1 of Schedule 5 to the 2008 Act) some other matters which may be included in a DCO under section 120(3). It is important to note that this subsection does not restrict the matters which may be included in a DCO pursuant to section 120(3) – for instance the section states :

*‘the provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5’*

(TSH’s emphasis).

TSH does not consider that a provision is prevented from inclusion simply because it is not specifically listed in Part 1 of Schedule 5 (indeed, section 120(4) also allows a provision which is *related to* those matters listed in Part 1 of Schedule 5 to the 2008 Act), provided that the provision is related to the authorised development.

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

- (a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;
- (b) make amendments, repeals or revocations of statutory provision of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of or in connection with that DCO;
- (c) include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the DCO; and

- (d) include incidental, consequential, supplementary, transitional or transitional provisions and savings.
- 2.20 The draft DCO includes powers to acquire land for the purposes of carrying out the authorised development (Article 25) and acquire rights (Article 27) pursuant to section 120 of the 2008 Act and powers, under section 120 (3) and (4) and Part 1 of Schedule 5, paragraph 2, to authorise the creation, extinguishment and interference with interests in, or rights over, land (Article 28, Article 30). The justification for these powers is explained within the Statement of Reasons (document reference 4.1C).
- 2.21 The draft DCO also includes other ancillary matters such as the improvement/alteration/diversion and stopping up of highways (Article 9, Article 10, Article 11, Article 12) and the creation of new public rights of way and new private means of access (Article 13, Article 14). The DCO also applies, disapplies and modifies certain legislation relating to HNRFI (Article 49).

### 3. LOCATION OF HNRFI

- 3.1 The Application principally relates to land to the north west of junction 2 of the M69 motorway. The site is bounded on its north west boundary by the Nuneaton to Felixstowe railway and to the south east by the M69 motorway. The woodland areas of Burbage Wood, Aston Firs and Freeholt Wood, together with a gypsy and traveller community and mobile home site are located at the south west of the site. The location of the site can be seen on the Location Plan (document reference: 2.1, Examination Library reference: APP-006).
- 3.2 The site for the rail freight terminal, warehouses, associated infrastructure, landscaping and access, including a proposed link road to the A47 is identified as the 'main site' in the DCO and comprises the works areas for Work Nos. 1 to 7 and is referred to as the Main Site in this document.
- 3.3 There will also be works to Junction 2 of the M69 motorway within the strategic road network including new southern slip roads (Work No. 8) and to the approach to the Junction within the local highway network (Work No. 9).
- 3.4 There are also some other highway mitigation works proposed at various existing highway junctions within the vicinity of the site. These are defined in the draft DCO as Work Nos. 10 to 17 and are identified on the highway general arrangement plans (document series: 2.4, Examination Library reference: APP-021 to APP-031) .
- 3.5 The vast majority of land within the Order Limits lies within the District of Blaby and County of Leicestershire. There are some parts, however, which fall within Hinckley and Bosworth Borough (Leicestershire County) and one highway junction which falls within the areas of Harborough District (Leicestershire County) and Rugby Borough (Warwickshire County). Administrative boundaries are shown on the Order Limits

Plan (document reference: 2.27, Examination Library reference: APP-021 to APP-031).

#### 4. PLANS AND OTHER DOCUMENTS

- 4.1 The documentation submitted with the Application is described in the Guide to Application (document reference: 1.4, Examination Library reference: APP-004) and includes all the plans and documents required to comply with Regulation 5(2) of the 2009 Regulations.
- 4.2 The plans submitted with the Application include:
- (i) A **Site Location Plan** identifying the site and the administrative boundaries (document reference: 2.1, Examination Library reference: APP-006);
  - (ii) **Land Plans** (pursuant to Regulation 5(2)(i) – document series: 2.20, Examination Library reference: APP-057 to APP-065) showing the land affected by the development and the land subject to compulsory acquisition powers;
  - (iii) **Works Plans** (pursuant to Regulation 5(2)(j) – document series: 2.2, Examination Library reference: APP-007 to APP-015) identifying the areas for the different works which are referred to in Schedule 1 in the Draft DCO (document reference: 3.1B) and, where appropriate, show limits of deviation;
  - (iv) **Access and Rights of Way Plans** (pursuant to Regulation 5(2)(k) – document series: 2.3, Examination Library reference: APP-016 to APP-020) which identify new and altered means of access, stopping up of streets and roads, new and diverted public footpaths, bridleways and cycle tracks;
  - (v) **Parameters Plans** (pursuant to Regulation 5(2)(o) - document series: 2.12, Examination Library reference: APP-047) which identify the parameters with which the Works must comply;
  - (vi) **Highway Plans** (pursuant to Regulation 5(2)(o) – document series: 2.4, Examination Library reference: APP-021 to APP-031). These show the various elements of the highway mitigation;
  - (vii) **Highway Classification Plans** (document series: 2.5, Examination Library reference: APP-032 to APP-035), **Traffic Regulation Plans** (document series: 2.6, Examination Library reference: APP-036 to APP-038) and **Speed Limit Plans** (document series: 2.7, Examination Library reference: APP-039 to APP-

042). These plans deal with the changes to the regulation of the highways as a result of the highway works;

- (viii) **Railport General Arrangement Plans** (document series: 2.25, Examination Library reference: APP-071 to APP-074), **Railport Line Diagram** (document reference: 2.22, Examination Library reference: APP-067), and **Rail Sections Plans** (document series: 2.23, Examination Library reference: APP-068 to APP-069) - (pursuant to Regulation 5(2)(o)). These plans illustrate the rail infrastructure for which authority is sought and the rail terminal;
- (ix) An **Illustrative Masterplan and Illustrative Context Masterplan** (document references: 2.8 and 2.9, Examination Library reference: APP-0043 and APP-044), are provided to assist in demonstrating a form of development of the Main Site which would comply with the parameters which have been assessed (as shown on the Parameters Plans (document series: 2.12 Examination Library reference: APP-047); and
- (x) **Other Plans:**
- **Crown Land Plans** – (Pursuant to Regulation 5(2)(n) (document series: 2.26, Examination Library reference: APP-075 to APP-083) – these plans identify the crown land within the Order limits. For the reasons explained in Appendix H of the Applicant’s Post Hearing Submissions (ISH1 and CAH1) – (document reference 18.1.8) and set out in the Statement of Reasons (document reference: 4.1C), the Applicant considers that the Crown Land Plans no longer need to form part of the Application.
  - **Order Limits Plan** (Pursuant to Regulation 5(2)(o) (document reference: 2.27, Examination Library reference: APP-087) – this plan shows the extent of the land covered by the draft DCO.
  - **Bridge Plan** (pursuant to Regulation 5(2)(o) (document reference: 2.19, Examination Library reference: APP-056) – this plans show the indicative general arrangement of the proposed bridge of the A47 Link Road over the railway.
  - **Indicative Phasing & Works Plans** (document series: 2.18 Examination Library reference: APP-050 to APP-055) – these plans show the indicative phasing / order of the development on the Main Site.
  - **Level Crossings Plan** (document series: 2.28) – these plans have been provided to clearly show on a simple plan the level crossings to be closed as part of the development.

## 5. THE DRAFT ORDER

- 5.1 This section of the memorandum explains each Article and Schedule of the updated draft DCO submitted at Deadline 2 (document reference: 3.1B), as required by Regulation 5(2)(c) of 2009 Regulations (as amended).
- 5.2 Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the ‘Model Provisions’) has been repealed, the drafting of the DCO has been developed using the Model Provisions as a starting point, and has taken into account other approved Development Consent Orders. In particular, regard has been had to The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>3</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>4</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>5</sup> given their particular relevance as rail freight DCOs. Additionally, other recently approved DCO have been considered and mention of those is included in this document.

### PART 1 - PRELIMINARY

#### *Preamble*

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

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

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

#### *Article 2 (Interpretation)*

- 5.5 This Article principally comprises the definition of terms used throughout the draft DCO.
- 5.6 The definitions are straightforward and are not explained in detail in this document, however one definition of note which is different from most other DCOs (apart from those for rail freight developments) is that of “**undertaker**” – this expressly refers to Tritax Symmetry (Hinckley) Limited and includes (in respect of the main site only), those persons who have the benefit of the DCO in accordance with section 156 of

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<sup>3</sup> S.I. 2016 No. 17

<sup>4</sup> S.I. 2019 No. 1358

<sup>5</sup> S.I. 2020 No. 511



the Planning Act 2008, once the development has commenced. Article 7 restricts the benefit of the DCO in certain respects to the Tritax Symmetry (Hinckley) Limited only.

- 5.7 In the ExA's Written Questions (ExQ1.5.2b), the ExA asked the Applicant to explain why the definition of "undertaker", particularly in relation to limb (b), is drafted as it is, since section 156(1) of the Planning Act 2008 confirms that a DCO has effect "for the benefit of the land and all persons for the time being interested in the land". Limb (b) of the definition of "undertaker" operates as a restriction on the generality of section 156(1) of the Planning Act 2008 in that it specifies that the provisions of that section apply only to those having an interest in the main site and not the entire Order limits. The benefit of the Order as it applies to land within the Order limits but outside of the main site therefore rests solely with Tritax Symmetry (Hinckley) Limited subject to the provisions of Articles 7 and 8. Furthermore, the benefit of the Order in respect of the main site does not transfer until development is implemented on the land concerned, which prevents individual landowners having the benefit of the Order to undertake piecemeal implementation.
- 5.8 As discussed at ISH5, the ExA also asked the Applicant to consider the relationship of the definition of "undertaker" with Article 7(4) and Article 8. Article 7(1) states that the Order is for the benefit of the undertaker and then sets out exceptions to that generality in Article 7(2), (3) and (4). The Article 7(4) exception applies to works expressly stated in the Order to be for the benefit of the entities listed. Article 8 relates to the transfer of benefit of those provisions which are solely for the benefit of the Applicant under Articles 7(2) and (3) and for which the consent of the Secretary of State is needed to authorise their transfer. The provision of Article 8 set out the process to be followed to achieve such a transfer. The Applicant is therefore satisfied that there are no inconsistencies between the definition on "undertaker" and the provisions of Article 7(4) and Article 8.
- 5.9 In the Examining Authority's ("ExA") Initial Observations on Drafting of dDCO (Appendix F of the Rule 6 Letter (Examination Library reference PD-005)), the ExA requested that the Applicant consider amending the definition of "owner" to include derivatives in the same way the definition of "maintain" does. As confirmed in ISH1 relating to the dDCO and in the Applicant's Updated Responses to the ExA's Initial Observations on Drafting of dDCO submitted at Deadline 1 (Appendix C to the Applicant's Post Hearing Submissions (ISH1 and CAH1) (Document 18.1.3), the Applicant has considered whether the definition should be amended in this regard and does not think this is necessary. There are no derivatives of 'owner' in language terms. The term is defined by reference to the Acquisition of Land Act 1981 and the definition in that Act is a person satisfying specified criteria 'from time to time'. As such the Applicant considers it is not appropriate to include any reference to successors in title or assigns in the definition in the dDCO.

5.10 In the ExA's Written Questions (ExQ1.5.2a), the ExA asked the Applicant to explain why the definition of "authorised development" includes "any works carried out under the requirements". The words "any works carried out under the requirements" are intended to capture any such works which do not constitute "development" within the meaning of s32 of the Planning Act 2008. Examples might include survey or ground investigation works (including archaeological investigation), temporary works for the protection of land, watercourses or structures, the replacement of traffic signs and road markings as part of highway works.

~~5.7~~

~~5.85.11~~ The Applicant has made various amendments to the definitions following discussions at ISH1 which are explained in the Schedule of changes made to the draft Development Consent Order submitted by the Applicant at Deadline 2 (Document 3.4B), but largely the remainder of Article 2 is consistent with many other DCOs including The West Midlands Rail Freight Interchange Order 2020<sup>6</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>7</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>8</sup> and sets out further matters relating to interpretation.

## **PART 2 – PRINCIPAL POWERS**

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

~~5.95.12~~ This Article provides development consent for the authorised development to be carried out and used within the Order Limits subject to the provisions of the draft DCO and to the requirements.

5.13 The Article includes the reference to the authorised development being "used" specifically to ensure that the consent for use of the whole of the authorised development is covered. Section 157 of the 2008 Act authorises the use of *buildings* in respect of which development consent is granted, but there is no similar provision related to land. Further, although "use" is also expressly included in Articles 5 (for the rail infrastructure and warehousing) and 42 (for the railway system), in those Articles, the "use" provision relates only to some specific works.

5.14 In the ExA's Written Questions (ExQ1.5.3), the ExA asked the Applicant to explain the reasoning for the words "and used" given the provisions in Article 5 authorise the use to take place, and to set out how all users of the site will be subject to operational requirements under Schedule 2. The ExA also asked the Applicant to consider the

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<sup>6</sup> S.I. 2020 No. 511

<sup>7</sup> S.I. 2019 No. 1358

<sup>8</sup> S.I. 2016 No. 17

relationship to Article 7, and in particular the phrase “other persons affected by the authorised development” in that Article, since this could be considered to apply both to those with interests in the Order land, but also to those outside.

5.15 The provisions of Article 3 are general in nature and apply to the whole of the authorised development across the whole of the Order limits. However, the authorisation Article 3 is “Subject to the provisions of this Order”.

5.16 Article 5 only applies to Work Nos 1-7 and provides for the specific use of Work Nos 1-7 and incorporates the authorisation of ancillary uses from time to time. As set out in paragraph 5.27 below, this has the effect of authorisation the operation and use of those Works as if they had been granted planning permission under the Town and Country Planning Act 1990.

5.17 Authorisation given to the undertaker under Articles 3 and 5 is also expressly granted subject to the requirements. This effectively means all occupiers of the site would be subject to the requirements. Occupiers and all users authorised by them would therefore potentially be liable for breach of the order if permitting use of the development otherwise than in accordance with the terms of the requirements. Again this replicates the position on consents granted under the Town and Country Planning Act 1990.

5.18 As set out in paragraph 5.8 above, Article 7(4) operates as a restriction on the undertaker taking the benefit of powers in the Order where those powers are expressly granted (inter alia) for the benefit of other persons affected by the authorised development. Articles 3 and 5 do not contain any such powers and so the Applicant does not consider that there is any inconsistency between Article 3, Article 5 and Article 7 that needs to be resolved.

~~5.10~~

~~5.115.19~~ Article 3(2) has been included to make clear that nothing in the Order grants development consent for the construction of a generating station within the meaning of section 14(1)(a) of the 2008 Act, as set out in the Applicant’s Energy Note submitted at Deadline 1 following the discussions at ISH1 (Appendix B to the Applicant’s Post Hearing Submissions (ISH1 and CAH1) (Document 18.1.2)). This was previously governed by requirement 17 in the dDCO, which has now been removed.

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

~~5.125.20~~ This Article is included in the draft DCO pursuant to section 115 of the 2008 Act and identifies by reference to the Parameters Plan (document reference: 2.12 Examination Library reference: APP-047), the Works Plans (document series: 2.2, Examination Library reference: APP-050 to APP-055), the Highway Plans (document

series 2.4, Examination Library reference: APP-021 to APP-031) and the railway plans (document series: 2.23 – 2.25, Examination Library reference: APP-068 to APP-074), the parameters and limits of deviation within which the authorised development must be carried out. The Parameters Plans provide the parameters for the Main Site, the Works Plans show the maximum extent of the areas within which the Works (defined in Schedule 1 of the draft DCO) may take place and provide the lateral limits of deviation for Work Nos. 4 and 7. Article 4(3) also provides that any Work which has a boundary with Work No. 4 or 7 may move to abut Work 4 or 7 in the event that Work 4 or 7 deviates within its permitted limits of deviation. The highway plans provide the vertical limits of deviation for the highway works and the rail plans provide the vertical limits of deviation for the rail works.

5.135.21 The Parameters Plans are the basis of the environmental assessment that has been carried out. The plans identify the parameters of the authorised development on the Main Site which are secured through Article 4. They identify the parameters that apply to each development zone and set out the maximum zone floorspace, maximum overall floorspace, the finished floor levels and building height range. The extent of the structural green infrastructure to be provided is also identified. These provide the “Rochdale Envelope” for the purposes of the environmental assessment of the development on the site. This is in line with Planning Inspectorate Advice Note 9 “Using the Rochdale Envelope”<sup>9</sup>.

5.145.22 The detail of the authorised development (aside from the highway works) which is not set out on the Parameters Plans will be approved following the grant of the draft DCO and through the submission of details to the local planning authority pursuant to the requirements contained in Schedule 2 (Requirements) of the draft DCO. This would include, for example, location and height of buildings and ecological mitigation details.

5.155.23 The detail of the highway works will be approved through the provisions of the relevant protective provisions with the appropriate highway authority (Parts 2 and 3 of Schedule 13). The design of those works are required to be in accordance with the Highway Plans (document series: 2.4, Examination Library reference: APP-021 to APP-031).

5.165.24 This approach is in accordance with the guidance set out in the Planning Inspectorate’s Advice Notes 9<sup>10</sup> and 15<sup>11</sup>.

5.175.25 The Article allows for exceptions to the application of the limits of deviation where the relevant planning authority are satisfied that it would not result in any materially new or materially different significant effects on the environment that

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<sup>9</sup> Rochdale Envelope: Version 3, republished July 2018

<sup>10</sup> Rochdale Envelope: Version 3, republished July 2018

<sup>11</sup> Drafting Development Consent Orders: Version 2, republished July 2018

have not been assessed in the Environmental Statement (document reference: 6.1, Examination Library reference: APP-109 to APP-130).

5-185.26 This approach was authorised in The Northampton Gateway Rail Freight Interchange Order 2019<sup>12</sup> and has previously been considered to be an acceptable principle. This Article is consistent with the relevant Article in that Order<sup>13</sup>.

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

5-195.27 This Article gives express authorisation of the use of Work No. 1 to 7, pursuant to section 157 of the 2008 Act. It authorises the operation and use of the rail freight terminal and warehousing and ensures that ancillary uses apply in the same way as if the rail terminal and/or warehousing were built pursuant to a planning permission.

5-205.28 The Article follows the approach taken in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order <sup>14</sup> and other more recent Development Consent Orders<sup>15</sup>.

### ***Article 6 (Maintenance of authorised development)***

5.29 This Article is based upon Article 3 of the Model Provisions and provides for the maintenance of the authorised development (apart from the highway works, the maintenance of which is covered by Article 15). The Article is consistent with the drafting in The West Midlands Rail Freight Interchange Order 2020<sup>16</sup> and is similar to Article 6 of The Northampton Gateway Rail Freight Interchange Order 2019<sup>17</sup>.

5-215.30 In the ExA's Written Questions (ExQ1.5.5), the ExA noted that Article 6(1) refers to "an agreement made under this Order [which] provides otherwise" and asked the Applicant to explain which, if any, agreements it is referring to. The Applicant notes that there are several agreements potentially contemplated with third parties under the Protective Provisions to which this provision would apply, but it would also encompass a mechanism for the generality of this permissive power to be restricted by agreement by reference to being made under the terms of the Article. There are no such agreements currently being progressed by the Applicant.

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<sup>12</sup> S.I. 2019 No. 1358 (Article 4)

<sup>13</sup> Article 4

<sup>14</sup> S.I. 2014 No. 2384 (Article 4)

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

<sup>16</sup> S.I. 2020 No. 511 (Article 6)

<sup>17</sup> S.I. 2019 No. 1358 (Article 4)

5-225.31 The inclusion of this Article is permitted by section 120(3) of the 2008 Act because maintenance of the authorised development is clearly “related” to the consent. The Article permits any activity within the definition of “maintain” as per Article 2, but does not authorise any maintenance activity which would be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the Environmental Statement (document reference 6.1, Examination Library reference: APP-109 to APP-130) or in any updated environmental information submitted pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017<sup>18</sup>.

### ***Article 7 (Benefit of Order)***

5-235.32 The DCO will benefit the “undertaker”, as defined. In the case of the Main Site, this includes all parties who qualify under section 156 of the 2008 Act, once the development commences. However, some powers will benefit only TSH as follows:

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

5-245.33 The application of the compulsory acquisition powers to TSH only is appropriate due to the need to provide security on the ability to fund any potential compensation due as a result of the exercise of those powers.

