

Tritax Symmetry (Hinckley) Limited

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

The Hinckley National Rail Freight Interchange Development Consent Order

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Planning Act 2008

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

202[] No. 0000

INFRASTRUCTURE PLANNING

The Hinckley National Rail Freight Interchange Order 202[]

<i>Made</i> - - - -	202[X]
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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an order granting development consent.

The application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c) by a Panel of three members (the Panel) appointed by the Secretary of State in accordance with Chapter 2 of Part 6 of the 2008 Act.

The Panel, having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section 74 of the 2008 Act has reported to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn and the report of the Panel has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application].

The Secretary of State is satisfied that, pursuant to article 25(2), the acquisition of common land comprised within the Order land (as identified in the book of reference) does not exceed 200 square metres, and that 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, and, accordingly, section 131(5) of the 2008 Act applies.

The Secretary of State in exercise of the powers conferred by sections 114(d), 115(e), 117(f), 120(g) and 122(h) of, and Part 1 of Schedule 5(i) to, the 2008 Act, makes the following Order—

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- (a) 2008 c. 29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Section 37 was amended by sections 128(2) and 137 of, and paragraphs 1 and 5 of Part 1 of Schedule 13 to, the Localism Act 2011 (c. 20).
 - (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732 and S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378, S.I. 2019/734, S.I. 2020/764, S.I. 2020/1534 and S.I. 2021/978. There are other amendments to the Regulations which are not relevant to this Order.
 - (c) S.I. 2010/103, amended by S.I. 2012/635.
 - (d) Section 114 was amended by paragraph 55 of Part 1 of Schedule 3 to the Localism Act 2011 (c.20).
 - (e) Section 115 was amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
 - (f) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
 - (g) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
 - (h) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
 - (i) Part 1 of Schedule 5 was amended by paragraph 4 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23), paragraph 71 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Schedule 6 to the Wales Act 2017.

PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Hinckley National Rail Freight Interchange Order 202[X] and comes into force on [] 202[].

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1980 Act” means the Highways Act 1980(c);
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(e);
- “the 1990 Act” means the Town and Country Planning Act 1990(f);
- “the 1991 Act” means the New Roads and Street Works Act 1991(g);
- “the 2003 Act” means the Communications Act 2003(h);
- “the 2008 Act” means the Planning Act 2008(i);
- “the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010(j);
- “the 2017 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(k);
- “A47 link road” means the new road to be constructed as part of the authorised development between junction two of the M69 motorway and the B4668 Leicester Road being Works No. 7;
- “access and rights of way plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;
- “address” includes any number or address used for the purposes of electronic transmission;
- “apparatus” for the purposes of article 9 (street works) and article 37 (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;
- “authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act, and any works carried out under the requirements;
- “book of reference” means the document of that description referred to in Schedule 15 and certified as the book of reference by the Secretary of State for the purposes of this Order;
- “bridleway” has the same meaning as in the 1980 Act;

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- (a) 1961 c.33.
 - (b) 1965 c.56.
 - (c) 1980 c.66.
 - (d) 1981 c.66.
 - (e) 1984 c.27.
 - (f) 1990 c.8.
 - (g) 1991 c.22.
 - (h) 2003 c.21
 - (i) 2008 c. 29.
 - (j) S.I. 2010/948, amended by S.I. 2011/987, S.I. 2012/635, S.I. 2012/2975, S.I. 2013/982, S.I. 2014/385, S.I. 2015/377, S.I. 2015/644, S.I. 2015/836, S.I. 2018/172, S.I. 2019/1103 and S.I. 2020/1226.
 - (k) S.I. 2017/572, amended by S.I. 2017/1012.

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“chief officer of police” means the chief constable for the relevant area or any successor in function;

“commence” or “commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), as part of the authorised development unless the context indicates otherwise;

“common land” means those parts of land forming part of Burbage Common and Woods and identified as parcels 120 and 121 on the land plans;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(a);

“electronic communications code” has the same meaning as in section 106 of the 2003 Act(b);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide.