5-255.34 It is considered that the power to carry out the highway works should be restricted to the named undertaker as opposed to being available to all the owners of the land interests within the Order Limits, so that TSH, as the developer of the site overall, can ensure the comprehensive delivery of the highway infrastructure.

5-265.35 Sub-paragraph 4 is included to ensure that any works which may be carried out by other parties under the Protective Provisions are authorised.

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<sup>18</sup> S.I. 2017 No. 572 (as amended)

5-275.36 This wording has been included in other Orders such as the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016<sup>19</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>20</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>21</sup>.

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

5-285.37 This Article is included to set out the procedure to be followed in the event that a request to transfer the benefit of Part 5 and/or Parts 2 and 3 of Schedule 13 (Protective Provisions) is made to the Secretary of State, as permitted by Article 7(2) and (3)(a).

5-295.38 This Article is based on Article 5 of the Model Provisions but contains a requirement to consult with the Secretary of State prior to seeking their consent for a transfer and provisions relating to the giving of notice to the Secretary of State prior to such transfer taking effect. The drafting of Article 8 (including the requirement to consult) is similar to the drafting of The Norfolk Vanguard Offshore Wind Farm Order 2022<sup>22</sup> and The Little Crow Solar Park Order 2022<sup>23</sup> but is limited to specified parts of the Order for the reasons set out above.

## **PART 3**

### **STREETS**

#### ***Article 9 (Street works)***

5-305.39 This Article permits the carrying out of, on the streets specified in Schedule 3 (Streets subject to street works), the works described in the Article for the purposes of the authorised development.

5-315.40 The inclusion of this Article in the draft DCO provides a statutory right to undertake street works within the specified streets and means that the undertaker will not need to obtain a separate licence from the street authority under the New Roads and Street Works Act 1991.

5-325.41 This Article is based on Article 8 of the Model Provisions although it includes a more extensive list of potential works than Model Provision 8. The extended list of potential works is the same as that included in other Orders such as The West

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<sup>19</sup> S.I. 2016 No. 863 (Article 7)  
<sup>20</sup> S.I. 2019 No. 1358 (Article 7)  
<sup>21</sup> S.I. 2020 No. 511 (Article 7)  
<sup>22</sup> S.I. 2022 No. 436 (Article 5)  
<sup>23</sup> S.I. 2022 No. 138 (Article 6)

Midlands Rail Freight Interchange Order 2020<sup>24</sup> and The Northampton Gateway Rail Freight Interchange Order 2019<sup>25</sup>.

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

5.335.42 This Article is not included in the Model Provisions but is included in similar form in in many other Development Consent Orders including the recent Southampton to London Pipeline Order 2020<sup>26</sup>.

5.345.43 The inclusion of the Article in the draft DCO is authorised pursuant to section 120(3) of the 2008 Act since any necessary works are related to the authorised development.

5.44 This Article relates to the roads in the main site which will be maintained as private roads. Any alteration to those roads will still require the consent of the local highway street authority, notwithstanding that they are private roads. A deemed consent provision has been included to ensure there is timely a route to a decision.

~~5.35~~

5.45 This deemed consent approach is increasingly incorporated in many DCOs, , for example, see the National Grid (Hinkley Point C Connection Project) Order 2016<sup>27</sup> (although it is noted this had a shorter 28 day period). It was also included, with the 42 day period as is proposed here, in The Northampton Gateway Rail Freight Interchange Order 2019<sup>28</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>29</sup>.

5.46 In the ExA's Written Questions (ExQ1.5.6), the ExA noted that this power would allow the Applicant to alter any street within the Order limits, and asked the Applicant to explain why this extensive power is required, and why it could not be limited to specific identified streets.

5.47 Primarily, this power relates to private streets to be provided as part of the development and which may need to be altered from time to time as the development proceeds and to streets within the main site that need to have their layout altered (e.g. Burbage Common Road and the public rights of way network).

5.48 The Applicant also notes that the provision is still subject to the consent of the local street authority under Article 10(2) and considers that it would be unduly restrictive

<sup>24</sup> S.I. 2020 No. 511 (Article 8)  
<sup>25</sup> S.I. 2019 No. 1358 (Article 8)  
<sup>26</sup> S.I. 2020 No. 1099 (Article 10)  
<sup>27</sup> S.I. 2016 No. 49 (Article 12)  
<sup>28</sup> S.I. 2019 No. 1358 (Article 9)  
<sup>29</sup> S.I. 2020 No. 511 (Article 9)



on the generality of this permissive power whose purpose is to ensure the deliverability of the of the development in a timely manner to limit it to specific streets. To do so would also require an element of detailed design which has not yet been undertaken.

5.36

### ***Article 11 (Permanent stopping up of streets)***

5.375.49 This Article is based on Article 9 of the Model Provisions and allows the stopping up of streets permanently. Schedule 4 (Streets to be permanently stopped up for which no substitute is to be provided) of the draft DCO identifies the lengths of street that are to be permanently stopped up and the stage of the authorised development at which the stopping up is to take place. The extents of stopping up are shown on the Access and Rights of Way Plans (document series: 2.3, Examination Library reference: APP-016 to APP-020). The Article makes provision for all rights of way in the stopped up streets to be extinguished. Provision is also made for the payment of compensation.

5.385.50 Article 11(6) has been included to ensure that the permanent stopping up of Smithy Lane, which comprises an all-purpose highway, does not take place until the substitute for the bridleway also served by the relevant part of Smithy Lane (identified as public right of way V29/7 in Part 1 of Schedule 5) has been provided in accordance with Article 13. This will ensure that the replacement bridleway is available for use prior to the stopping up taking place.

5.395.51 The Article is similar to the Article included in East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>30</sup> save that there are no streets to be stopped up for which alternative streets are to be provided, and to Articles in the Northampton Gateway Rail Freight Interchange Order 2019<sup>31</sup>.

5.405.52 The power is authorised by section 120(3) by virtue of the stopping up being related to the authorised development, and its inclusion in the draft DCO is also specifically authorised by section 120(4) and paragraph 17 of Part 1 of Schedule 5 to the 2008 Act, since all of the streets to which this Article applies which are to be permanently stopped up are highways.

### ***Article 12 (Temporary closure of streets)***

5.415.53 This Article provides for the temporary closure of streets for the purpose of carrying out the authorised development. It is included in the draft DCO to

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<sup>30</sup> S.I. 2016 No. 17 (Article 11)

<sup>31</sup> S.I. 2019 No. 1358 (Article 10)

ensure that the undertaker has the power to close streets temporarily should it be necessary. As with Article 11, the inclusion of the power is authorised by section 120(3) (i.e. by virtue of the temporary closure being related to the authorised development), section 120(4) and paragraph 17 of Part 1 of Schedule 5 to the 2008 Act.

5.425.54 The Article is largely based on the Model Provision Article 11 save that it does not specify any streets to be temporarily stopped up at this stage because that is not considered necessary and the Article is drafted so that the prior consent of the street authority is required before any streets are stopped up temporarily.

5.55 The Article is similar to many other DCOs, for example, the M20 Junction 10a Order 2017<sup>32</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>33</sup>, The A57 Link Roads Development Consent Order 2022<sup>34</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>35</sup>.

5.56 In the ExA's Written Questions (ExQ1.5.6), the ExA asked the Applicant to explain why this provision is needed for the authorised development as opposed to where it has previously been utilised in precedent DCOs. The Applicant envisages that it may be necessary to temporarily close streets or parts of streets (including widths) in order to provide safe working areas for carrying out works or to enable works to be carried out to streets or in, on over or under streets. Examples might include the provisions of new accesses to compounds, to provide services to the main site, to provide appropriate signage or to restrict public access to areas in the interests of safety.

5.435.57 Where this is done Article 12(2) would allow the undertaker to use that area of a street and a temporary working site which might include its temporary use for siting of plant and storage of equipment and apparatus during the working day pending its use.

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

5.445.58 This Article is included in the draft DCO to allow for the creation, substitution, stopping up of rights of way affecting land within the Order Limits (see tables at paragraphs 5.50 and 5.52 below for details of rights of way being created, substituted or stopped up) and for the closure of level crossings (see table at paragraph 5.54 below for details of level crossing affected) as well as the power of temporary

<sup>32</sup> S.I. 2017 No. 1202 (Article 14)

<sup>33</sup> S.I. 2019 No. 1358 (Article 11)

<sup>34</sup> S.I. 2022 No. 1206 (Article 14(4))

<sup>35</sup> S.I. 2020 No. 511 (Article 11)

closure of any public rights of way to the extent agreed with the relevant highway authority. ~~(U50/1 – see access and rights of way plan – document reference 2.3B, Examination Library reference APP-018).~~ It is necessary for some public rights of way to be stopped up and substitutes provided and for the closure of the level crossings identified in order for the authorised development to be carried out.

~~5.45 Where a public right of way is to be closed temporarily, the Order provides for the temporary closure to cease at the stage of the authorised development set out in Schedule 5.~~

5.465.59 This Article is similar in nature to articles found in other Orders such as The West Midlands Rail Freight Interchange Order 2020<sup>36</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>37</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>38</sup>.

5.475.60 The inclusion of a power to stop up a public right of way is permitted by section 136 of the 2008 Act, if the Secretary of State is satisfied that an alternative right of way will be provided, or an alternative is not required.

5.485.61 Schedule 5 (Public rights of way) of the draft DCO identifies the public rights of way affected by the draft DCO. Part 1 specifies the extent of the permanent stopping up and the substitute public rights of way to be created. The exact alignments of the new rights of way are to be agreed between the undertaker and the local highway authority. Schedule 5 (Public rights of way) fixes only the terminus points for those new rights of way. These terminus points are shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020).

5.62 In the ExA's Written Questions (ExQ1.5.18), the ExA asked the Applicant to explain the reasoning behind the temporary closure and subsequent reopening of the PRow U50/1 between points 6 and 7 and the creation of new footpath on a very similar, but different line, rather than rationalising these into a single route. The Applicant has reviewed PRow U50/1 between points 6 and 7 and it is acknowledged that it would be more practical to permanently stop up this section of the footpath and replace it with the new bridleway proposed on the route shown on the Access and Rights of Way Plans. The Applicant has amended Article 13 and Parts 1 and 4 of Schedule 5 to reflect this.

5.495.63 It is considered that proposed the substitute rights of way are proportionate to the extent of stopping up.

<sup>36</sup> S.I. 2020 No. 511 (Article 12)

<sup>37</sup> S.I. 2019 No. 1358 (Article 12)

<sup>38</sup> S.I. 2016 No. 17 (Article 12)

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

<b>PROW Stopped Up</b>	<b>Extent of Stopping Up</b>	<b>Reason no substitute is provided</b>
V23/1	The dashed green line between point 9 and point 11 on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	Area to be redeveloped as a private railport with no public access.
U50/3	The dashed green line between point 10 and point 12 on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	Area to be redeveloped as a private railport with no public access.
U52/6	The dashed green line between point 4 and point 32 on the access and rights of way plan (document references: 2.3A and 2.3C, Examination Library reference: APP-017 and APP-019)	Alternative route provided via new bridleway and footway on A47 link road
U52/7	The dashed green line between point 32 and point 3 on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	Alternative route provided along footway on A47 link road
V35/2	The dashed green line between point 29 and point 32 on the access and rights of way plan (document references: 2.3A and 2.3D, Examination Library reference: APP-017 and APP-020)	Alternative route provided along footway on A47 link road

PROW Stopped Up	Extent of Stopping Up	Reason no substitute is provided
U50/2	The dashed green line between point 28 and point 29 on the access and rights of way plan (document references: 2.3A and 2.3D, Examination Library reference: APP-017 and APP-020)	Alternative route provided along footway on estate roads
U53/1	The dashed green line between point 30 and point 31 on the access and rights of way plans (document references: 2.3A and 2.3D, Examination Library reference: APP-017 and APP-020)	Alternative route provided via permissive footpath/cyclepath associated with estate road
T89/1	The dashed green line between points 24 and point 25 and point 26 on the access and rights of way plan (document reference: 2.3B, Examination Library reference: APP-018)	This PROW is being stopped up as part of the necessary level crossing closure and for safety reasons, because the exit onto the B581 at point 24 is considered to be unsafe. The closure of the level crossing means that there can be no substitute provided, however, the existing route from point 26 to the B581 via Bostock Close remains

5-515.65 The Article also provides for the creation of new public rights of way as part of the authorised development (being wholly new and not provided as a result of the stopping up and substitution of an existing right of way). The reason for which the provisions relating to the creation of the public rights of way are included in the draft DCO is to facilitate the development and therefore their creation is clearly “related” to the authorised development pursuant to section 120(3) of the 2008 Act.

5-525.66 The new rights of way are detailed in Part 3 of Schedule 5 and their purpose and how they relate to the development are set out in the table below.

New Public Right of Way	Purpose
The bridleway shown with a solid yellow line between points 5 and 7 on the access and rights of way plan (document references: <del>2.3A</del> , 2.3C and 2.3D, Examination Library reference: <del>APP-017</del> , APP-019 and APP-020)	Provide amenity route around the southern boundary of the Main HNRFI Site
The footpath shown dashed brown between points 8 and 10 on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	To enable access over or under the railway line via A47 Link Road or Burbage Common Underbridge
The footpath shown dashed brown between points 33 and 34 on the access and rights of way plan (document references: <del>2.3A and</del> 2.3D, Examination Library reference: <del>APP-017 and</del> APP-020)	To provide direct stepped access to A47 Link Road footway from proposed bridleway
The footpath shown dashed brown between points 35 and 36 on the access and rights of way plan (document references: <del>2.3A and</del> 2.3D, Examination Library reference: <del>APP-017 and</del> APP-020)	To provide ramped access to A47 Link Road footway from proposed bridleway
The bridleway shown with a solid yellow line between points 7 and 18 on the access and rights of way plan (document reference: 2.3D, Examination Library reference: APP-020)	To provide amenity route around the southern boundary of the Main HNRFI Site
The bridleway shown with a solid yellow line between points 16 and 13 on the access and rights of way plan (document references: 2.3B and 2.3D, Examination Library reference: APP-018 and APP-020)	To provide amenity route around the south-eastern and north-eastern boundaries of the Main HNRFI Site

New Public Right of Way	Purpose
Extension of U17/2 between points 19 and 20 shown dashed brown on the access and rights of way plan (document reference: 2.3B, Examination Library reference: APP-018)	To access existing bridge over the railway line in lieu of stopped up Thorney Fields level crossing.

~~5.53 Part 4 of Schedule 5 identifies the extent of the public right of way to be temporarily closed.~~

5.545.67 The closure of the level crossings identified on the Access and Rights of Way Plans (document series: 2.3, Examination Library reference: APP-016 to APP-020) and referred to in Article 13(5) is required as part of the authorised development for the reasons set out in the table below.

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

Level Crossing	Reason for closure
	there is an oncoming train in the other direction. Pedestrian route diverted via an existing bridge.
Outwoods level crossing	If an east bound 775m freight train was held at a red signal prior to accessing the terminal, whilst it would not block the level crossing, it would partially obstruct the line of sight for pedestrians crossing north to south, potentially giving them insufficient time to complete their crossing, if there is an oncoming train in the other direction. The level crossing to be replaced by a new footbridge providing equivalent access.

### **Article 14 (Accesses)**

**5.555.68** This Article is included to allow for new access to be provided or existing accesses to be altered. Any works under this Article require prior consent from the relevant highway authority or, in the case of private streets, the street authority (save for those which are included and defined as part of the authorised development which will not require any further consent other than through the provisions of Parts 2 and 3 of Schedule 13 (Protective Provisions).

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

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



Private Means of Access	Reason why no substitute to be provided
The private means of access shown coloured blue and labelled D on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	Existing field served by the access will be developed over therefore access is no longer required.
The private means of access shown coloured blue and labelled G on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	Existing field served by the access will be developed over therefore access is no longer required.
The private means of access shown coloured blue and labelled H on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	Existing field served by the access will be developed over therefore access is no longer required.
The private means of access shown coloured blue and labelled I on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	Existing access to railway no longer required due to new rail terminal.
The private means of access shown coloured blue and labelled J on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	Existing access to railway no longer required due to new rail terminal.
The private means of access shown coloured blue and labelled K on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)	Existing access to railway no longer required due to new rail terminal.

Private Means of Access	Reason why no substitute to be provided
<p>The private means of access shown coloured blue and labelled L on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>Existing access to railway no longer required due to new rail terminal.</p>
<p>The private means of access shown coloured blue and labelled M on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>Existing access to railway no longer required due to new rail terminal.</p>
<p>The private means of access shown coloured blue and labelled N on the access and right of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>Existing dwelling served by access to be developed over therefore access no longer required.</p>
<p>The private means of access shown coloured blue and labelled O on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>Existing field served by the access to be developed over and therefore access is no longer required.</p>
<p>The private means of access shown coloured blue and labelled P on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>Existing dwelling served by the access to be developed over and therefore access no longer required.</p>
<p>The private means of access shown coloured blue and labelled Q on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>Existing dwelling served by the access to be developed over and therefore access no longer required.</p>

Private Means of Access	Reason why no substitute to be provided
<p>The private means of access shown coloured blue and labelled R on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>Existing dwelling served by the access to be developed over and therefore access no longer required.</p>
<p>The private means of access shown coloured blue and labelled S on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>Existing field served by the access to be developed over and therefore the access no longer required.</p>
<p>The private means of access shown coloured blue and labelled T on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>Existing dwelling served by the access to be developed over and therefore the access is no longer required.</p>
<p>The private means of access shown coloured blue and labelled U on the access and rights of way plan (document reference: 2.3B, Examination Library reference: APP-018)</p>	<p>Existing field served by the access to be developed over and therefore the access no longer required.</p>
<p>The private means of access shown coloured blue and labelled V on the access and rights of way plan (document reference 2.3 B, Examination Library reference: APP-018)</p>	<p>Existing field served by the access to be developed over and therefore the access no longer required.</p>
<p>The private means of access shown coloured blue and labelled W on the access and rights of way plan (document reference: 2.3B, Examination Library reference: APP-018)</p>	<p>Existing field served by the access to be developed over and therefore the access no longer required.</p>

Private Means of Access	Reason why no substitute to be provided
<p>The private means of access shown coloured blue and labelled AB on the access and rights of way plan (document reference: 2.3D, Examination Library reference: APP-020)</p>	<p>Existing dwelling and fields served by the access to be developed over therefore the access is no longer required.</p>

5-585.71 Paragraph 6 allows the provision of new means of access and the table below explains why these are to be created:

New Private Means of Access	Reason for Creation of New Private Means of Access
<p>The private means of access marked C and shown hatched green on the access and rights of way plan (document reference: 2.3A, Examination Library reference: APP-017)</p>	<p>New access needed into existing field due to severance resulting from the new link road.</p>
<p>The private means of access marked AC and shown hatched green on the access and rights of way plan (document reference: 2.3B, Examination Library reference: APP-018)</p>	<p>New maintenance access route to drainage attention structure.</p>
<p>The private means of access marked X and shown hatched green on the access and rights of way plan (document reference: 2.3B, Examination Library reference: APP-018)</p>	<p>New maintenance access route to drainage attention structure.</p>

New Private Means of Access	Reason for Creation of New Private Means of Access
The private means of access shown coloured blue and labelled AD on the access and rights of way plan (document reference: 2.3D, Examination Library reference: APP-020)	Access point for main development internal link road.
The private means of access shown coloured blue and labelled AE on the access and rights of way plan (document reference: 2.3D, Examination Library reference: APP-020)	Access point for main development internal link road.
The private means of access shown coloured blue and labelled AF on the access and rights of way plan (document reference: 2.3D, Examination Library reference: APP-020)	Access point for rail terminal and container yard.
The private means of access shown coloured blue and labelled AG on the access and rights of way plan (document reference: 2.3D, Examination Library reference: APP-020)	Access point for development hospitality suite.

5-595.72 The creation of the private accesses is permitted by section 120(3) of the 2008 Act because the purpose for which the provisions relating to the creation of the private accesses are included in the draft DCO is to facilitate the development consented by the draft DCO, and therefore their creation is clearly related to the authorised development.

5-605.73 The Article is similar to others included in recent DCOs such as The Northampton Gateway Rail Freight Interchange Order 2019<sup>39</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>40</sup>.

<sup>39</sup> S.I. 2019 No. 1358 (Article 13)

<sup>40</sup> S.I. 2020 No. 511 (Article 13)

### **Article 15 (Maintenance of highway works)**

5-615.74 This Article provides for the maintenance of the highway works. It refers to the process of certification of commencement of maintenance by the undertaker under the Protective Provisions in paragraph 6 of Part 2 and paragraph 6 of Part 3 of Schedule 13 (Protective Provisions) and deals with the dedication of new highway, cross referring to the relevant Protective Provisions.

5-625.75 The Article has precedent in The Northampton Gateway Rail Freight Interchange Order 2019<sup>41</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>42</sup>.

5-635.76 The inclusion of this Article is permitted by section 120(3) of the 2008 Act because maintenance of the highway works is clearly “related” to the consent. The specification of the highway authority for the highway works is also authorised by section 120(4) and paragraph 23 of Part 1 to Schedule 5 of the 2008 Act.

### **Article 16 (Classification of highways)**

5-645.77 This Article is required in order to make provision for the classification of new highways within the Order Limits as identified in Schedule 7 (Classification of highways) and shown on the Highway Classification Plans (document series: 2.5 Examination Library reference: APP-032 to APP-035).

5-655.78 The provision to classify the highways is specifically permitted by section 120(4) and paragraph 19 of Part 1 to Schedule 5 of the 2008 Act.

5-665.79 This Article is based on an article in The Northampton Gateway Rail Freight Interchange Order 2019<sup>43</sup>

### **Article 17 (Speed limits)**

5-675.80 This Article is based upon articles in other DCOs, for example, The Central Bedfordshire Council (Woodside Link Houghton Regis) Order 2014 <sup>44</sup> , The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 <sup>45</sup> , The Northampton Gateway Rail Freight Interchange Order 2019 <sup>46</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>47</sup>.

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<sup>41</sup> S.I. 2019 No 1358 (Article 14)

<sup>42</sup> S.I. 2020 No. 511 (Article 14)

<sup>43</sup> S.I. 2019 No. 1358 (Article 15)

<sup>44</sup> S.I. 2014 No. 2637 (Article 11)

<sup>45</sup> S.I. 2016 No. 17 (Article 17)

<sup>46</sup> S.I. 2019 No. 1358 (Article 16)

<sup>47</sup> S.I. 2020 No. 511 (Article 16)

5.685.81 Paragraph 1 of this Article and Part 1 of Schedule 8 (Speed limits) provide for amendments to existing orders. The existing orders which are the subject of amendment are contained in the Speed Limit Plans (document series: 2.7 Examination Library reference: APP-039 to APP-042).

5.695.82 The Article allows the length of the highways identified in Schedule 8 (Speed limits) to be subject to new speed limits as set out in that schedule following completion of the relevant part of the authorised development, as if such restrictions were imposed by an order under the Road Traffic Regulation Act 1984.

5.705.83 The Article also enables temporary speed limits during construction by agreement with the relevant highway authority.

5.84 The inclusion of the Article is permitted by section 120(3) of the 2008 Act, since the regulation of speed limits on the various highways is related to the provision of the highway works as part of the authorised development. The requirement of the various speed limits is also related to the classification of the various highways, and is therefore permitted by section 120(4) and paragraph 19 of Part 1 of Schedule 5 of the 2008 Act. The Article enables the alteration of speed limits over some stretches of highway which are not within the Order limits. This is because the operation of these powers does not require physical development (other than the erection of relevant signage, the areas for which are included in the Order limits) and therefore those stretches of highway do not need to be within the Order limits. This approach is consistent with that taken in The Northampton Gateway Rail Freight Interchange Order 2019<sup>48</sup>.

5.715.85 The reduction in speed limit on Stanton Lane from national speed limit to 40mph is required as part of the suite of mitigation measures to reduce vehicle speeds along this route and discourage rerouting background traffic from utilising Stoney Stanton by increasing journey times.

5.725.86 Paragraph 6 provides that the new speed limits set by the draft DCO may be varied in the future by the relevant traffic authority, as they could have been had they been imposed by an order under the Road Traffic Regulation Act 1984, in a manner similarly consistent with that taken in The Northampton Gateway Rail Freight Interchange Order 2019.

### **Article 18 (Traffic Regulation)**

5.735.87 This Article enables amendments to existing traffic regulation orders which are necessary as a result of the authorised development. Consent of the relevant traffic authority is required.

5.745.88 The Article also provides for new permanent and temporary traffic regulation orders to allow, with the consent from the relevant traffic authority, the imposition of orders which may be necessary for the carrying out of the works. These powers are similar to those contained in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>49</sup> and in The Southampton to London Pipeline Order 2020<sup>50</sup>.

5.755.89 The inclusion in the DCO of this power falls within section 120(3) of the 2008 Act because the need for a Traffic Regulation Order in this manner would only be required as result of the authorised development.

### ***Article 19 (Clearways and no waiting)***

5.765.90 Article 19 provides for Clearways along lengths of the new highway works. The lengths of road affected are identified in Part 1 of Schedule 9 (Traffic regulation).

5.775.91 The Article also proposes the imposition of a “no waiting at any time” traffic regulation order along the length of the A47 Link Road from the M69 roundabout along the dual carriageway part of the road to the third roundabout. These lengths of road are set out in Part 2 of Schedule 9 (Traffic regulation).

5.785.92 Similar to the inclusion of the Article authorising traffic regulation, this Article is related to the authorised development and is therefore permitted by section 120(3) of the 2008 Act.

5.795.93 This Article is based on Articles found in other Orders such as The West Midlands Rail Freight Interchange Order 2020<sup>51</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>52</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>53</sup>.

### ***Article 20 (Agreements with Highway Authorities)***

5.805.94 This Article allows the undertaker to enter into agreements with the relevant highway authority relating to the matters listed in the Article.

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<sup>49</sup> S.I. 2014 No. 2384 (Article 18).  
<sup>50</sup> S.I. 2020 No. 1099 (Article 16)  
<sup>51</sup> S.I. 2020 No. 511 (Article 18)  
<sup>52</sup> S.I. 2019 No. 1358 (Article 18)  
<sup>53</sup> S.I. 2016 No. 17 (Article 19)



5.815.95 This ability to enter into agreements might be required with the relevant highway authority to deal with matters which might not be covered by the Protective Provisions.

5.825.96 The Article is similar to a provision included in several DCOs including The National Grid (Hinkley Point C Connection Project) Order 2016<sup>54</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>55</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>56</sup>. It has its origin basis in Article 13 of the Model Provisions.

5.835.97 The inclusion of this Article is permitted by section 120(3) of the 2008 Act because it would permit agreements related to the authorised development or matters ancillary to the authorised development.

## **PART 4**

### **SUPPLEMENTAL POWERS**

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

5.845.98 This Article is based on Article 14 of the Model Provisions and is required in relation to the drainage of the land within the Order Limits in connection with the carrying out and maintenance of the development. Consent is required from the person who owns the relevant watercourse, public sewer or drain but such consent may not be unreasonably withheld.

5.855.99 Article 21 closely follows the form of provision included in several DCOs including The Northampton Gateway Rail Freight Interchange Order 2019<sup>57</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>58</sup>.

5.865.100 The Applicant has included an additional paragraph (Article 21(6)) within this Article (as compared to the Model Provision) relating to the need to obtain consent from the lead local flood authority and enabling the lead local flood authority to impose conditions on that consent. This paragraph follows wording in the Northampton Gateway Rail Freight Interchange Order 2019<sup>59</sup> and would deal with the obtaining of consent under the Article, rather than through a separate process

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<sup>54</sup> S.I. 2016 No. 49 (Article 15)

<sup>55</sup> S.I. 2019 No. 1358 (Article 20)

<sup>56</sup> S.I. 2020 No. 511 (Article 20)

<sup>57</sup> S.I. 2019 No. 1358 (Article 21)

<sup>58</sup> S.I. 2020 No. 511 (Article 21)

<sup>59</sup> S.I. 2019 No. 1358 (Article 21)

outside of the Order. The distance of 3 metres has been agreed with the lead local flood authority.

5.101 Its inclusion is permitted by section 120(3) as well as section 120(4) and specifically paragraph 26 of Part 1 to Schedule 5 of the 2008 Act.

5.102 In the ExA's Written Questions (ExQ1.5.9), the ExA asked the Applicant to explain the relationship between Article 21 and section 146 of the Planning Act 2008. Article 21 authorises the undertaker to discharge water into (inter alia) any watercourse or underground strata subject to the provisions therein.

5.103 As a consequence, section 146 Planning Act 2008 is then engaged. Section 146 relates orders which authorise the discharge of water into inland waters (which would include a watercourse) or underground strata and has the effect that the person to whom the order is granted does not also acquire the power to take water or require discharges to be made from such watercourses or underground strata.

5.875.104 The effect of section 146 is to make it explicit that although the DCO may confer power on the undertaker to put water into a watercourse or underground strata, the undertaker cannot then take water back out or require discharges to be made from such watercourse or underground strata under this Article.

### ***Article 22 (Protective works to buildings and structures)***

5.885.105 This Article is based on a former Model Provision that allows the undertaker, at its own expense, to carry out protective works to any building or structure affected by the authorised development where it is considered necessary or expedient. A similar provision is included in The Boston Alternative Energy Facility Order 2023<sup>60</sup> and The Drax Power (Generating Stations) Order 2019<sup>61</sup>. It has been inserted following the commentary from the ExA on the drafting of the dDCO and discussions at ISH1.

5.895.106 Such protective works can be undertaken at any time before or during the carrying out in the vicinity of the relevant building works forming part of the authorised development. Protective works can also be undertaken after the carrying out of works forming part of the authorised development for a period of five years from the day on which that part of the authorised development first becomes operational.

5.905.107 In addition to the powers to undertake protective works, the Article includes powers to enter any building and structure to which the power applies and any land within its curtilage to survey to determine whether protective works are needed

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<sup>60</sup> S.I. 2023 No. 778 (Article 22)

<sup>61</sup> S.I. 2019 No. 1315 (Article 35)

and there are powers to enter adjacent land to carry out any protective works. However there is a requirement, before utilising the powers in the Article, to serve notice on owners and occupiers with at least 14 days' notice of the said works. In respect of some of the powers included in the Article there is an ability for a counter notice to be served by the land owner/occupier within a period of 10 days from the day on which the notice was served.

5.915.108 The Article includes compensation provisions in relation to the consequences of the protective works being undertaken.

5.925.109 The Model Provision has been modified to provide that section 13 (*refusal to give possession to acquiring authority*) of the Compulsory Purchase Act 1965 applies to the entry onto, or possession of land under this Article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (*application of compulsory acquisition provisions*) of the 2008 Act. This follows the approach taken in The Boston Alternative Energy Facility Order 2023<sup>62</sup>.

5.935.110 This Article is permitted by section 120(3) of the 2008 Act as protective works to buildings affected by the authorised development is a matter ancillary to the grant of consent for the authorised development, and 120(4) and paragraph 10 (*"The protection of the property or interests of any person"*) of Part 1 to Schedule 5 of the 2008 Act.

### **Article 23 (Authority to survey and investigate the land)**

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

5.955.112 The provision is permitted by sections 120(3) and 120(4) of the 2008 Act, and specifically paragraph 12 of Part 1 to Schedule 5.

5.965.113 This Article follows Article 16 of the Model Provisions and is included in almost identical form in most DCOs including The West Midlands Rail Freight Interchange Order 2020<sup>63</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>64</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>65</sup>,

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<sup>62</sup> S.I. 2023 No. 778 (Article 22)

<sup>63</sup> S.I. 2020 No. 511 (Article 22)

<sup>64</sup> S.I. 2019 No. 1358 (Article 22)

<sup>65</sup> S.I. 2016 No. 17 (Article 23)

as well as The Boston Alternative Energy Facility Order 2023<sup>66</sup> (with shorter notice provisions).

### ***Article 24 (Human Remains)***

5.975.114 This Article has been inserted following the commentary from the ExA on the drafting of the dDCO and discussions at ISH1. It authorises the removal of human remains from the Order limits and provides a process for notification and identification of the human remains as well as their re-internment or cremation. The Article requires the payment of the reasonable expenses associated with this process. Whilst it is not anticipated that any human remains will be encountered during construction works, it is possible that human remains could be found within the Order limits. Without this Article, the express consent of the Secretary of State for Justice would be required for removal which would risk delay to the construction programme.

5.985.115 The Article closely follows drafting used in The Drax Power (Generating Stations) Order 2019<sup>67</sup>, The Boston Alternative Energy Facility Order 2023<sup>68</sup> and The Little Crow Solar Park Order 2022<sup>69</sup> save that the disapplication of section 25 Burial Act 1857 is contained in Article 49.

## **PART 5**

### **POWERS OF ACQUISITION**

#### ***Article 25 (Compulsory acquisition of land)***

5.995.116 This Article will authorise the compulsory acquisition of land shown on the Land Plans (document series: 2.20, Examination Library reference: APP-057 to APP-065) and described in the Book of Reference (document reference: 4.3B) and is permitted by section 120(4) and paragraph 1 of Part 1 of Schedule 5 to the 2008 Act, and by section 123 of the 2008 Act. The drafting of this Article follows some of the approach in the Northampton Gateway Rail Freight Interchange Order 2019<sup>70</sup>, but separates the provisions dealing with land and rights.

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<sup>66</sup> S.I. 2023 No. 778 (Article 21)

<sup>67</sup> S.I. 2019 No. 1315 (Article 18)

<sup>68</sup> S.I. 2023 No. 778 (Article 24)

<sup>69</sup> S.I. 2022 No. 436 (Article 12)

<sup>70</sup> S.I. 2019 No. 1358

~~5.1005.117~~ TSH seeks powers to acquire the freehold of the land shown coloured pink on the Land Plans. There are also some parcels of land over which TSH has secured agreement relating to the freehold but where it has not been possible to guarantee termination of tenancies and therefore in respect of those parcels TSH seeks acquisition of leasehold/tenant interests, and those parcels are also shown pink on the Land Plans. This is explained in further detail in the Statement of Reasons (document reference: 4.1C).

~~5.1015.118~~ It will be noted from the Land Plans that the Order Limits include special category land. This is common land; being Burbage Common and Woods. The compulsory acquisition of common land is subject to additional restrictions under sections 131 of the 2008 Act. Section 131 has the effect that a DCO which authorises the compulsory acquisition of land forming part of a common is subject to special parliamentary procedure unless the Secretary of State is satisfied that one of subsections 131(4) to 131(5) applies and that fact is recorded in the DCO. Subsection 131(5) applies if:

~~5.101.15.118.1~~ the land authorised to be compulsorily acquired does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway; and

~~5.101.25.118.2~~ the giving in exchange of other land is unnecessary, whether in the interests of the persons (if any) entitled to rights of common or other rights or in the interests of the public.

~~5.1025.119~~ This Article therefore includes a restriction on the extent of common land which may be acquired to no more than 200 square metres and TSH considers that section 131(5) of the 2008 Act applies. This is because the permanent land requirement for the proposed bridleway connection from the site into Burbage Common and Woods is Burbage Common and Woods will ultimately be less than 200 square metres. The Applicant provided at Deadline 1 a plan confirming the area needed for the permanent and temporary works (see Appendix E of the Applicant's Post Hearing Submissions (ISH1 and CAH1) (Document 18.1.5)), however, the precise location of the bridleway connection remains uncertain at this stage and the Applicant requires the flexibility for that provision, which requires the area of common land shown on the Land Plans and explained in the Statement of Reasons (Document 4.1C). As discussed during ISH1, the Applicant has checked whether there are other drafting precedents for the inclusion of Article 25(2) but understands this is a novel approach. The Applicant does not consider this to be problematic, since it is simply ensuring the powers are limited since the precise location of the bridleway connection cannot be fixed at this stage. The Applicant has also added similar restrictions in the articles authorising temporary possession. The provisions provide comfort and certainty that no more than 200 square metres

of common land will be interfered with and gives clarity to satisfy s131(5) of the 2008 Act.

5.1035.120 Further detail on the inclusion of common land is provided in the Statement of Reasons (document reference: 4.1C).

***Article 26 (Compulsory acquisition of land - ~~Minerals—incorporation of the mineral code~~)***

5.1045.121 This Article incorporates the ‘mineral code’ into the draft DCO. This exempts the existing minerals under land being automatically acquired pursuant to the exercise of compulsory acquisition. It also enables the undertaker to prevent a minerals owner from working existing minerals and provides the undertaker with the ability to compensate the owner for any inability to do so as a result of the development.

5.1055.122 The Article follows Article 19 of the Model Provisions and its inclusion is permitted by 120(4) and paragraphs 2 and 3 of Part 1 to Schedule 5 of the 2008 Act. Similar provisions are included in The West Midlands Rail Freight Interchange Order 2020<sup>71</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>72</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>73</sup>.

***Article 27 (Compulsory acquisition of rights)***

5.1065.123 This Article is included to allow the compulsory acquisition of existing rights and the power to create and acquire compulsorily new rights and the benefit of restrictions over the land shown on the Land Plans (document series 2.20, Examination Library reference: APP-057 to APP-065), described in the Book of Reference (document reference 4.3B). The land in which new rights may be created is listed in Schedule 11 (Land in which new rights may be created).

5.1075.124 The Article is permitted by section 120(4) and paragraphs 1<sup>74</sup> and 2 of Part 1 to Schedule 5 of the 2008 Act.

5.1085.125 The Article is based on recently approved provisions in various DCOs.<sup>75</sup> This approach ensures that compulsory purchase is limited only to the rights that are required.

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<sup>71</sup> S.I. 2020 No. 511 (Article 28)

<sup>72</sup> S.I. 2019 No. 1358 (Article 29)

<sup>73</sup> S.I. 2016 No. 17 (Article 27)

<sup>74</sup> Paragraph 1 refers to “land” but section 159 of the 2008 Act confirms that in this context, “land” includes a right in, on, over or under land.

<sup>75</sup> e.g. The York Potash Harbour Facilities Order 2016 (S.I. 2016 No. 772) (Article 24), The Triton Knoll Electrical System Order 2016 (S.I. No 2016 No. 880) (Article 18), The Thames Water Utilities Limited (Thames Tideway

~~5.1095.126~~ The approach requires a modification to compulsory purchase and compensation provisions and these are dealt with in Schedule 12 (Modifications of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants), which is permitted by section 120(5)(a) of the 2008 Act.

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

~~5.1105.127~~ This Article ensures that where the works permitted by the draft DCO interfere with existing easements or other rights (including restrictions as to the use arising by virtue of a contract), those rights shall not present an impediment to delivery. The Article is required to provide certainty that the carrying out of the authorised development will not be prevented as a result of any third party rights.

~~5.1115.128~~ The Article provides for compensation to be payable to the beneficiary of any right that is extinguished, abrogated or discharged. This power is permitted by sections 120(3), 120(4) and paragraphs 2 and 3 of Part 1 to Schedule 5 of the 2008 Act. The power is also supplementary to Articles 23 and 25 of the draft DCO and its inclusion is therefore necessary to give full effect to the draft DCO; it is therefore permitted by section 120(5)(c) of the 2008 Act.

~~5.129~~ This Article is based on provisions included in previously granted Orders such as The West Midlands Rail Freight Interchange Order 2020<sup>76</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>77</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>78</sup>.

~~5.130~~ In the ExA's Written Questions (ExQ1.5.11a), the ExA noted that unlike the cited precedents above, this provision refers to "any contractors, servants or agents of the Undertaker" and asked the Applicant to explain why this is necessary and also why the term is used in various Protective Provisions.

~~5.131~~ These words are included for the sake of clarity to make it clear that the power applies to the undertaker or those authorised or appointed by them in carrying out the project. The same words are used in the protective provisions for the benefit of Network Rail, National Highways, the local highways authorities, Cadent, utility undertakers, electronic communications network operators, and NGED in order to clarify that the indemnities given to those parties arising from the construction of any specified works do not extend to circumstances where the damage or

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Tunnel) Order 2014 (S.I. 2014 No. 2384), (Article 29), The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No. 1358) (Article 25), and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511) (Article 25).