“environmental statement” means the document of that description referred to in Schedule 15 and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“hedgerow” includes hedgerows to which the Hedgerow Regulations 1997 apply(c);

“HGV” means any vehicle with an operational weight capable of exceeding 7.5 tonnes;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“highway classification plans” means the plans of that description referred to in Schedule 15 and certified as the highway classification plans by the Secretary of State for the purposes of this Order;

“highway plans” means the plans of that description referred to in Schedule 15 and certified as the highway plans by the Secretary of State for the purposes of this Order;

“highway works” means the works comprised in Work Nos. 7 to 17;

“land plans” means the plans of that description referred to in Schedule 15 and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means Leicestershire County Council or any successor in function as lead local flood authority or equivalent body;

“level crossings” means the level crossings shown on the access and rights of way plans and on the level crossings plan;

“level crossings plan” means the plan of that description referred to in Schedule 15 (certification of plans and documents) and certified as the level crossings plan by the Secretary of State for the purposes of this Order;

“maintain” includes inspect, repair, adjust, alter, clear, refurbish or improve and any derivative of “maintain” is to be construed accordingly;

“main site” means that part of the land within the Order limits comprising the areas shown on the works plans as Work Nos. 1 to 7;

(a) 1980 c. 66. The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) 2003 c. 21. Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

(c) S.I. 1997/1160.

“National Highways” means National Highways Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015(a) or any successor in function;

“Network Rail” means Network Rail Infrastructure Limited and any associate company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;

“Order limits” means the limits shown on the works plans represented by a red line within which the authorised development may be carried out;

“owner” in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(b);

“parameters plans” means the plans of that description referred to in Schedule 15 and certified as the parameters plans by the Secretary of State for the purposes of this Order;

“public communications code provider” has the meaning given in section 151(1) (interpretation of Chapter 1) of the 2003 Act;

“public sewer or drain” means a sewer or drain which belongs to a relevant highway authority or a sewerage undertaker;

“railway” has the same meaning as in the 2008 Act;

“railway plans” means the plans of that description referred to in Schedule 15 and certified as railway plans by the Secretary of State for the purposes of this Order;

“relevant highway authority” means in any provision of this Order the highway authority for any area of land to which that provision relates;

“relevant planning authority” means as regards the operation or enforcement of any provision of this Order the district planning authority within whose administrative boundary that part of the authorised development relevant to the operation or enforcement of the provision in question is situated;

“relevant street authority” means in any provision of this Order the street authority for any area of land to which that provision relates;

“relevant traffic authority” means in any provision of this Order the traffic authority for any area of land to which that provision relates;

“relocation works” means works executed, or apparatus provided, under paragraph (2) of article 37 (apparatus and rights of statutory undertakers in stopped up streets);

“requirements” means the requirements set out in Part 1 of Schedule 2 (requirements);

“speed limit plans” means the plans of that description referred to in Schedule 15 and certified as the speed limit plans by the Secretary of State for the purposes of this Order;

“statutory undertaker” means a statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“strategic road network” means that part of the highway network comprising trunk roads and motorways;

(a) S.I 2015/376

(b) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act(a), together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act(b);

“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(c);

“traffic regulation plans” means the plans of that description referred to in Schedule 15 and certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“tree preservation order” has the meaning given in section 198 of the 1990 Act(d);

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 or 19(1) of the 1980 Act(e); or
- (b) an order or direction under section 10 of the 1980 Act; or
- (c) this Order; or
- (d) any other enactment;

“the undertaker” means—

- (a) Tritax Symmetry (Hinckley) Limited (company number 10885167) whose registered office is at Unit B, Grange Park Court, Roman Way, Northampton, NN1 5EA; and
- (b) in respect of the main site only, any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person but does not include any such person until such time as the authorised development is commenced on land owned by that person;

“verge” means any part of the street which is not a carriageway;

“water authority” means Severn Trent Water Limited (company number 02366686) registered at Severn Trent Centre, 2 St John’s Street, Coventry, CV1 2LZ and any successor in function;

“warehousing” means the warehousing constructed as part of the authorised development;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“working day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holiday) of the Banking and Financial Dealings Act 1971(f) and any derivative of “working day” is to be construed accordingly; and

“the works plans” means the plans of that description referred to in Schedule 15 and certified as the works plans by the Secretary of State for the purposes of this Order.