<sup>76</sup> S.I. 2020 No. 511 (Article 27)

<sup>77</sup> S.I. 2019 No. 1358 (Article 27)

<sup>78</sup> S.I. 2016 No. 17 (Article 26)

interruption of services is due to any act neglect or default on the part of those parties or their officers contractors, servants or agents. Due to the way it which these parties operate through officers and sub-contractors etc it is vital that these words are retained in the protective provisions to ensure that these parties are bound by the actions of such officers and sub-contractors etc in the operation of the protective provisions. The Applicant notes that such wording is standard across protective provisions in other made orders and has been agreed with the majority of benefitting parties in relation to this application.

5.1125.132 The ExA also asked the Applicant to review this provision with Article 26 to ensure that there are not inadvertent disconnects, for example, where private rights include mineral rights (ExQ1.5.11b). The Applicant has done so and is content that there is no disconnect. As set out in paragraph 5.122 above, the purpose of Article 26 is to prevent the undertaker from acquiring the minerals themselves when exercising compulsory acquisition powers. However, the undertaker can interfere with the right to work the mineral subject to payment of compensation.

#### ***Article 29 (Time limit for exercise of authority to acquire land and rights compulsorily)***

5.1135.133 This Article imposes a time limit of five years from the date the draft DCO comes into force for the exercise of compulsory acquisition powers.

5.1145.134 The time limit for exercising the compulsory acquisition powers under Part 1 of the Compulsory Purchase Act 1965 is disapplied by section 125(3)(a) of the 2008 Act. This Article therefore imposes a time limit which is linked to the time period in which the authorised development is required to commence (see requirement 1), in accordance with section 154(3) of the 2008 Act.

5.1155.135 This Article mirrors Article 20 of the Model Provisions. Near identical provisions are included in The West Midlands Rail Freight Interchange Order 2020<sup>79</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>80</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>81</sup>.

#### ***Article 30 (Private Rights)***

5.1165.136 This Article provides that all private rights and restrictions over land which is subject to compulsory acquisition (in respect of the freehold) are extinguished and in respect of compulsory acquisition of rights, are extinguished to the extent that

<sup>79</sup> S.I. 2020 No. 511 (Article 29)

<sup>80</sup> S.I. 2019 No. 1358 (Article 30)

<sup>81</sup> S.I. 2016 No. 17 (Article 28)



those rights are inconsistent with the rights required for the authorised development.

5.1175.137 The inclusion of this power is permitted by section 120(4) and paragraph 2 of Part 1 to Schedule 5 of the 2008 Act. The power is also supplementary to Articles 23 and 25 and its inclusion is therefore necessary to give full effect to the draft DCO; it is therefore permitted by section 120(5)(c) of the 2008 Act.

5.1185.138 This Article is based on Article 22 of the Model Provisions (although the draft DCO refers to ‘private rights and restrictions’ rather than ‘private rights of way’) and is also found in a similar form to that included here within West Midlands Rail Freight Interchange Order 2020<sup>82</sup> and the Northampton Gateway Rail Freight Interchange Order 2019<sup>83</sup> (which also refers to ‘private rights and restrictions’ and therefore mirrors the draft DCO providing precedent for this approach).

5.1195.139 Paragraph 9 has been included to ensure that 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 this Article, they will, so far as they have been identified following diligent enquiry be listed in the Book of Reference<sup>84</sup> and consulted pursuant to sections 42 and 44 of the 2008 Act. This provision is frequently found in other made Orders, including The A47 Wansford to Sutton Development Consent Order 2023<sup>85</sup>, The M25 Junction 28 Development Consent Order 2022<sup>86</sup> and The Boston Alternative Energy Facility Order 2023<sup>87</sup>.

### ***Article 31 (Rights under or over streets)***

5.1205.140 Article 31 provides the power to temporarily occupy land above or below streets (save those which are within the strategic road network) within the Order Limits without having to acquire that land. Compensation is payable for any loss or damage to structures along the relevant street.

5.1215.141 This Article is required to enable the carrying out of the authorised development and it therefore permitted by section 120(3) of the 2008 Act.

5.1225.142 This Article closely follows Article 27 of the Model Provisions and The West Midlands Rail Freight Interchange Order 2020<sup>88</sup>. It is also found in a similar form to that included within The Northampton Gateway Rail Freight Interchange Order

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<sup>82</sup> S.I. 2020 No. 511 (Article 26)

<sup>83</sup> S.I. 2019 No. 1358 (Article 26)

<sup>84</sup> Doc Ref 4.3B

<sup>85</sup> S.I. 2023 No. 218 (Article 26(9))

<sup>86</sup> S.I. 2022 No. 573 (Article 29(9))

<sup>87</sup> S.I. 2023 No. 778 (Article 28(9))

<sup>88</sup> S.I. 2020 No. 511 (Article 33)

2019<sup>89</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>90</sup>.

### ***Article 32 (Application and modification of the 1981 Act)***

~~5.1235.143~~ This Article is based on Article 23 of the Model Provisions and closely follows the drafting in The West Midlands Rail Freight Interchange Order 2020<sup>91</sup>. The Article provides for the application of the vesting declaration procedure to the compulsory acquisition under the draft DCO. It also reflects the recently enacted amendments to the Compulsory Purchase (Vesting Declarations) Act 1981 made by the Housing and Planning Act 2016.

~~5.1245.144~~ The application of the Compulsory Purchase (Vesting Declarations) Act 1981 is permitted by section 120(5)(a) of the 2008 Act.

### ***Article 33 (Modification of Part 1 of the 1965 Act)***

~~5.1255.145~~ This Article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the draft DCO by section 125 of the 2008 Act. The modification of those provisions is permitted by section 120(5)(a) of the 2008 Act.

~~5.1265.146~~ The Article deals with amendments required to the Compulsory Purchase Act 1965 as a result of the Housing and Planning Act 2016, to ensure consistency with the draft DCO.

~~5.1275.147~~ This Article is in line with the equivalent provision found in other Orders such as The West Midlands Rail Freight Interchange Order 2020<sup>92</sup> and the Boston Alternative Energy Facility Order 2023<sup>93</sup>.

### ***Article 34 (Temporary use of land for carrying out the authorised development)***

~~5.1285.148~~ This Article allows the occupation of the land specified in Schedule 10 (Land over which temporary possession may be taken) temporarily while the works are carried out, and also any of the land identified for permanent acquisition that has not yet been acquired so that there is no undue delay in being able to carry out works or use the land. The inclusion of this Article is intended to potentially reduce

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<sup>89</sup> S.I. 2019 No. 1358 (Article 34)

<sup>90</sup> S.I. 2016 No. 17 (Article 30)

<sup>91</sup> S.I. 2020 No. 511 (Article 31)

<sup>92</sup> S.I. 2020 No. 511 (Article 30)

<sup>93</sup> S.I. 2023 No. 778 (Article 31)

the scope of permanent acquisition required which is considered an appropriate use of the powers.

5-1295.149 The Article also makes provision for the time limit for return of the land, restoration and payment of compensation.

5-1305.150 Paragraph (12) incorporates section 13 of the Compulsory Purchase Act 1965 and applies it to the temporary use of the land to which this Article applies. Section 13, which allows enforcement of possession, is automatically applied to the powers in Articles 25 to 40 by virtue of section 125 of the 2008 Act. The power is required in relation to the temporary use of land to ensure that the undertaker will be able to enforce the taking of temporary possession of the land to carry out the relevant works in the event that the owner or occupier refuses to allow possession.

5-1315.151 This Article is taken from Article 28 of the Model Provisions with a couple of minor modifications to include use of the land for the purposes of a working site with access in connection with the authorised development and to construct or carry out works (including mitigation works or operations) or the use of the land for the purpose of the authorised development. These modifications are the same as those granted in the recent The Northampton Gateway Rail Freight Interchange Order 2019<sup>94</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>95</sup>.

5-1325.152 Use of the land for the provision of means of access, haul roads, fencing and other means of enclosure, bridges, structures and buildings has been included so it clear as to the types of work and activities which may be undertaken. It is also considered that this approach would benefit affected landowners since it could 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 would not be known until the works had been finalised.

5-1335.153 The inclusion of bridges is necessary because the 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 and is therefore required for clarity that the relevant land may be used to construct those bridges. Interaction with the railway network will be governed and the installation of the bridges will be carried out in accordance with the protective provisions in the DCO 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).

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<sup>94</sup> S.I. 2019 No. 1358 (Article 34)

<sup>95</sup> S.I. 2020 No. 511 (Article 30)

5.1345.154 The inclusion of the power to temporarily occupy land in order to construct or carry out any works including mitigation works or operations or to use the land for the purpose of the authorised development is necessary so that 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.

5.1355.155 Paragraph (3) follows the drafting in Article 33(3) of The Boston Alternative Energy Facility Order 2023 and has been included to provide the ability to, in the event of a potential risk or safety alert, enter land to put right a danger subject to giving such period of notice as is reasonably practical in the circumstances. In all other cases not less than 14 days' notice must be given.

5.1365.156 As noted at paragraph 5.102 above, a new sub-paragraph (14) has been added to ensure that no more than 200 square metres of common land will be used for the works relating to the new bridleway connection into Burbage Common.

### ***Article 35 (Temporary use of land for maintaining authorised development)***

5.1375.157 This Article allows the undertaker to take temporary possession of land within the Order Limits to maintain the authorised development during the five year maintenance period (being the five years from when the relevant part of the development is first brought into use).

5.1385.158 The Article follows Article 29 of the Model Provisions and its inclusion in the draft DCO is authorised by virtue of sections 120(3), 120(4) and paragraph 1 of Part 1 to Schedule 5, and section 125 of the 2008 Act. The Article is in the an almost identical form as the corresponding provision in the Northampton Gateway Rail Freight Interchange Order 2019<sup>96</sup>, save for the addition of paragraph 9 in the draft DCO.

5.1395.159 Paragraph 9 is based on the drafting in Article 34(4) of The Boston Alternative Energy Facility Order 2023 and has been included to provide the ability to, in the event of a potential risk or safety alert, enter land to put right a danger subject to giving such period of notice as is reasonably practical in the circumstances. In all other cases not less than 28 days' notice must be given.

5.1405.160 As noted at paragraph 5.102 above, a new sub-paragraph (12) has been added to ensure that no more than 200 square metres of common land will be used

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<sup>96</sup> S.I. 2019 No. 1358 (Article 36)

for any temporary maintenance relating to the new bridleway connection into Burbage Common.

### **Article 36 (Statutory Undertakers)**

5-1415.161 This Article allows, subject to the Protective Provisions, the acquisition of rights over any land within the Order Limits belonging to statutory undertakers. In addition it allows the construction of the authorised development in a way which may cross underneath or over apparatus belonging to a statutory undertaker. Finally it allows the extinguishment of rights of statutory undertakers and the replacement, renewal, repositioning, altering and/or supplementing of apparatus belonging to statutory undertakers within the Order Limits.

5-1425.162 The inclusion of the Article is authorised by section 127(2) and (3) and section 138 of the 2008 Act.

5-1435.163 TSH considers that any statutory undertakers' land affected can be replaced (or relocated/diverted) without serious detriment to the carrying on of the undertaking, and there are suitable Protective Provisions proposed in this regard.

5-1445.164 This Article is based on Article 31 of the Model Provisions with minor modifications to additionally allow the development to be constructed in such a way as to cross over or under apparatus belonging to statutory undertakers. Similar drafting can be found in recent DCOs including The A303 (Amesbury to Berwick Down) Development Consent Order 2023<sup>97</sup>, The A428 Black Cat to Caxton Gibbet Development Consent Order 2022<sup>98</sup> and The A57 Link Roads Development Consent Order 2022<sup>99</sup>.

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

5-1455.165 This Article follows Article 32 of the Model Provisions and protects statutory undertakers' rights (and for the purposes of the Article this includes a public communications provider as defined in section 151(1) of the Communications Act 2003<sup>100</sup>) where their apparatus is under, in, along or across a street which has been stopped up under the draft DCO. The Article mirrors the corresponding provision in the recent The West Midlands Rail Freight Interchange Order 2020<sup>101</sup>, The

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<sup>97</sup> S.I. 2023 No. 834 (Article 31)

<sup>98</sup> S.I. 2022 No. 934 (Article 39)

<sup>99</sup> S.I. 2022 No. 1206 (Article 33)

<sup>100</sup> Defined as being (a) a provider of a public electronic communications network; (b) a provider of a public electronic communications service; or (c) a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service;

<sup>101</sup> S.I. 2020 No. 511 (Article 36)

Northampton Gateway Rail Freight Interchange Order 2019<sup>102</sup>, and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>103</sup>.

5-1465.166 The Article provides that a statutory undertaker must remove/relocate the apparatus at the reasonable request of the undertaker (the undertaker bearing the cost of that relocation). The provision is linked to Article 10 and its inclusion is therefore authorised by sections 120(3) as well as 120(4) and paragraph 14 of Part 1 to Schedule 5 of the 2008 Act, which allows provision for the removal, disposal or re-siting of apparatus.

### ***Article 38 (Recovery of costs of new connections)***

5-1475.167 This Article provides that where any apparatus of a public utility undertaker or public communications provider is removed under Article 37, a person who is affected by interruption in supply is entitled to compensation for expenditure reasonably incurred in effecting an alternative supply. It is considered appropriate to ensure that provision for compensation for such loss of supply is included in the Order.

5-1485.168 The Article is linked to Article 37 and its inclusion is therefore authorised by section 120(3) of the 2008 Act.

5-1495.169 This Article is taken from Article 33 of the Model Provisions and has been included in DCOs such as The A1 Birtley to Coal House Development Consent Order 2021<sup>104</sup> and The A57 Link Roads Development Consent Order 2022<sup>105</sup>.

### ***Article 39 (No double recovery)***

5-1505.170 This Article is based on other recent DCOs<sup>106</sup> and secures the established principle that a claimant in compulsory purchase is to be compensated for no more and no less than his loss. It ensures that compensation is not payable in respect of the same loss or damage under both the draft DCO and other compensation regimes. It is important that this is included to ensure that compensation will only be payable once.

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<sup>102</sup> S.I. 2019 No. 1358 (Article 37)

<sup>103</sup> S.I. 2016 No. 17 (Article 32)

<sup>104</sup> S.I. 2021 No. 74 (Article 36)

<sup>105</sup> S.I. 2022 No. 1206 (Article 35)

<sup>106</sup> e.g. The Triton Knoll Electrical System Order 2016 (S.I. 2016 No. 880) (Article 28), The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No. 1358) (Article 37) and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511) (Article 37)

~~5.1515.171~~ It is a supplementary provision and its inclusion is authorised by section 120(5)(d) of the 2008 Act as well as sections 120(3) and 120(4) and paragraph 36 of Part 1 to Schedule 5 of the 2008 Act.

~~5.1525.172~~ This Article is contained in many made Orders and is based on drafting within both The Northampton Gateway Rail Freight Interchange Order 2019<sup>107</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>108</sup>.

***Article 40 (Guarantees in respect of payment of compensation)***

~~5.1535.173~~ This Article is included as security in respect of payment of compensation for any interests which are affected by the exercise of the relevant compulsory powers listed. The Article will ensure that no compulsory acquisition powers can be pursued until appropriate security for the liabilities of the undertaker to pay compensation in respect of that acquisition has been provided to the relevant local planning authority depending on which administrative area the proposed acquisition is situated in.

~~5.1545.174~~ The Article is related to the powers for the acquisition of land and is therefore related to paragraph 1 of Part 1 of Schedule 5 to the 2008 Act. Its inclusion is therefore authorised by section 120(4) of the 2008 Act.

~~5.1555.175~~ The requirement to provide a form of security for potential compensation as a result of exercising compulsory acquisition powers is a generally accepted principle which has been included in various recent approved Orders<sup>109</sup>. 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.

~~5.1565.176~~ The Applicant has considered this provision in more detail since the discussions at the ISH and still considers it to be appropriate. It is the Applicant's view that 15 years from the date on which the relevant power is exercised is an appropriate period for the relevant form of security to be in place, since this extends 10 years beyond the final date from which any compulsory acquisition may be exercised under the DCO. This time period has been accepted in many made Orders such as The Triton Knoll Electrical System Order 2016<sup>110</sup>, The Boston

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<sup>107</sup> S.I. 2020 No. 511 (Article 37)

<sup>108</sup> S.I. 2019 No. 1358 (Article 37)

<sup>109</sup> e.g. The Triton Knoll Electrical System Order 2016 (S.I. 2016 880) (Article 37) The Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No 1358) (Article 23) and The West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No 511) (Article 23).

<sup>110</sup> S.I. 2016 880 (Article 37 (4))

Alternative Energy Facility Order 2023<sup>111</sup> and The Riverside Energy Park Order 2020<sup>112</sup>.

5.1575.177 This Article is similar to the equivalent provisions contained in The Northampton Gateway Rail Freight Interchange Order 2019<sup>113</sup>, West Midlands Interchange Rail Freight Interchange Order 2020<sup>114</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>115</sup>.

#### ***Article 41 (Special category land)***

5.1585.178 At the time the DCO was drafted, the Order land included a number of plots of land which had been identified as potentially comprising Crown land. Notwithstanding that these plots comprised either subsoil beneath existing highway land over which no rights of acquisition were required, or in one case, a restriction which was specifically excluded from being subject to acquisition, the Applicant intended to undertake further investigations to establish whether consent was required to include the land in the Order land for the draft DCO and, if so, whether that consent is forthcoming.

5.1595.179 The Article also provided for the special category land included in the Order to be discharged from all rights, trusts and incidents to which it was previously subject, so far as inconsistent with the exercise of rights and powers pursuant to the Order.

5.1605.180 Accordingly, this Article was included in the DCO on a precautionary basis while those investigations in relation to Crown land were undertaken. The relevant Crown bodies have since confirmed that they do not have rights in the relevant plots and accordingly, the parts of the Article which pertained to Crown land have been removed from the DCO. Please see the Statement of Reasons (document 4.1C) for further detail. The provisions relating to special category land, being a small area of land at Burbage Common and Woods, are retained.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### ***Article 42 (Operation and use of railways)***

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<sup>111</sup> S.I. 2023 778 (Article 52 (4))

<sup>112</sup> S.I. 2020 419 (Article 10 (4))

<sup>113</sup> S.I. 2019 No. 1358 (Article 23)

<sup>114</sup> S.I. 2019 No. 511 (Article 23)

<sup>115</sup> S.I. 2016 No. 17 (Article 24)



~~5.1615.181~~ This Article is based on Article 41 contained within Schedule 2 of the Model Provisions (Model Provisions for Railways). It has been included as the authorised development includes a railway. This Article has been amended from the Article in the Model Provisions for Railways to allow only for the carriage of goods as the authorised development will not be used for passenger trains. The provision is included pursuant to sections 115 and 120(3) of the 2008 Act.

~~5.1625.182~~ This Article is identical to the provision contained West Midlands Interchange Rail Freight Interchange Order 2020<sup>116</sup> save for the inclusion of Article 42(2) which has been included at the request of and is agreed with Network Rail.

### ***Article 43 (Operational land for the purposes of the 1990 Act)***

~~5.1635.183~~ This Article ensures that land within the Order Limits shall be treated as operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. The provision is included pursuant to sections 115 and 120(3) of the 2008 Act. As indicated in the Applicant's Updated Responses to the ExA's Initial Observations on drafting of the dDCO (Appendix C to the Applicant's Post Hearing Submissions (ISH1 and CAH1) (Document 18.1.3)), it is considered prudent for this provision to relate to all land within the Order limits 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.

~~5.1645.184~~ This Article mirrors Article 36 of the Model Provisions and has been included in a number of DCOs including The Drax Power (Generating Stations) Order 2019<sup>117</sup> and The Boston Alternative Energy Facility Order 2023<sup>118</sup>.

### ***Article 44 (Charges)***

~~5.1655.185~~ This Article is based on Article 42 at Schedule 2 of the Model Provisions (Model Provisions for Railways). It allows the undertaker to levy charges for the carrying of items and goods on the railway, or for other services or facilities connected to its operation. Amendments from the Article contained in the Model Provisions have been included, as the proposed railway is to be used for the carriage of goods only.

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<sup>116</sup> S.I. 2019 No. 511 (Article 38)

<sup>117</sup> S.I. 2019 No. 1315 (Article 38)

<sup>118</sup> S.I. 2023 No. 778 (Article 42(2))

5.1665.186 The modified Article is contained in The West Midlands Rail Freight Interchange Order 2020<sup>119</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>120</sup>, and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>121</sup>.

5.1675.187 The provision is authorised by section 120(4) and paragraph 18 of Part 1 to Schedule 5 of the 2008 Act.

#### ***Article 45 (Defence to proceedings in statutory nuisance)***

5.1685.188 This Article is based upon Article 7 in the Model Provisions and appears in other approved DCOs. It provides a defence to proceedings brought in relation to a nuisance in certain circumstances. The Article is included as authorised by section 158 of the 2008 Act. The Statutory Nuisance Statement (document reference: 14.1, Examination Library reference: APP-355) provides an explanation of TSH's assessment of whether any nuisance would arise.

5.1695.189 The Article is similar to the corresponding contained in The Northampton Gateway Rail Freight Interchange Order 2019<sup>122</sup>, The Boston Alternative Energy Facility Order 2023<sup>123</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>124</sup>.

#### ***Article 46 (Felling or lopping of trees and removal of hedgerows)***

5.1705.190 This Article is based upon Article 39 in the Model Provisions. It enables the undertaker to fell or lop any tree hedgerow or shrub near the authorised development, or cut back its roots, where the undertaker reasonably believes that it is necessary to prevent the tree hedgerow or shrub from interfering with the authorised development. This power is subject to some exceptions and restrictions however (e.g. the provisions do not without the agreement of the relevant highway authority to any tree or hedgerow within a highway). It is included pursuant to sections 120(3) and 120(4) and paragraph 13 of Part 1 to Schedule 5 of the 2008 Act.

5.1715.191 Paragraph 1(a) has been included to provide for the removal of obstructions or interferences with the authorised development by the felling or lopping of any tree, shrub or hedgerow within 15 metres of any part of the authorised development, or the cutting back of its roots. This Article is included in many made

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<sup>119</sup> S.I. 2020 No. 511 (Article 40)  
<sup>120</sup> S.I. 2019 No. 1358 (Article 40)  
<sup>121</sup> S.I. 2016 No. 17 (Article 35)  
<sup>122</sup> S.I. 2019 No. 1358 (Article 41)  
<sup>123</sup> S.I. 2023 No. 778 (Article 44)  
<sup>124</sup> S.I. 2016 No. 17 (Article 36)

DCOs <sup>125</sup> and specifically the distance of 15 metres follows The Northampton Gateway Rail Freight Interchange Order 2019 <sup>126</sup>. Some DCO <sup>127</sup> do not specify a particular distance and simply refer to trees, shrubs or hedgerows “near” the Order limits.

5.1725.192 The Article makes provision for compensation to be payable for any loss or damage arising, as authorised by section 120(4) and paragraph 26 of Part 1 to Schedule 5 of the 2008 Act.

5.1735.193 The Article also allows for the felling, lopping or cutting back of trees subject to a tree preservation order, with the consent of the relevant planning authority. The Article follows the guidance in paragraph 22 of Advice Note Fifteen: Drafting Development Consent Orders<sup>128</sup>.

#### ***Article 47 (Protective Provisions)***

5.1745.194 The Article gives effect to the Protective Provisions which are contained in Schedule 13 (Protective Provisions) referred to further below.

#### ***Article 48 (Governance of requirements and governance of protective provisions relating to highway works)***

5.1755.195 The Article is included to ensure that the draft DCO provides flexibility for the detail of the authorised development to be approved pursuant to requirements (and in the case of the highway works, protective provisions) but to keep such detail within the scope of the authorised development as set out in the draft DCO and within the scope of what has been environmentally assessed.

5.1765.196 Paragraph (1), highlights that all initial approvals under the requirements and Part 2 and 3 of Schedule 13 (Protective Provisions) are governed by Article 4. This paragraph prevents details being approved which would lead to a form of development outside the scope of that which has been assessed. Paragraph (2) in accordance with Advice Note Fifteen: Drafting Development Consent Orders<sup>129</sup> and makes it clear that approvals may subsequently be amended provided agreed with the relevant planning authority or relevant highway authority (as applicable) but any changes to approved details must not extend beyond the parameters of what

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<sup>125</sup> (e.g. The West Midlands Interchange Rail Freight Interchange Order 2020 (S.I. 2020 No. 511) (Article 41), The A47 Wansford to Sutton Development Consent Order 2023 (S.I. 2023 No. 218) (Article 29), The M25 Junction 28 Development Consent Order 2022 (S.I. 2022 No. 573) (Article 23), and The Boston Alternative Energy Facility Order 2023 (S.I. 2023 No. 778) (Article 23))

<sup>126</sup> S.I. 2019 No. 1358 (Article 42)

<sup>127</sup> (e.g. The Norfolk Vanguard Offshore Wind Farm Order 2022 (S.I. 2022 No. 138) (Article 35), and The Hornsea Three Offshore Wind Farm Order 2020 (Article 34))

<sup>128</sup> Drafting Development Consent Orders: (Version 2) Republished July 2018

<sup>129</sup> Drafting Development Consent Orders: (Version 2) Republished July 2018

has been assessed. Paragraph (3) gives effect to the procedure for approval or discharge of requirements as set out in Part 2 of Schedule 2.

5.1775.197 The flexibility that is allowed for is essential. If no provision is made for the subsequent approval of details (and variations within the constraints referred to) then the development would be significantly disadvantaged against other large scale distribution sites and its ability to compete with those sites for occupiers would be adversely affected.

5.1785.198 This Article is based on similar articles in other granted orders such as The West Midlands Rail Freight Interchange Order 2020<sup>130</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>131</sup> and The Boston Alternative Energy Facility Order 2023<sup>132</sup>.

***Article 49 (Disapplication, application and modification of legislative provisions)***

5.1795.199 As permitted by section 120(5) of the 2008 Act, this Article incorporates and modifies legislative provisions which are necessary for carrying out the authorised development.

5.1805.200 Article 48(1) removes the need for additional consents to make use of the “one stop shop” and avoid having to obtain a separate consent governing the same development.

5.180.15.200.1 Article 48(1)(a) provides for disapplication of byelaws made under Paragraphs 5, 6 and 6a of Schedule 25 to the Water Resources Act 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 disapplied under the DCO in their application to the development authorised under it. This

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<sup>130</sup> S.I. 2020 No. 511 (Article 43)

<sup>131</sup> S.I. 2019 No. 1358 (Article 43)

<sup>132</sup> S.I. 2023 No. 778 (Article 45)

is consistent with many other made DCOs for example the recently made Longfield Solar Farm Order 2023<sup>133</sup>.

~~5.180.25.200.2~~ Article 48(1)(b) provides for the disapplication of section 23 of the Land Drainage Act 1991 in relation to watercourses for which Leicestershire County Council is the drainage board concerned to avoid the need to secure future consents, as is permitted by s120(5) of the Planning Act 2008. The DCO includes at article 22 provisions relating to the discharge of water including in relation to the need to obtain consent.

~~5.180.35.200.3~~ Article 47(1)(c) disapplies Section 32 of the Land Drainage Act 1991 due to the disapplication of section 23 of the Land Drainage Act 1991 and the applicable provision relating to land drainage therefore being Article 21 of the DCO and not the Land Drainage Act 1991.

~~5.180.45.200.4~~ Article 48(1)(d) disapplies Byelaws made under Section 66 of the Land Drainage Act 1991, including future byelaws, on the basis that these address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the DCO 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 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<sup>134</sup>.

~~5.180.55.200.5~~ Article 47(1)(e) provides for the disapplication of section 28E of the Wildlife and Countryside Act 1981 to ensure certainty that the DCO authorises the works and that any notification under this provision would not apply, since Natural England's approval for relevant works would be secured pursuant to the DCO.

~~5.180.65.200.6~~ Article 49(1)(f) disapplies section 25 of the Burial Act 1857 as Article 24 replaces the consenting procedures pursuant to section 25

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<sup>133</sup> S.I. 2023 No. 734 (Article 6)

<sup>134</sup> S.I. 2023 No. 734 (Article 6)

with an alternative procedure, which provides satisfactory alternative protection, for managing the removal of any human remains disturbed during the course of carrying out authorised development. 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). Disapplication has been included in DCOs such as The Drax Power (Generating Stations) Order 2019<sup>135</sup> and the Boston Alternative Energy Facility Order 2023<sup>136</sup> and Little Crow Solar Park Order 2022<sup>137</sup> albeit in the article providing for the removal of human remains rather than an article dealing with disapplication more widely.

~~5.1815.201~~ Article 49(2) ensures that the provisions in the Neighbourhood Planning Act 2017 relating to temporary possession do not apply to the temporary possession of land under Articles 34 and 35 of the DCO. The provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and therefore it is considered appropriate to apply the temporary possession regime which has been included in previous DCOs and Orders made under the Transport and Works Act 1992 to date instead. Such DCOs include The A428 Black Cat to Caxton Gibbet Development Consent Order 2022<sup>138</sup>, The Boston Alternative Energy Facility Order 2023<sup>139</sup> and The M25 Junction 28 Development Consent Order 2022<sup>140</sup>.

~~5.1825.202~~ Article 49(3) provides that development carried out pursuant to a planning permission following implementation of the draft DCO would not be in breach of the draft DCO, removing the risk of criminal liability pursuant to section 161 of the 2008 Act. This also includes any development authorised by a general development order as well as an express planning permission. In addition the Article is designed to ensure that any implementation of a subsequent planning permission would not prevent the further construction, maintenance or use of the authorised development under the draft DCO. This wording is deemed prudent and necessary following the ruling in *Hillside Parks Ltd (Appellant) v Snowdonia National Park Authority*<sup>141</sup>. This Article follows Article 5(2) of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>142</sup> except for the addition of the

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135 S.I. 2019 No. 1315 (Article 18)  
136 S.I. 2023 No. 778 (Article 24)  
137 S.I. 2022 No. 436 (Article 12)  
138 S.I. 2022 No. 934 (Article 3)  
139 S.I. 2023 No. 778 (Article 40)  
140 S.I. 2022 No. 573 (Article 47)  
141 [2022] UKSC 30  
142 S.I. 2016 No. 17

wording relating to the *Hillside* judgement which is without precedent as far as TSH are aware due to the recent nature of the judgment.

5-1835.203 Article 49(4) dis-applies Regulation 4 of the Town and country Planning (Control of Advertisements) (England) Regulation 2007 in respect of advertisements located in the locations shown on the Parameters Plans (document reference: 2.12, Examination Library reference: APP-047). Again, making use of the “one stop shop” approach, this removes the need to obtain a further consent for the advertisement boards required for the development. This approach has been included in previously granted rail freight orders where similar signage is be needed including, The Northampton Gateway Rail Freight Interchange Order 2019<sup>143</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>144</sup>.

5-1845.204 Article 49(5) dis-applies the CIL provisions to ensure there are no unforeseen 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.<sup>145</sup>

5-1855.205 Article 49(6) - Schedule 14 refers to miscellaneous controls and applies/modifies and/or amends them as appropriate to ensure they facilitate, and do not constrain, the development. This is based on the approach taken in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>146</sup> and many subsequent DCOs. The legislative provisions disapplied and the reasons for this are set out in the table below:

DCO provision		Reasoning
<b>Schedule 14 Paragraph 2</b>	Section 141 of the Highways Act 1980	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.

<sup>143</sup> S.I. 2019 No. 1358 (Article 45)

<sup>144</sup> S.I. 2016 No. 17 (Article 8)

<sup>145</sup> See for example The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014 No. 2384) (Schedule 19), the Northampton Gateway Rail Freight Interchange Order 2019 No. 1358 (Article 45), the West Midlands Rail Freight Interchange Order 2020 No. 511 (Article 44), The Boston Alternative Energy Facility Order 2023 No. 40 (Article 40). and National Grid Hinkley Point C Connection (S.I. 2016 No. 49) (Article 9)

<sup>146</sup> S.I. 2014 No. 2384 (Schedule 19)

DCO provision		Reasoning
	Section 167 of the Highways Act 1980	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.
<b>Schedule 14 Paragraph 3</b>	Section 56(1) and (1A) of the New Roads and Street Works Act 1991	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.
	Section 56A of the New Roads and Street Works Act 1991	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.
	Section 58(1) of the New Roads and Street Works Act 1991	The Applicant considers the disapplication of this provision necessary to ensure the delivery 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	This provision is disapplied 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.
	Section 62(2) of the New Roads and Street Works Act 1991	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	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	Detailed design is covered through the DCO including the protective provisions and therefore the statutory



DCO provision		Reasoning
	and Street Works Act 1991	provision is disapplied to ensure only one governing mechanism.
	Section 73A(1) of the New Roads and Street Works Act 1991	The Applicant notes that this provision is not yet in force and that in its Deadline 1 submissions (Appendix C to the Applicant's Post Hearing Submissions (ISH1 and CAH1) (Document 18.1.3), the Applicant indicated that it proposed to delete reference to this from the Schedule, however, upon reflection, the Applicant considers it sensible to continue to disapply this provision so that should it come into force, it will not apply to the authorised development. In any event, the DCO and protective provisions deal with maintenance of the streets.
	Section 78A(1) of the New Roads and Street Works Act 1991	The Applicant notes that this provision is not yet in force and that in its Deadline 1 submissions (Appendix C to the Applicant's Post Hearing Submissions (ISH1 and CAH1) (Document 18.1.3), the Applicant indicated that it proposed to delete reference to this from the Schedule. However, upon reflection, the Applicant considers it sensible to continue to disapply this provision so that should it come into force, it will not apply to the authorised development. In any event, the DCO and protective provisions deal with maintenance of the streets.
	Section 74 of the New Roads and Street Works Act 1991	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.
	Section 74A of the New Roads and Street Works Act 1991	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 ensure that only the DCO is the appropriate governing mechanism.
	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	

DCO provision		Reasoning
	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.	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.
	No directions under paragraph 3 of Schedule 3A to the New Roads and Street Works Act 1991 may be issued to the undertaker.	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.
	Paragraph 3(4) of Schedule 3A to the New Roads and Street Works Act 1991 in relation to the execution of works in the course of the authorised development.	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.
	Paragraph 5(1) of Schedule 3A to the New Roads and Street Works	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.

DCO provision		Reasoning
	Act 1991 in relation to the execution of works in the course of the authorised development	
<b>Schedule 14 Paragraph 4</b>	Section 42 of the Local Government (Miscellaneous Provisions) Act 1976	This provision is disapplied to ensure certainty so that no unknown future enactment restricts the authorised development.
<b>Schedule 14 Paragraph 5</b>	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.	As indicated in Appendix C to the Applicant's Post Hearing Submissions (ISH1 and CAH1) (Document 18.1.3), the Applicant has reviewed and considered this provision and considers that its disapplication should be removed. This is because article 46 deals with the felling of trees including those subject to preservation orders. This has been removed in the dDCO submitted at Deadline 2.
<b>Schedule 14 Paragraph 6</b>	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.	This provision needs to be disapplied to ensure that the Hedgerow Regulations do not apply to those hedgerows which are authorised to be removed under the DCO.

~~5.1865.206~~ Article 49(7) ensures that anything permitted as a result of the provisions of Article 49 does not prevent the operation of the 2017 EIA Regulations, in accordance with Advice Note 15: Drafting Development Consent Orders<sup>147</sup>.

~~5.1875.207~~ This Article has the same effect as equivalent Articles in orders such as in The West Midlands Rail Freight Interchange Order 2020<sup>148</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>149</sup>.

### **Article 50 (Certification of plans and documents)**

~~5.1885.208~~ This Article specifies with reference to Schedule 15 (Certification of plans and documents) the plans and documents that must be certified under the Order. As discussed in ISH1, the Applicant has discussed with the local planning authorities the possibility of the DCO referring to a website where the certified documents will be made available to the public. It has been agreed that this will be Blaby District Council's website and Article 50(3) requires the Applicant to liaise with Blaby District Council to ensure that, as soon as practicable following the making of this Order, a copy of each of the documents listed in Schedule 15 is made available and maintained by it in an electronic form suitable for inspection by members of the public. The Applicant awaits confirmation from Blaby District Council as to the address to refer to in the Explanatory Note of the DCO.

~~5.1895.209~~ This Article is taken from Article 43 of the Model Provisions and closely follows the drafting in The West Midlands Rail Freight Interchange Order 2020<sup>150</sup>, The Northampton Gateway Rail Freight Interchange Order 2019<sup>151</sup>, and The Drax Power (Generating Stations) Order 2019<sup>152</sup>. The Applicant has included drafting to provide for the situation where a draft plan or document to be certified under this Article refers to a provision of the dDCO which differs from the corresponding provision in the made Order. In such circumstances, the plan or document is to be construed as referring to the corresponding article in the made Order.

### **Article 51 (Service of Notices)**

~~5.1905.210~~ This Article departs from the Model Provisions. Its inclusion allows certainty regarding the procedure for service of any notice required by the Order, for example, under Article 24 (Authority to survey and investigate the land). The Article is included pursuant to section 120(3) of the 2008 Act. The Article is similar however

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<sup>147</sup> Drafting Development Consent Orders: (Version 2) Republished July 2018  
<sup>148</sup> S.I. 2020 No. 511 (Article 44)  
<sup>149</sup> S.I. 2019 No. 1358 (Article 45)  
<sup>150</sup> S.I. 2020 No. 511 (Article 45)  
<sup>151</sup> S.I. 2019 No. 1358 (Article 46)  
<sup>152</sup> S.I. 2019 No. 1315 (Article 40)

to the equivalent provision in The West Midlands Rail Freight Interchange Order 2020<sup>153</sup> and The Northampton Gateway Rail Freight Interchange Order 2019<sup>154</sup>.

### **Article 52 (Arbitration)**

~~5.1915.211~~ This Article is included in case of any dispute regarding the provisions of this Order, except where it is expressly dis-applied, as it is in the case of some of the protective provisions which provide for their own dispute resolution mechanisms. The provision is included pursuant to sections 120(3) and 120(4) and paragraph 37 of Part 1 to Schedule 5 of the 2008 Act.

~~5.1925.212~~ This Article is similar to Article 42 of the Model Provisions and mirrors the drafting in The West Midlands Rail Freight Interchange Order 2020<sup>155</sup>.

## **SCHEDULES**

### **Schedule 1 (Authorised Development)**

~~5.1935.213~~ This schedule describes the authorised development for which the draft DCO is sought, including associated development.