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- (a) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26).
 - (b) 1984 c. 27. Section 121A was inserted by section 168(1) of, and paragraph 70 of Part II of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22), and amended by section 1(6) of, and paragraphs 70 and 95(1) and (3) of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). There are other amendments to schedule 121A of the Act which are not relevant to this Order.
 - (c) 2004 c. 18.
 - (d) 1990 c. 8. Section 198 was amended by sections 192(1), (2)(a), (b) and (c), and section 238 of, and paragraphs 7 and 8 of Schedule 8, and Schedule 13 to, the Planning Act 2008 (c. 29), sections 31, 32, and 84 of, and paragraph 20 of Schedule 6, paragraph 34 of Schedule 7 and Schedule 19, and Parts I and II of, the Planning and Compensation Act 1991 (c. 34) and section 42(3) of the Planning and Compulsory Purchase Act 2004 (c. 5).
 - (e) 1980 c. 66. Section 10 was amended by section 22(2) of the New Roads and Street Works Act 1991 (c. 22), paragraph 22 of Schedule 2 to the Planning Act 2008 (c. 29) and section 1(6) of, and paragraph 10 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). Section 19(1) was amended by section 1(6) of, and paragraphs 1 and 15 of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).
 - (f) 1971 c. 80.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and where applicable distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development) and references to numbered requirements are to the requirements as numbered in Part 1 of Schedule 2 (requirements).

(5) For the purposes of this Order all areas described in square metres in the book of reference are approximate.

(6) Where the term approximate precedes a figure of measurement or quantum then the flexibility accorded by that word is limited by the parameters and the limits of deviation as described in article 4 and does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement.

(7) Where in this Order a document or a plan is referred to by reference to a document number, the reference is to the document or plan of that number referred to in Schedule 15.

PART 2

PRINCIPAL POWERS

Development consent granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out and used within the Order limits.

(2) Nothing in this Order grants development consent for the construction of a generating station within the meaning of section 14(1)(a) of the 2008 Act.

Parameters of authorised development

4.—(1) The authorised development so far as shown on the parameters plans is to be carried out within the parameters shown and described on the parameters plans.

(2) In carrying out the authorised development the undertaker may—

- (a) in respect of Works Nos. 4 and 7, deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of the highway works deviate vertically from the levels shown on the highway plans to a maximum of 1.5 metres upwards or downwards; and
- (c) in respect of the railway works comprised in Work Nos. 1 and 3 deviate vertically from the levels shown on the railway plans to a maximum of 1.5 metres upwards and 3 metres downwards,

except that the maximum limits described in paragraphs 2(a) to 2(c) do not apply to constrain the authorised development when it is demonstrated by the undertaker, on application, to the relevant planning authority's satisfaction, and the relevant planning authority certifies accordingly, that a deviation in excess of these limits would not 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 or in any updated environmental information supplied under the 2017 EIA Regulations.

(3) Any Work No. shown on the works plans as having a boundary with Work Nos. 4 or 7 may be carried out so that it adjoins those works in the line or situation they are constructed pursuant to the power to deviate conferred by sub-paragraph (2)(a) above.

Authorisation of use

5. Subject to the provisions of this Order and to the requirements, the undertaker and any persons authorised by the undertaker may operate and use that part of the authorised development comprised in Works Nos. 1 to 7 inclusive for the purposes of a rail freight terminal and warehousing, any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes.

Maintenance of authorised development

6.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) Paragraph (1) does not apply to the highway works the maintenance of which is governed by article 15 (maintenance of highway works) and Parts 2, 3 and 4 of Schedule 13 (protective provisions).

(3) Paragraph (1) does not extend to any maintenance works 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 or in any updated environmental information supplied under the 2017 EIA Regulations.

Benefit of Order

7.—(1) Subject to paragraphs (2), (3) and (4) of this article and to article 8 (transfer of the benefit of certain provisions of the Order) the undertaker shall have the benefit of the Order.

(2) Tritax Symmetry (Hinckley) Limited, has the sole benefit of the provisions of Part 5 (powers of acquisition) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(3) Tritax Symmetry (Hinckley) Limited has the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Parts 2, 3 and 4 of Schedule 13 (protective provisions) unless—

- (a) the Secretary of State consents to the transfer of the benefit of those provisions; or
- (b) the provisions of paragraphs 8(7) or 12(3) of Part 2 or paragraph 22 of Part 3 or paragraph 4(7) of Part 4 of Schedule 13 apply in which case the relevant highway authority shall have the benefit of the powers to carry out the relevant highway works.