~~5.1945.214~~ The Works are as follows:

<b>Work Number</b>	<b>Description</b>
<b>1</b>	The construction of new railway lines from the rail freight terminal (Work No. 2) to connect with the existing Leicester to Hinckley railway line, the general arrangement of which is shown on the Railway Plans (document series 2.25, Examination Library reference: APP-071 to APP-074) including— <ul style="list-style-type: none"><li>(a) construction of a new railway track and associated rail infrastructure;</li><li>(b) formation of new railway embankments, cuttings and all necessary earthworks and drainage;</li><li>(c) construction of railway improvements including—</li></ul>

<sup>153</sup> S.I. 2020 No. 511 (Article 46)

<sup>154</sup> S.I. 2019 No 1358 (Article 47)

<sup>155</sup> S.I. 2020 No. 511 (Article 47)

Work Number	Description
	<ul style="list-style-type: none"> <li>(i) the alteration of the existing railway infrastructure including track, points, signals and associated plant;</li> <li>(ii) railway signage and warning lights;</li> <li>(d) new arrival and departure railway tracks adjacent to the existing railway;</li> <li>(e) works to accommodate the demolition of the Burbage Common Road bridge over the Leicester to Hinckley railway line;</li> <li>(f) works to accommodate the construction of a new bridge to cross the Leicester to Hinckley railway line and all necessary superstructures and substructures including footings, abutments and wingwalls to be provided as part of Works No. 7;</li> <li>(g) a headshunt;</li> <li>(h) work to stop up the existing public rights of way shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020) and work associated with the closure of the existing Barwell level crossing and Earl Shilton level crossing;</li> <li>(i) works to accommodate a revised public right of way from Burbage Common Road underneath the rail corridor to be provided as part of Work No. 6;</li> <li>(j) works to accommodate a new foul rising main within Burbage Common Road underneath the rail corridor to be provided as part of Work No. 18;</li> <li>(k) the closure of existing private accesses shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020); and</li> <li>(l) the stopping up of the length of Burbage Common Road shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020).</li> </ul>
<b>2</b>	The construction of a rail freight terminal to connect with the rail infrastructure described in Work No. 1, the general

Work Number	Description
	<p>arrangement of which is shown on the Railways Plans (document series 2.25, Examination Library reference: APP-071 to APP-074) including—</p> <ul style="list-style-type: none"> <li>(a) construction of an intermodal freight loading/unloading terminal including but not exclusively:           <ul style="list-style-type: none"> <li>(i) railway sidings to load/unload freight and cripple sidings;</li> <li>(ii) gantry cranes, crane rails, reach stacker loading/unloading areas and freight dock platforms;</li> <li>(iii) freight and container storage areas;</li> </ul> </li> <li>(b) earthworks to achieve a terminal plateau;</li> <li>(c) railway infrastructure including signals, gantry signals and signs;</li> <li>(d) rail freight terminal refuelling and minor maintenance areas;</li> <li>(e) terminal entrance and exit gateways, loading lanes, internal roads, gatehouses and parking areas;</li> <li>(f) rail freight terminal administrative building including staff and visitor welfare facilities;</li> <li>(g) works to accommodate the demolition of the Burbage Common Road bridge over the Leicester to Hinckley railway line;</li> <li>(h) works to accommodate the construction of a new bridge to cross the Leicester to Hinckley railway line and all necessary superstructures and substructures including footings, abutments and wingwalls to be provided as part of Works No. 7;</li> <li>(i) storage and workshop buildings;</li> <li>(j) the stopping up of existing public rights of way shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(k) the closure of the existing private accesses shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020); and</li> </ul>

Work Number	Description
	<p>(l) the stopping up of the length of Burbage Common Road shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020)</p>
<p><b>3</b></p>	<p>The construction of railway infrastructure to serve the warehousing described in Work No. 5 to be constructed on land identified as zones B3, D1, D2, E1 and E2 on the Parameters Plans (document reference 2.12, Examination Library reference: APP-047), including—</p> <ul style="list-style-type: none"> <li>(a) railway tracks and points;</li> <li>(b) signals and signs; and</li> <li>(c) associated infrastructure.</li> </ul>
<p><b>4</b></p>	<p>The construction of on-site highway infrastructure including—</p> <ul style="list-style-type: none"> <li>(a) roads and associated junctions;</li> <li>(b) roundabout junctions;</li> <li>(c) footways and shared use footways / cycleways;</li> <li>(d) the stopping up of existing public rights of way shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(e) bus stops, bus stop lay-bys, shelters and signage;</li> <li>(f) street lighting and signage;</li> <li>(g) demolition of existing buildings;</li> <li>(h) the closure of existing private accesses shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020); and</li> <li>(i) the stopping up of the length of Burbage Common Road shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020)</li> </ul>
<p><b>5</b></p>	<p>The construction of rail served warehousing including—</p> <ul style="list-style-type: none"> <li>(a) construction of development plateaux;</li> </ul>



Work Number	Description
	<ul style="list-style-type: none"> <li>(b) demolition of existing buildings;</li> <li>(c) warehouses and ancillary buildings including estate management office and gatehouses;</li> <li>(d) drainage, swales, bunding, landscape and planting works;</li> <li>(e) vehicle, cycle, equestrian and pedestrian access routes and signage;</li> <li>(f) roof mounted photovoltaics;</li> <li>(g) external plant;</li> <li>(h) vehicle maintenance, service yards, washing and refuelling facilities, weighbridges and electric vehicle charging units;</li> <li>(i) hardstandings and container storage;</li> <li>(j) parking for HGV's and other vehicles (including cycles), driver welfare facilities and HGV fuelling area;</li> <li>(k) energy centre;</li> <li>(l) works to accommodate a revised public right of way from Burbage Common Road to be provided as part of Work No. 6;</li> <li>(m) the stopping up of the lengths of existing public rights of way as shown on Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(n) the closure of existing private accesses shown on the Access and Rights of Way Plans (Document series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(o) the stopping up of the length of Burbage Common Road shown on the Access and Rights of Way Plans (Document series 2.3, Examination Library reference: APP-016 to APP-020); and</li> <li>(p) primary electricity substation.</li> </ul>
<b>6</b>	<p>The provision of hard and soft landscape works including—</p> <ul style="list-style-type: none"> <li>(a) demolition of existing buildings;</li> </ul>

Work Number	Description
	<ul style="list-style-type: none"> <li>(b) earthworks to create screening bunds</li> <li>(c) soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements;</li> <li>(d) basins for surface water attenuation (including flood alleviation related drainage infrastructure);</li> <li>(e) new and diverted footpaths and bridleways as shown on the Access and Rights of Way Plans (Document series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(f) wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest;</li> <li>(g) amenity open space;</li> <li>(h) noise attenuation including acoustic fencing and / or landscape screening;</li> <li>(i) the stopping up of existing public rights of way shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020); and</li> <li>(j) signage and totems located within the areas indicated on the Parameters Plan (document 2.12, Examination Library reference: APP-047).</li> </ul>
<b>7</b>	<p>The construction of the A47 link road the general arrangement of which is shown on the Highway Plans (document series 2.4, Examination Library reference: APP-021 to APP-031) including—</p> <ul style="list-style-type: none"> <li>(a) connection into a new arm provided at the roundabout at junction 2 of the M69 motorway (Work No. 9);</li> <li>(b) construction of a new three arm roundabout on the B4668 Leicester Road including a segregated left-turn lane from the B4668 southbound onto the A47 link road;</li> <li>(c) upgrading and realignment of the B4668 either side of the new three arm roundabout;</li> </ul>

Work Number	Description
	<ul style="list-style-type: none"> <li>(d) two no. roundabouts to connect to Work No. 4 and one further roundabout;</li> <li>(e) a new bridge over the Leicester to Hinckley railway;</li> <li>(f) a new private access to Bridge Farm as shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(g) signalised crossings for pedestrians, cyclists and horse-riders;</li> <li>(h) the closure of existing private accesses shown on the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(i) the stopping up existing public rights of way shown on the Access and Rights of Way Plans (Document series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(j) bus stops and bus stop lay-bys;</li> <li>(k) acoustic barriers; and</li> <li>(l) demolition of the Burbage Common Road bridge over the Leicester to Hinckley railway.</li> </ul>

Work Number	Description
8	<p>Works to junction 2 of the M69 motorway within the strategic road network the general arrangement of which is shown on the Highway Plans comprising (document series 2.4, Examination Library reference: APP-021 to APP-031)—</p> <ul style="list-style-type: none"> <li>(a) construction of a new slip road for southbound traffic joining the M69 at junction 2;</li> <li>(b) construction of a new slip road for northbound traffic leaving the M69 at junction 2;</li> <li>(c) minor alterations to the existing slip road for southbound traffic leaving the M69 at junction 2;</li> <li>(d) roadside landscape works and planting, to include structural tree planting and landscape bunds;</li> </ul>

Work Number	Description
	<ul style="list-style-type: none"> <li>(e) motorway signage;</li> <li>(f) improvements to bridleway V29/6; and</li> <li>(g) diversion and protection of existing services.</li> </ul>
<p><b>9</b></p>	<p>Works to the roundabout at junction 2 of the M69 motorway outwith the strategic road, the general arrangement of which is shown on the Highway Plans (Document series 2.4, Examination Library reference: APP-021 to APP-031) comprising—</p> <ul style="list-style-type: none"> <li>(a) realignment, widening and signalisation of the B4669 Hinckley Road to the east and west of the M69 junction 2 roundabout;</li> <li>(b) realignment, widening and signalisation of the circulatory carriageway of the M69 junction 2 roundabout</li> <li>(c) works to connect the A47 link road (Work No. 7) and new slip roads (Work No. 8) into the M69 junction 2 roundabout;            signalisation of the M69 approaches to the M69 junction 2 roundabout; and</li> <li>(d) closure of existing private accesses and provision of new private accesses as shown on the Access and Rights of Way Plans (Document series 2.3, Examination Library reference: APP-016 to APP-020).</li> </ul>
<p><b>10</b></p>	<p>Works to the B4669 Hinckley Road the general arrangement of which is shown on the Highway Plans (Document series 2.4, Examination Library reference: APP-021 to APP-031) including-</p> <ul style="list-style-type: none"> <li>(a) the provision of improvements to the footway along the B4669 Hinckley Road; and</li> <li>(b) carriageway widening and signalisation of the junction between the B4669 Hinckley Road and Stanton Lane signage.</li> </ul>
<p><b>11</b></p>	<p>Works to Stanton Lane and works to Hinckley Road, B581 Stanton Road and B581 New Road in Stoney Stanton the general arrangement of which is shown on the Highways</p>

Work Number	Description
	<p>Plans (Document series 2.4, Examination Library reference: APP-021 to APP-031) including—</p> <ul style="list-style-type: none"> <li>(a) gateway feature on Hinckley Road at the entrance to Stoney Stanton; and</li> <li>(b) conversion of the mini roundabout at the junction between Hinckley Road, B581 Station Road and B581 New Road to a signalised junction.</li> </ul>
<b>12</b>	<p>Works to the B4669 Hinckley Road and B4669 Leicester Road in Sapcote the general arrangement of which is shown on the Highways Plans (Document 2.4, Examination Library reference: APP-021 to APP-031) including—</p> <ul style="list-style-type: none"> <li>(a) gateway feature at the entrance to Sapcote from the B4669 Leicester Road;</li> <li>(b) provision of a zebra crossing of the B4669 Leicester Road to the immediate east of the junction with Church Street;</li> <li>(c) kerb realignments at the junction between the B4669 and Church Street;</li> <li>(d) relocation of a bus stop; and</li> <li>(e) public realm scheme including seating and planting.</li> </ul>
<b>13</b>	<p>Works to the junction of the A47 Normandy Way and A47 Ashby Road the general arrangement of which is shown on the Highways Plans (Document 2.4, Examination Library reference: APP-021 to APP-031) including—</p> <ul style="list-style-type: none"> <li>(a) lane widening;</li> <li>(b) pedestrian crossing; and</li> <li>(c) signage.</li> </ul>
<b>14</b>	<p>Works to the junction of the A47 Normandy Way and B4668 Leicester Road the general arrangement of which is shown on the Highways Plans (Document 2.4, Examination Library reference: APP-021 to APP-031) including the widening of the B4668 northbound approach to the roundabout.</p>
<b>15</b>	<p>Within the area of land described on the works plans as Work No. 15 works to the junction of the B4114 Coventry</p>

Work Number	Description
	Road and Croft Road the general arrangement of which is shown on the Highways Plans (Document 2.4, Examination Library reference: APP-021 to APP-031) including the widening of the B4114 southbound approach to the junction.
<b>16</b>	<p>Works to the Cross in Hand roundabout at the A5, A4303, Coal Pit Lane and B4027 Lutterworth Road the general arrangement of which is shown on the Highways Plans (Document 2.4, Examination Library reference: APP-021 to APP-031) including—</p> <ul style="list-style-type: none"> <li>(a) widening of all approaches to the roundabout to increase capacity; and</li> <li>(b) realignment of the B4027 Lutterworth Road arm of the roundabout to improve entry deflection.</li> </ul>
<b>17</b>	<p>Works to the junction of the B4114 Coventry Road, B518 Broughton Road and B581 Coventry Road the general arrangement of which is shown on the Highway Plans (Document 2.4, Examination Library reference: APP-021 to APP-031) including —</p> <ul style="list-style-type: none"> <li>(c) signalisation of the junctions between the B4114 Coventry Road and the B581 Broughton Road;</li> <li>(d) carriageway widening; and</li> <li>(e) a lay-by.</li> </ul>
<b>18</b>	<ul style="list-style-type: none"> <li>(a) the installation of a new foul rising main within Burbage Common Road and the B581 Stanton Road;</li> <li>(b) the construction of a connection with the existing public sewer within the B581 Stanton Road;</li> <li>(c) provision of a turning head on Burbage Common Road, the general arrangement of which is shown on the highway plans; and</li> <li>(d) connection to a new public bridleway shown on the Access and Rights of Way Plans (Document series 2.3, Examination Library reference: APP-016 to APP-020).</li> </ul>

Work Number	Description
19	<ul style="list-style-type: none"> <li>(a) earthworks to create screening bunds and a bund to the north of the railway works (Work No. 1);</li> <li>(b) soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements;</li> <li>(c) basins for surface water attenuation (including flood alleviation related drainage infrastructure);</li> <li>(d) new and diverted footpaths and bridleways as shown on the Access and Rights of Way Plans (Document series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(e) wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest;</li> <li>(f) amenity open space;</li> <li>(g) noise attenuation including acoustic barriers or landscape screening;</li> <li>(h) connection into the existing ditch at Burbage Common;</li> <li>(i) the stopping existing public rights of way shown on the Access and Rights of Way Plans (Document Series 2.3, Examination Library reference: APP-016 to APP-020);</li> <li>(j) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans;</li> <li>(k) the reinstatement of agricultural land; and</li> <li>(l) the provision of a new turning head on Burbage Common Road as shown on the Highway Plans (Document 2.4, Examination Library reference: APP-021 to APP-031).</li> </ul>
20	<ul style="list-style-type: none"> <li>(a) the closure of the Outwoods level crossing and the diversion of public footpath U8/1 comprising the construction of a new footbridge over the Felixstowe to Nuneaton railway line to connect into existing footpath U52/3 as shown on the Access and Rights</li> </ul>

Work Number	Description
	<p>of Way Plans (document Series 2.3, Examination Library reference: APP-016 to APP-020); and</p> <p>(b) removal of existing infrastructure associated with the above.</p>
21	<p>(a) the closure of the Thorney Fields level crossing and the diversion of public footpath U17/2 along the route shown on the Access and Rights of Way Plans (document Series 2.3, Examination Library reference: APP-016 to APP-020); and</p> <p>(b) removal of existing infrastructure associated with the above.</p>
22	<p>(a) the stopping up of public footpath T89/1 to the extent as shown on the Access and Rights of Way Plans (document Series 2.3, Examination Library reference: APP-016 to APP-020) including closure of the Elvesthorpe level crossing and removal of associated infrastructure; and</p> <p>(b) provision of an uncontrolled crossing over the B581 Station Road as shown on the Highway Plans (Document <u>Series</u> 2.4, Examination Library reference: APP-021 to APP-031).</p>

5.1955.215 Schedule 1 also includes “Further Works” the precise locations of which it is not possible to identify at this stage. These “Further Works” are not location specific because they relate to items the precise location of which is not ascertainable at this stage because the development will be subject to more detailed engineering design, or are items where their location may change, such as parking facilities, charging points etc. The approach is included in several made DCOs including The Northampton Gateway Rail Freight Interchange Order 2019 <sup>156</sup> and The West Midlands Rail Freight Interchange Order 2020<sup>157</sup>.

5.1965.216 All of the “Further Works” are subject to the provisos contained in the schedule including the test of “significant adverse environmental effects” pursuant

<sup>156</sup> S.I. 2019 No 1358

<sup>157</sup> S.I. 2020 No 511



to paragraph 13 of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017<sup>158</sup>.

## **Schedule 2 (Requirements)**

### **Part 1 – Requirements**

~~5.1975.217~~ Schedule 2 (Requirements) contains the requirements pursuant to section 120(1) of the 2008 Act. Section 120(2) states that requirements “*may in particular include*”:

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

~~5.1985.218~~ The matters covered by the requirements are set out below:

<b>Requirement (No. and Topic)</b>	<b>Explanation</b>
<b>2 (Time limits)</b>	This provides that the authorised development must commence no later than the expiration of five years beginning with the date on which the Order comes into force. This is based on the model provisions as per requirement 2.
<b>3 (Phasing of Development)</b>	This requires a phasing scheme setting out all of the phases of the authorised development to be submitted and approved in writing by the relevant planning authority prior to the commencement of construction works. This is based on the model provisions as per requirement 3, save that it must be submitted prior to the commencement of construction works which is defined in paragraph 1 of Schedule 2 and which excludes archaeological investigation, ecological mitigation and site investigation. As these investigative works do not form part of the final, built authorised development and given the scale of the authorised development, it is considered appropriate for such works to be carried out prior to approval on phasing.

Requirement (No. and Topic)	Explanation
	<p>An implementation clause has been added as new sub-paragraph (3) in response to a request from the ExA and following discussions at ISH1.</p> <p>To address the amendments made to Schedules 5 and 6, the Applicant has added a requirement for details of the closure and reopening of PROW and private accesses to clarify the relevant triggers for these (as discussed at ISH 1).</p>
<p><b>4 (Detailed design approval)</b></p>	<p>Requirement 4 provides that construction works shall not commence on any phase until details of that phase have been submitted and approved by the relevant planning authority. Detailed design will not be settled at the time the Order is made, therefore it is necessary for such details to be approved prior to construction works on the relevant phase commencing. This follows model requirement 4, save that the details are to be approved prior to the commencement of construction works.</p> <p>This requirement also requires that a minimum of 20% of the total number of car parking spaces shall be equipped with electrical charging points. Amendments have been made to sub-paragraph (3) to respond to the ExA’s request that the minimum power rating for the charging points be specified. However, it is not possible to specify what the rating will be for the remainder of the charging points (for which passive provision is to be made) as these charging points will be installed by future occupiers of the warehouse units and will need to respond to their requirements. A definition of “passive provision” (mentioned in paragraph 4(3)) has been added to paragraph 1 of Schedule 2 (“Interpretation”).</p>
<p><b>5 (Design and phasing of highway works)</b></p>	<p>This requirement addresses the timing for completion of specific highway works. The works must be completed by the stage specified in the requirement or such later stage as agreed by National Highways and/or Leicestershire County Council (as relevant).</p>

Requirement (No. and Topic)	Explanation
	<p>Paragraph 2 of this requirement provides that the undertaker shall not be obliged to undertake Work No. 17 if a third party has commenced construction of the works shown coloured green on Sheet 8C of the highways plans prior to the stage of development specified in column (3) of the requirement.</p> <p>Requirement 5(2) is necessary because those works shown coloured green on the respective highway plans are already committed by another developer, and the Applicant need only be compelled to carry out those works in the event that those works have not already been carried out.</p> <p>Requirement 5(3) was removed from the version of the dDCO submitted on 11 September (Document 3.1A, Examination Library reference AS-008 clean and AS-009 tracked) as explained in the DCO Amendments Tracker (Document 3.4, Examination Library reference AS-010) following the provision of clarity by Gazeley LP that the highway works previously identified green on the highway general arrangement plan for these works (Document 2.4H [APP-029]) are no longer proposed/required to be undertaken by Gazeley LP and the Applicant will therefore undertake these works in accordance with requirement 5(1) and the relevant protective provisions.</p>
<p><b>6 (Public right of way and level crossing closure)</b></p>	<p>The first part of this requirement requires the undertaker to stop up the public rights of way identified in the table no later than the stage of authorised development specified in that table, or such later stage as agreed with Leicestershire County Council.</p> <p>For the reasons of safety, the second part of this requirement provides that the rail freight terminal forming part of Work No. 2 must not commence commercial operation until the specified level crossings have been closed. The undertaker may therefore not benefit from the rail freight terminal forming part of the</p>

Requirement (No. and Topic)	Explanation
	<p>authorised development until it has complied with this requirement.</p> <p>In response to the request from the ExA in its Initial Observations on Drafting of dDCO (Annex F of the Rule 6 Letter, Examination Library reference PD-005), paragraph 6(2) has been amended to clarify that testing of rail track within the rail freight terminal should not take place until the level crossings referred to in paragraph 6(2)(a)-(e) have been closed. As noted in Appendix C of the Applicant’s Post Hearing Submissions (ISH1 and CAH1) (Document 18.1.3) in relation to this point, this particular paragraph is included in the dDCO only as an absolute back stop that the crossings will be closed by this stage, since in reality, their closure will be delivered earlier in the construction programme pursuant to the Public Rights of Way Strategy.</p>
<p><b>7 (Construction Environmental Management Plan)</b></p>	<p>This requirement provides that prior to the commencement of construction works on each phase, a detailed construction environment management plan must be approved by the relevant planning authority. The plan must be in accordance with the principles of the CEMP which will be a certified document for the purposes of Schedule 15.</p> <p>Paragraph 7(3) has been amended to clarify that the undertaker should be responsible for reviews and updated if considered reasonably necessary, with the approval of the relevant planning authority, as discussed in ISH1.</p>
<p><b>8 (Travel plan)</b></p>	<p>In accordance with this requirement, the undertaker must at all times comply with the framework site wide travel plan.</p> <p>Prior to the occupation of an individual warehouse unit, an occupier-specific travel plan must be approved by the relevant planning authority. This plan must be in accordance with the framework travel plan, thereby ensuring uniformity across the authorised development where possible and ensuring that the</p>

Requirement (No. and Topic)	Explanation
	<p>principles on which the framework site wide travel plan is based are carried through to individual units.</p> <p>In response to the request from ExA and discussions at the ISH, as well as a request from Blaby DC the requirement has been clarified to remove the compliance period of five years <u>and instead require compliance during the period of occupation</u> and to include an obligation to monitor the travel plan for a period of five years after first occupation (or earlier cessation of occupation).</p>
<p><b>9 (Sustainable transport strategy)</b></p>	<p>This requirement provides that the sustainable transport strategy must be complied with following the first occupation of any warehouse floorspace. This is to ensure that the objectives identified in the strategy are followed by individual occupiers.</p> <p>In response to a request from Blaby DC a new requirement has been added at new paragraph 9(2) to require the undertaker to use reasonable endeavours to maximise the use of Euro VI compliant vehicles in relation to HGV fleets visiting the warehouse units and public transport serving the authorised development. A definition has also been added for “Euro VI compliant” at paragraph 1 of the Schedule.</p>
<p><b>10 (Rail)</b></p>	<p>This requirement prohibits more than 105,000 square metres of warehouse floorspace <u>(including ancillary office)</u> from being occupied until the rail freight terminal (which is capable of handling a minimum of four 775m trains per day) and any associated rail infrastructure has been completed. This will permit some initial occupation, but the majority of occupation will therefore only be able to take place once the rail terminal can become operational.</p>
<p><b>11 (Container stack height)</b></p>	<p>This requirement limits the height of any stack of containers to specified heights within the container storage area and the returns area. This is to mitigate the visual impact pending the establishment of planting.</p>

Requirement (No. and Topic)	Explanation
	<p>The Applicant <del>has previously</del> amended paragraph 11(2)(a) at the request of Blaby DC (<u>as per the dDCO submitted at Deadline 2 (Document Reference 3.1B, Examination Library reference: REP2-010)</u>). Other amendments requested by Blaby DC <del>cannot</del> could not be agreed by the Applicant as they unreasonably restricted the commercial operation of the site and the ability to satisfy the terminal operator’s requirements. <u>However, the Applicant has now been able to agree the restrictions on container stack height and has updated the dDCO submitted at Deadline 4 (Document Number 3.1C accordingly).</u></p>
<p><b>12 (Archaeology and building recording)</b></p>	<p>This requirement prohibits the commencement of a phase until a written scheme of investigation for that phase based on the provisions of the archaeological mitigation strategy has been submitted to and approved in writing by the relevant planning authority.</p> <p>This draws from model requirement 16 but goes further by requiring that no part of the authorised development on the main site shall commence until a level 3 record of the building historic interest identified in the archaeological mitigation strategy has been undertaken. A level 3 record is reference to the recording levels as recommended by Historic England.</p> <p>Additional provisions relating to publishing and archiving records are to be deposited with the Historic Environment Record of the relevant planning authority. Also the notification of previously unidentified human remains to the relevant planning authority have been added as new sub-paragraphs (3) and (4). An implementation provision has been added as new sub-paragraph (5).</p>
<p><b>13 (Sustainable drainage)</b></p>	<p>This requirement requires a sustainable drainage strategy to be approved by the relevant planning authority for each phase prior to the commencement of that phase. This strategy is to be based on the</p>

Requirement (No. and Topic)	Explanation
	<p>drainage strategies submitted as part of the application, insofar as they are relevant for that phase. This is based on model requirement 14.</p> <p>An implementation provision has been added as new sub-paragraph (2).</p>
<b>14 (Surface water)</b>	<p>This requirement requires a surface water drainage scheme for each phase to be submitted and approved by the relevant planning authority prior to the commencement of that phase.</p> <p>The requirement also provides that no phase shall be occupied until details of the long-term maintenance of the surface water drainage system within a phase have been approved by the relevant planning authority. This is considered appropriate in order to ensure that the risk of flooding is managed long-term.</p> <p>Implementation provisions have been added as new sub-paragraphs (2) and (4) relating to the surface water drainage system and long-term maintenance plan respectively.</p>
<b>15 (Contaminated land)</b>	<p>This requirement prohibits the commencement of a phase until a remediation strategy to deal with the risks of contamination of controlled waters has been submitted and approved by the relevant planning authority following consultation with the Environment Agency. This is based on model requirement 15.</p> <p>In response to the ExA's request and as per the Applicant's response at ISH1, sub-paragraph (1) has been amended so as to include the contamination of land as well as the contamination of controlled waters. An implementation provision has been added at new sub-paragraph (2).</p> <p>A further paragraph has also been added at the request of the Environment Agency to ensure that a verification report is submitted and approved detailing any</p>

Requirement (No. and Topic)	Explanation
	<p>measures that were required under the remediation strategy and confirming their completion before the relevant phase of development is brought into use.</p>
<p><b>16 (Construction hours)</b></p>	<p>This requirement provides for construction hours and no construction on Sundays or bank holidays. However, this restriction does not apply to the specified works listed in the requirement, including works approved by the relevant planning authority, emergency works and highway works. It is considered necessary to exclude some works from the restriction on hours to allow certain element of the projects to be constructed outside of those hours where continuous working is required, or working outside of those hours would mitigate effects (e.g. on the operational rail or highway networks), or where there are no likely significant environmental effects associated with particular works.</p> <p>The Applicant <del>has</del> altered the construction hours following a request by Blaby DC (<u>as per the dDCO submitted at Deadline 2 (Document Reference 3.1B, Examination Library reference: REP2-010)</u>). This doesn't fully accord with Blaby DC's request, which was to limit construction hours to 07:00 – 13:00 on a Saturday, rather than the amended requirement which limits construction to 07:00 – 15:00 on a Saturday. This is to allow for civil engineering works which are required up to 15:00 on Saturdays.</p> <p><u>The Applicant has since agreed phased construction hours with Blaby DC and this is reflected in the dDCO submitted at Deadline 4 (Document Reference: 3.2B). Construction works relating to the phase of the authorised development which includes the earth works must not take place on Sundays, bank holidays, public holidays, nor otherwise outside the hours of 07:00 to 19:00 on week days and 07:00 to 15:00 on Saturdays. Construction works relating to all phases of the authorised development must not take place on Sundays, bank holidays, public holidays, nor otherwise</u></p>



Requirement (No. and Topic)	Explanation
	<p><u>outside the hours of 7:00 to 19:00 Monday to Friday and 7:00 to 13:00 on Saturday.</u></p> <p>In response to a request from Blaby DC, a notification provision to the relevant planning authority in relation to emergency works mentioned in sub-paragraph 16(2)(i) has been added as sub-paragraph (3).</p>
<b>[previous requirement 17 – Electricity generation cap]]</b>	As explained above, this requirement has been removed and the matter is dealt with at article 3(2).
<b>17 (Energy strategy)</b>	<p>This requirement provides that no phase of the authorised development may be occupied until a detailed energy strategy for that phase has been submitted and to and approved in writing by the relevant planning authority. The strategy must be in accordance with the energy strategy which will be a certified document pursuant to Schedule 15.</p> <p>An implementation provision has been added at new sub- paragraph (2).</p>
<b>18 (HGV route management plan and strategy)</b>	This requirement provides that the HGV route management plan and strategy must be complied with at all times following the first occupation of warehouse floorspace.
<b>19 (Landscape Ecological Management Plan)</b>	<p>This requirement prohibits commencement of <u>a phase of</u> the authorised development until a landscape and ecological management plan <u>for that phase</u> has been submitted and approved by the relevant planning authority. Following implementation, it will reviewed on the 5<sup>th</sup> anniversary of commencement and at five yearly intervals thereafter. This is in accordance with model requirement 17, save that the review provisions have been added to ensure that the content of the LEMP remains appropriate for achieving the objectives therein.</p> <p><u>The plan must be in accordance with the principles of the Outline Landscape and Ecology Management Plan</u></p>

Requirement (No. and Topic)	Explanation
	<p><u>which will be a certified document for the purposes of Schedule 15.</u></p> <p>As abbreviations are not generally used in relation to the names of plans and strategies in Schedule 2, the abbreviation “LEMP” has been replaced with “landscape ecological management plan” throughout this requirement.</p>
<p><b>20 (Ecological mitigation management plan)</b></p>	<p>Where a phase includes ecological mitigation or management, this requirement prohibits commencement of that phase until a detailed ecological mitigation and management plan has been submitted. This plan will set out the ecological mitigation strategies to be employed to ensure that protected species and habitats are safeguarded during site clearance and construction.</p> <p>An implementation provision <del>has been</del> <u>is added included</u> at <del>new</del> sub- paragraph (52).-</p>
<p><b>21 (Landscape scheme)</b></p>	<p>This requirement provides that no phase shall commence until a written landscaping scheme for that phase has been submitted and approved by the relevant planning authority. This scheme must be in accordance with illustrative landscape strategy, thereby ensuring that each landscaping scheme aligns with the overall strategy.</p> <p>An implementation provision has been added at new sub-paragraph (4).</p>
<p><b>22 (Site waste and materials management plan)</b></p>	<p>This requirement provides for the submission of a detailed site waste and materials management plan for each phase prior to the commencement of construction works on that phase. The plan must be approved by the relevant planning authority.</p> <p>An implementation provision has been added at new sub-paragraph (2) and some typographical errors have been corrected.</p>

Requirement (No. and Topic)	Explanation
<p><b>23 (Construction traffic management plan)</b></p>	<p>In accordance with this requirement, a detailed construction management plan must be submitted to and approved by the relevant planning authority for each phase prior to the commencement of construction work on that phase. This is based on model provision 22 but goes further by specifying details which must be included in the plan.</p> <p>An implementation provision has been added at new sub-paragraph (4).</p>
<p><b>24 (Temporary highway accesses)</b></p>	<p>This requirement provides that prior to commencement of construction works on any phase, details of the siting, design and layout of any new or modified temporary means of access shall be submitted to and approved by the relevant highway authority.</p> <p>An implementation provision has been added at new sub-paragraph (2).</p>
<p><b>25 (Public rights of way strategy)</b></p>	<p>This requirement provides that prior to the commencement of construction works on any phase, a detailed public rights of way strategy for that phase must be submitted and approved by the relevant highway authority. The detailed strategy must be in accordance with the principles set out in the public rights of way strategy to be certified as part of Schedule 15.</p> <p>An implementation provision has been added at new sub-paragraph (2).</p>
<p><b>26 (Control of operational noise)</b></p>	<p>In accordance with <del>this sub-paragraph (1) of the</del> requirement, details of all mechanical and ventilation plant and any other noisemaking machinery or mobile plant to be used within the main site, must be approved in writing by the relevant planning authority prior to their installation. An implementation provision has</p>

Requirement (No. and Topic)	Explanation
	<p>been added as the penultimate sentence of this requirement.</p>
<p><b>27 (Acoustic barriers)</b></p>	<p>This requirement provides that any acoustic barriers to be provided as part of any phase in accordance with requirement 4 must be completed prior to first occupation of that phase.</p> <p>In response to a request from Blaby DC, a requirement to maintain and retain the barriers throughout the lifetime of the development has been added.</p>
<p><b>28 (Combined heat and power)</b></p>	<p>This requirement prohibits the combined heat and power plant from operating for more than 30% of the hours in a calendar year. It is intended that the plant is used for back-up purposes only, therefore it is considered appropriate to limit its operation.</p> <p>The requirement has been clarified so as to require the provision of the annual usage report to be provided to the relevant planning authority on request.</p>
<p><b>29 (Biodiversity net gain)</b></p>	<p>This requirement provides that the authorised development must not commence until a biodiversity net gain strategy to achieve a 10% biodiversity net gain (in accordance with the principles set out in the biodiversity impact assessment) has been approved by the relevant planning authority.</p> <p>Paragraph 29(1) has been amended to clarify that the biodiversity net gain strategy relates to a requirement for a 10% net gain overall in relation to the whole of the authorised development. The strategy is to be approved by all of the planning authorities within the area of the authorised development (whether or not any element of the strategy entails works within a particular planning authority’s area).</p> <p>An implementation provision has been added at new sub-paragraph (2).</p>

Requirement (No. and Topic)	Explanation
<b>30 (Lighting)</b>	<p>This requirement prohibits occupation of a phase until a scheme for all permanent external lighting to be installed on that phase has been approved by the relevant planning authority. Each scheme must accord with the lighting strategy submitted with the application and which is to be certified and listed in Schedule 15.</p> <p>This requirement has been amended to accord with Blaby DC's requested amendments.</p>
<del><b>32 (Employment and skills)</b></del>	<p>Following discussion with the local planning authorities, the detail of employment and skills requirements are now to be dealt with in the s106 planning obligations and this requirement has been removed from the dDCO. The next draft of the s106 Agreement to be submitted at Deadline 4 will include provision for this.</p>
<b>31 (Woodland management plan)</b>	<p>In accordance with this requirement, no phase shall commence until a detailed woodland management has been submitted to and approved by the relevant planning authority. This plan must be in accordance with the principles in the woodland management plan.</p> <p>The plan has been renamed as the "woodland management plan" and the use of the abbreviation "DWAMP" has been removed for consistency of drafting.</p>
<b>32 (Amendments to approved details)</b>	<p>The Applicant has retained this paragraph in Part 1 of the Schedule as it is considered helpful for this overarching principle to be included.</p>
<b><u>33 (Lorry park management plan)</u></b>	<p><u>The Applicant has included a new requirement requiring that the lorry park management plan be complied with at all times following the first occupation of any warehouse floorspace on the authorised development.</u></p>

**Part 2 – Procedure for Approvals etc Under Requirements**

~~5.1995.219~~ This part deals with the procedure for approvals and appeals under the requirements. It is based on appendix 1 to Advice Note 15<sup>159</sup> but now includes longer timeframes for the necessary approvals. ~~However it~~ has also been modified in that rather than inserting a specific fee to be paid when an application is made to the discharging authority it instead refers to the fee that would have been payable had the fee been determined under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.<sup>160</sup> This approach was authorised in The Northampton Gateway Rail Freight Interchange Order 2019 <sup>161</sup> and is therefore considered to be an acceptable principle.

### ***Schedule 3 (Streets subject to Street Works)***

~~5.2005.220~~ This Schedule lists the streets within the Order Limits which are to be subject to the street works pursuant to Article 9.

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

~~5.2015.221~~ This Schedule lists the extent of streets to be stopped up pursuant to Article 11 with reference to the Access and Rights of Way Plans (document series 2.3, Examination Library reference: APP-016 to APP-020).

### ***Schedule 5 (Public Rights of Way)***

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

~~5.2025.222~~ This Part details the public rights of way which are to be stopped up with substitute to be provided pursuant to Article 13 with reference to the Access and Rights of Way Plans (document series: 2.3, Examination Library reference: APP-016 to APP-020).

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

~~5.2035.223~~ This Part sets out the public rights of way to be stopped up where no substitute is to be provided pursuant to Article 13 with reference to Access and

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<sup>159</sup> Drafting Development Consent Orders: (Version 2) Republished in July 2018

<sup>160</sup> S.I. 2012 No. 2920, amended by S.I. 2013 No. 2153, S.I. 2014 No. 357, S.I. 2014 No. 2026, S.I. 2015 No. 643, S.I. 2017 No. 1314 and S.I. 2019 No. 1154.

<sup>161</sup> S.I. 2019 No. 1358 (Schedule 2 Part 2)

Rights of Way Plans (document series: 2.3, Examination Library reference: APP-016 to APP-020).

### ***Part 3 – New Public Rights of Way to be Created***

~~5.204~~5.224 This Part sets out the new public rights of way to be provided pursuant to Article 13 with reference to Access and Rights of Way Plans (document series: 2.3, Examination Library reference: APP-016 to APP-020).

### ~~***Part 4 – Public Rights of Way to be temporarily closed***~~

~~5.205~~ This Part sets out the public rights of way to be temporarily closed pursuant to Article 13 with reference to Access and Rights of Way Plans (document series: 2.3, Examination Library reference: APP-016 to APP-020).

### ***Schedule 6 (Private Means of Access)***

#### ***Part 1 – Private Means of Access to be Replaced***

~~5.206~~5.225 This Part sets out the private means of access which are to be closed and replaced pursuant to Article 14 with reference to the Access and Rights of Way Plans (document series: 2.3, Examination Library reference: APP-016 to APP-020).

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

~~5.207~~5.226 This Part details the private means of access to be stopped up pursuant to Article 14 and not replaced, with reference to the Access and Rights of Way Plans (document series: 2.3, Examination Library reference: APP-016 to APP-020).

#### ***Part 3 – New private means of Access Created***

~~5.208~~5.227 This Part sets out the new private means of access to be provided with reference to the Access and Rights of Way Plans (document series: 2.3, Examination Library reference: APP-016 to APP-020).

### ***Schedule 7 (Classification of Highways)***

#### ***Part 1 – New Highways***

~~5.209~~5.228 This Part details the classification of the new lengths of highways created as a result of the highway works (Article 16).

## ***Schedule 8 (Speed Limits)***

### ***Part 1 – Existing Orders***

~~5.211~~5.229 This Part deals with the necessary amendments to existing traffic regulation orders (Article 17 (1)).

### ***Part 2 – Highways subject to 40 mph speed limit***

~~5.211~~5.230 This Part sets out the new 40 mph speed limit which will apply following the relevant part of works becoming maintainable by the relevant highway authority pursuant to Article 15 (Article 17(2)).

### ***Part 3 – Derestricted Highways***

~~5.212~~5.231 This Part sets out the highways which will be subject to a derestricted speed limit apply following the relevant part of works becoming maintainable by the relevant highway authority pursuant to Article 15 (Article 17(3)).

## ***Schedule 9 (Clearways and no waiting)***

### ***Part 1 (Clearways)***

~~5.213~~5.232 This Part describes the lengths of road to be subject to a new order for clearways (Article 19(1))

### ***Part 2 (No Waiting At Any Time)***

~~5.214~~5.233 This Part sets out the lengths of highway which will be subject to no waiting orders required as a result of the highway works (Article 19(2)).

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

~~5.215~~5.234 This Schedule sets out the land of which temporary possession may be taken as referred to in Article 34.

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

~~5.216~~5.235 This Schedule lists the parcels of land in which new rights may be created (Article 27(2)).



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

5.2175.236 This Schedule modifies provisions for compensation following the creation of new rights (Article 27(3)). 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). The amendments are required to ensure that the compensation provisions in those compulsory acquisition enactments relate to the powers granted in the DCO.

### ***Schedule 13 (Protective provisions)***

5.2185.237 Schedule 13 includes provisions to protect the interests of various bodies whose assets may be affected by HNRFI (Article 47).

5.2195.238 These Protective Provisions include:

- Part 1: Protection of Railway Interests
- Part 2: Protection of National Highways
- Part 3: Protection of Leicestershire County Council as The local highway authority~~the Local Highway Authority~~
- Part 4: Protection of Warwickshire County Council as local highway authority
- Part ~~4~~5: Cadent Gas Limited (as Gas Undertaker)
- Part ~~5~~6: Severn Trent Limited Water Limited
- Part ~~6~~7: General provisions for the protection of Electricity Undertakers
- Part ~~7~~8: General provisions for the protection of operators of the Electronic Communications Code Networks
- Part ~~8~~9: National Grid Electricity Distribution (East Midlands) Plc (as electricity provider)
- Part ~~9~~10: National Grid Electricity Transmission Plc (as Electricity Undertaker)

5.2205.239 The Protective Provisions remain the subject of ongoing negotiation and consultation with the relevant stakeholders and as such subject to refinement. The Applicant provided an update on the status of those discussions at ISH1 and this is reflected in the Applicant's Post Hearing Submissions (ISH1 and CAH1) (Document 18.1). The Applicant has included some updates to the protective provisions where those discussions have progressed and the current position at Deadline 2 is set out in the table below.

Protective provisions for the benefit of	Status of discussion between the parties
<b>Network Rail Infrastructure Limited</b>	<p><del>Positive Discussions</del> <u>discussions</u> are ongoing between the parties to deal with the overarching framework agreement which will govern the protective provisions as well as the asset protection arrangements. The Applicant envisages that the version of the provisions in the dDCO will be updated once that framework agreement has been finalised during the course of the Examination.</p>
<b>National Highways</b>	<p>Discussions <del>have been</del> <u>are</u> ongoing with National Highways (NH) <del>but, at Deadline 1, National Highways appended a new set of protective provisions to its Written Representations.</del></p> <p><del>The Applicant's position on these new protective provisions is explained in the Applicant's Comments on Written Representations (Document 18.3 Statutory Bodies section). The Applicant is considering the protective provisions:</del></p> <p><u>The protective provisions included in the DCO at Deadline 4 reflect latest negotiations and discussions with NH. The only points outstanding relate to:</u></p> <ul style="list-style-type: none"> <li>• <u>deemed approvals in the event that NH fails to respond to a request for approval within 2 months. The Applicant's position is that deemed approval is critical to providing certainty in terms of delivery of the project. Any delays will have significant impacts on the delivery programme. The Applicant considers the drafting to allow NH sufficient and reasonable time to respond and approve relevant details;</u></li> <li>• <u>drafting included by NH that has the effect of wholly disapplying a number of powers that have been included in the dDCO. The Applicant's position is that the drafting is not reasonable or acceptable and has not been sought by any other highway authority. The Applicant's intention is to carry out all relevant works in accordance with the NH protective provisions and NH's approval</u></li> </ul>

Protective provisions for the benefit of	Status of discussion between the parties
	<p><u>but, if that is not possible during construction, the Applicant must have certainty that the development can be delivered.</u></p> <ul style="list-style-type: none"> <li><u>'reasonable' and 'proper' drafting in terms of the discretion of the parties in respect of certain obligations and approvals or where costs are payable under the protective provisions.</u></li> </ul> <p>The Applicant <del>is</del><u>remains</u> committed to engaging, and continuing discussions and negotiations, with National Highways in respect of suitable protective provisions.</p>
<p><b><u>Leicestershire County Council as The local highway authority</u></b></p>	<p><del>As discussed in ISH1 and explained in the Applicant's Post Hearing Submissions (ISH1 and CAH1) (Document 18.1), Leicestershire County Council requested in the week before the ISH that the Applicant consider replacing the current protective provisions with its standard s278 Highways Act 1980 Agreement wording, on the basis that the same approach had been adopted in The East Midlands Gateway Rail Freight Interchange and Highway Order 2016/17.</del></p> <p><u>The Applicant is engaged in ongoing discussions and negotiations with LCC in respect of suitable protective provisions. The protective provisions have been included in the DCO and are based on the protective provisions included in The East Midlands Gateway Rail Freight Interchange and Highway Order 2016/17 and LCC's standard form Section 278 Agreement with amendments, the majority of which have been agreed between the Applicant and LCC.</u></p> <p><u>The only points outstanding relate to:</u></p> <ul style="list-style-type: none"> <li><u>deemed approvals in the event that LCC fails to respond to a request for approval within 42 days. The Applicant's position is that deemed approval is critical to providing certainty in terms of delivery of the project. Any delays will have significant impacts on the delivery programme. The Applicant considers the drafting to allow LCC sufficient and reasonable time to respond and approve relevant details;</u></li> </ul>

Protective provisions for the benefit of	Status of discussion between the parties
	<ul style="list-style-type: none"> <li><u>provisions securing the adoption and ongoing maintenance of the bridge to form part of the A47, over Network Rail infrastructure. The Applicant's position is that the bridge will form part of the A47 and should therefore become highway maintainable in the normal way.</u></li> </ul> <p><del>The Applicant has considered this request and is content to adopt the drafting included in the East Midlands Gateway Order with some amendments where necessary (for example there are no bridges over National Highways infrastructure in HNRFI but there will be over Network Rail infrastructure).</del></p> <p><del>The Applicant has confirmed this position to the County Council and will continue its endeavours to reach agreement on the provisions.</del></p> <p><del>The Applicant is still awaiting detailed comment from Warwickshire County Council in respect of Work No. 16 which needs to be dealt with between all three highway authorities. The Applicant notes however that Warwickshire County Council has referred to its standard form Section 278 Agreement in its Written Representations at Deadline 1. The Applicant is continuing to attempt to engage with Warwickshire County Council as the Applicant requires suitable protective provisions in the DCO to deal with the relevant highway works.</del></p>
<p><u>Warwickshire County Council as local highway authority</u></p>	<p><u>It has been agreed between the Applicant, Leicestershire County Council and Warwickshire County Council (WCC) that protective provisions should be included for the benefit of Warwickshire County Council.</u></p> <p><u>The Applicant is engaged in ongoing discussions and negotiations with WCC in respect of suitable protective provisions. The protective provisions have been included in the DCO and are based on WCC's standard form</u></p>

Protective provisions for the benefit of	Status of discussion between the parties
	<p><u>Section 278 Agreement with amendments, the majority of which have been agreed between the Applicant and WCC. The only points outstanding relate to:</u></p> <ul style="list-style-type: none"> <li><u>deemed approvals in the event that WCC fails to respond to a request for approval within 42 days. The Applicant’s position is that deemed approval is critical to providing certainty in terms of delivery of the project. Any delays will have significant impacts on the delivery programme. The Applicant considers the drafting to allow WCC sufficient and reasonable time to respond and approve relevant details.</u></li> </ul>
<b><u>Severn Trent Limited Water Limited</u></b>	<u>The Applicant has agreed protective provisions with Severn Trent</u>
<b>Cadent Gas Limited</b>	<p>The Applicant is engaged in ongoing discussions and negotiations with Cadent in respect of suitable protective provisions <del>and anticipates being in a position to include final and agreed protective provisions in the DCO shortly, and certainly within the timeframe of the Examination. The draft DCO will be updated to reflect the agreed position as soon as this is reached.</del> <u>The only points outstanding are in relation to the watching brief requirement, which is agreed subject to this being linked to a Cadent policy or working document confirming exactly what is required, and the wording of the indemnity. The Applicant envisages that the protective provisions will be settled shortly.</u></p>
<b>National Grid Electricity Distribution (East Midlands) Plc</b>	<p>The Applicant is engaged in ongoing discussions and negotiations with National Grid Electricity Distribution in respect of suitable protective provisions and anticipates being in a position to include final and agreed protective provisions the DCO shortly, and certainly within the timeframe of the Examination. <u>The only points outstanding in the protective provisions relate to:</u></p>

Protective provisions for the benefit of	Status of discussion between the parties
	<ul style="list-style-type: none"> <li><u>the requirement for an expert when making an expert determination to take into account NGED’s standard form rights for the type of alternative apparatus to be constructed in the circumstances similar to the Authorised Development. The Applicant does not object to this in principle but is awaiting copies of the standard form rights to review.</u>  <del>The draft DCO will be updated to reflect the agreed position as soon as this is reached.</del></li> </ul>
<b>National Grid Electricity Transmission PLC</b>	<p>The Applicant has received National Grid Electricity Transmission’s (“NGET’s”) template provisions and is engaged in ongoing discussions and negotiations with NGET in respect of suitable protective provisions. <u>The only points outstanding relate to:</u></p> <ul style="list-style-type: none"> <li><u>the requirement for NGET to give notice before taking access (save in cases of emergency). The Applicant requires this to be included to ensure that NGET’s employees can gain safe access to the site.</u></li> <li><u>deemed approvals in the event that NGET fails to respond to a request for approval within 56 days. The Applicant has proposed an alternative for consideration by NGET however, requires a mechanism to avoid undue delays.</u></li> <li><u>the requirement to provide details of the costings (including a formula if available) where sums are claimed under the indemnity provisions. The Applicant requires this in order to have transparency over the amounts claimed and in order for it to be able to claim on its insurance if required.</u></li> <li><u>a cap on the sums which may be claimed under the indemnity to the level of the insurance and security sought. The Applicant considers this to be reasonable.</u></li> <li><u>the dispute resolution mechanism which is currently being discussed with NGET. The Applicant anticipates being in a position to include final and agreed protective provisions the DCO shortly, and certainly within the timeframe of the Examination. The draft</u></li> </ul>

Protective provisions for the benefit of	Status of discussion between the parties
	<del>DCO will be updated to reflect the agreed position as soon as this is reached.</del>

***Schedule 14 (Miscellaneous Controls)***

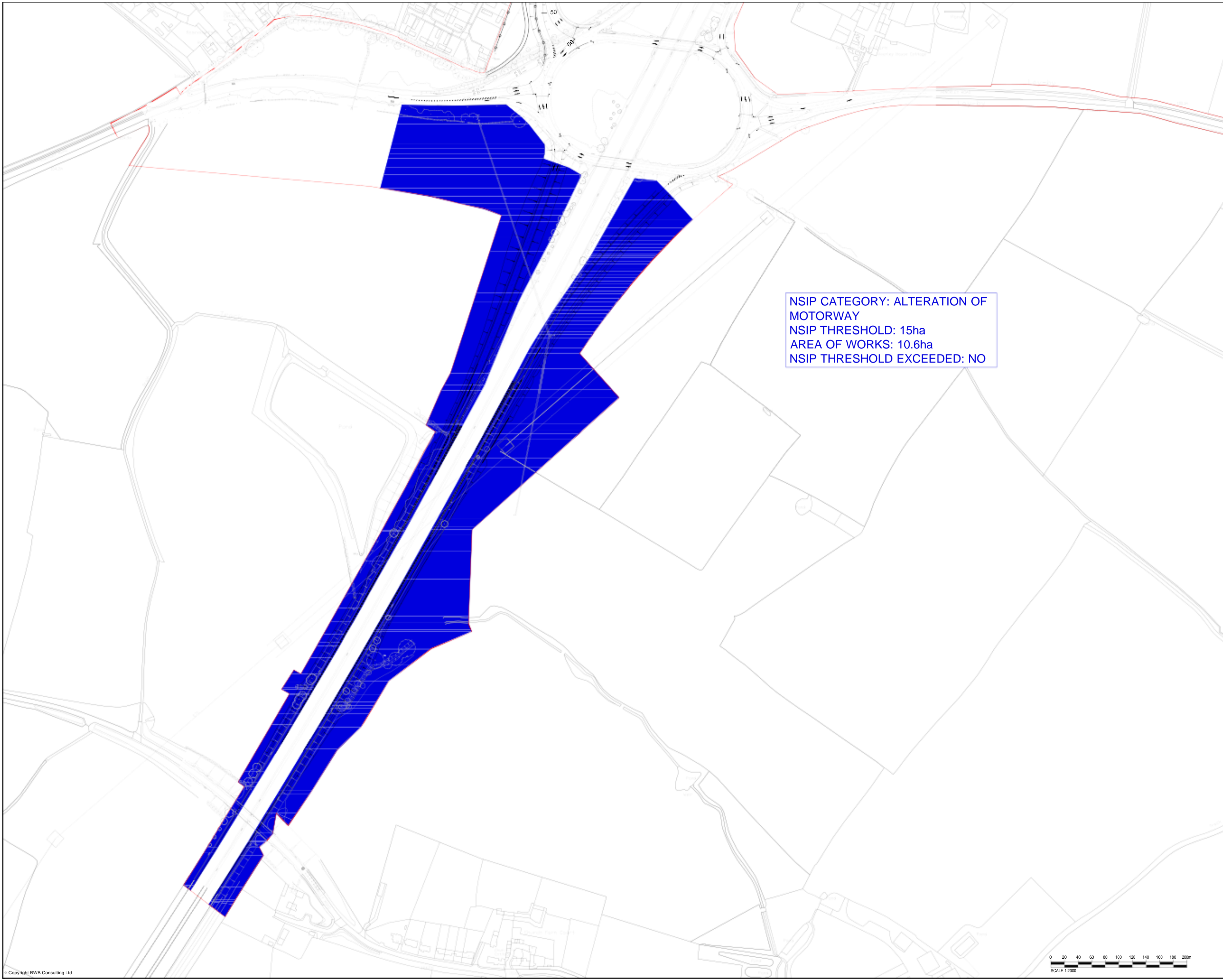
~~5.2215.240~~ This Schedule sets out various legislative provisions which are modified or excluded from application to the draft DCO as explained in paragraph 5.184 above.

***Schedule 15 (Certification of Plans and Documents)***

~~5.2225.241~~ This Schedule lists the various plans and documents that are to be certified by the Secretary of State for the purposes of the draft DCO. The plans and documents listed are those referred to in the draft DCO.

## APPENDIX 1





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

**Notes**

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

**Legend**

Order Limits

P04	20.10.22	Updated based on NH review	DF	SC	SC
P03	09.07.22	Areas Amended	DF	SC	SC
P02	09.12.21	Areas Amended	DF	SC	SC
P01	17.09.21	Preliminary Issue	DF	SC	SC
Rev	Date	Details of issue / revision	Drw	Chg	App

**Issues & Revisions**

Client

Project Title

**HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE**

Drawing Title

**DEVELOPMENT CONSENT ORDER NSIP CALCULATIONS: M-WAY ALTERATION**

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

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

**HRF-BWB-GEN-XX-SK-CH-SK058**

Drawing Status	Rev
<b>S2 - FOR INFORMATION</b>	<b>P04</b>

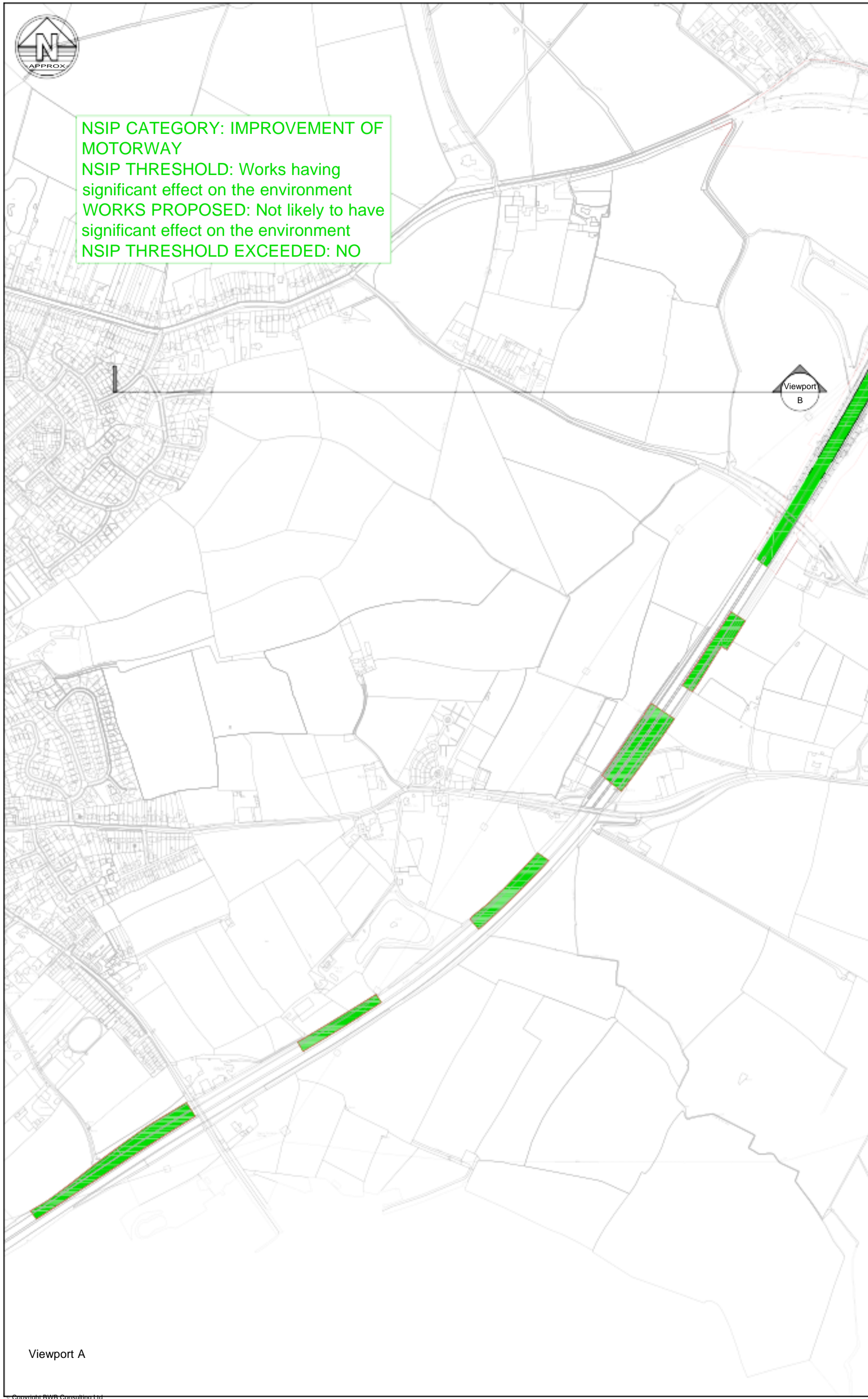
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SCALE 1:2000

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## APPENDIX 2



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



**Notes**

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

**Legend**

Order Limits

P02	20-10-22	Updated based on NH review	DF	SG	SG
P04	20-06-22	Preliminary Issue	DF	SG	SG
Rev	Date	Details of issue / revision	Drw	Chd	App

**Issues & Revisions**

Client

Project Title  
**HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE**

Drawing Title  
**DEVELOPMENT CONSENT ORDER NSIP CALCULATIONS: M-WAY IMPROVEMENT**

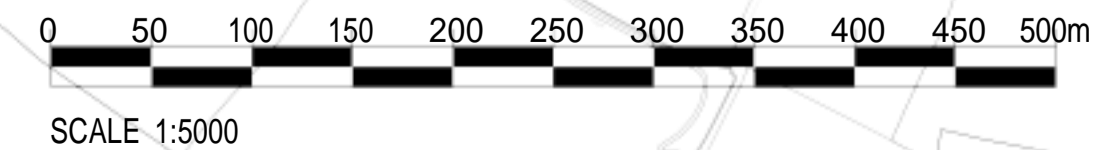
Regulation:	5(2) (o)	Document:	-
Drawn:	D.Fraser	Checked:	S.Carter
Approved:	S.Carter	Date:	20-06-22
BWB Ref:	NTT2814	Scale@A1:	1:5000

Project - Originator - Functional Breakdown - Spatial Breakdown - Form - Discipline - Number  
 HRF-BWB-GEN-XX-SK-CH-SK068

Drawing Status	Rev
<b>S2 - FOR INFORMATION</b>	<b>P02</b>

Viewport A

Viewport B



## APPENDIX 3



Notes

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

Legend

Order Limits

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

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

Issues & Revisions

Client



Project Title  
**HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE**

Drawing Title  
**DEVELOPMENT CONSENT ORDER NSIP CALCULATIONS: OTHER HWAY ALTERATION**

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

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

Drawing Status	Rev
<b>S2 - FOR INFORMATION</b>	<b>P01</b>