(4) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers, operators of the electronic communications code network and other persons affected by the authorised development.

Transfer of the benefit of certain provisions of the Order

8.—(1) The undertaker may with the consent of the Secretary of State transfer to another person (“the transferee”)—

- (a) the benefit of the provisions of Part 5 (powers of acquisition); and
- (b) the benefit of the provisions of Parts 2, 3 and 4 of Schedule 13 (protective provisions).

(2) Where a transfer has been made in accordance with paragraph (1) references in this Order to the undertaker except in paragraph (1), include references to the transferee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The undertaker must—

- (a) consult the Secretary of State before making an application for consent under paragraph (1) of this article by giving notice in writing of the proposed application; and

- (b) prior to any transfer under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer relates to the exercise of powers in their area, the relevant planning authority and in respect of paragraph (1)(b), the relevant highway authority

(5) A notice under paragraph (4)(b) must—

(a) state—

- (i) the name and contact details of the transferee;
- (ii) subject to paragraph (6), the date on which the transfer will take effect;
- (iii) the provisions to be transferred;
- (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (3), will apply to the person exercising the powers transferred; and
- (v) where the provisions to be transferred include all or any of the benefit of powers in Part 5 of this Order, confirmation of the availability and adequacy of funds for compensation, and

(b) be accompanied by—

- (i) where relevant, a plan showing the works or areas to which the transfer relates; and
- (ii) a copy of the document effecting the transfer signed by the undertaker and the transferee.

(6) The date specified under paragraph (5)(a)(ii) must not be earlier than the expiry of 14 days from the date of receipt of the notice given under paragraph (4)(b).

(7) The notice given under paragraph (4)(b) must be signed by the undertaker and the transferee as specified in that notice.

PART 3 STREETS

Street works

9.—(1) The undertaker may for the purposes of the carrying out of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) construct bridges and tunnels; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act and is subject to the provisions of Parts 2, 3 and 4 of Schedule 13 (protective provisions).

Power to alter layout, etc., of streets

10.—(1) Subject to paragraph (2), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the main site and the layout of any street at its junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers, and passing places.

(2) The powers conferred by paragraph (1) must not be exercised without the consent of the relevant street authority but such consent must not be unreasonably withheld and if the relevant street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

Permanent stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently each of the streets specified in columns (1) and (2) of Schedule 4 (streets to be permanently stopped for which no substitute is to be provided) to the extent shown on the access and rights of way plan, specified in column (3) of the Schedule.

(2) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.

(3) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of any dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped up streets).

(5) Any stopping up carried out under this article must be carried out in accordance with any relevant provisions of Schedule 13 (protective provisions).

(6) The powers conferred by paragraph (1) in respect of the permanent stopping up of Smithy Lane as identified in columns (1) and (2) of Schedule 4 must not be exercised unless and until the relevant works relating to the substitute bridleway for public right of way V29/7 identified in Part 1 of Schedule 5 (public rights of way to be permanently stopped up for which a substitute is to be provided) or an alternative temporary substitute public right of way agreed by the relevant highway authority has been provided in accordance with article 13(2) (public rights of way – creation, substitution, stopping up and closure of level crossings).

Temporary closure of streets

12.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily closed, altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site. The undertaker must restore any street used as a temporary working site to a standard to be agreed with the relevant street authority, such agreement not to be unreasonably withheld or delayed.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily close, alter, divert or restrict any street without the consent of the relevant street authority which may subject to paragraph (5) attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of higher standard than the temporarily closed street.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority which receives an application for consent under paragraph (4) accompanied with all relevant information fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was submitted with all relevant information, it is deemed to have granted consent.

Public rights of way - creation, substitution, stopping up and closure of level crossings

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

- (a) stop up each of the public rights of way specified in columns (1) and (2) of Part 1 of Schedule 5 (public rights of way to be permanently stopped up for which a substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule;
- (b) provide the substitute public rights of way described in column (4) of Part 1 of Schedule 5 between the specified terminus points, on a detailed alignment to be agreed with the relevant highway authority;
- (c) temporarily close any public rights of way to the extent agreed with the relevant highway authority and provide substitute temporary public rights of way on an alignment to be agreed with the relevant highway authority prior to the temporary closure of the public right of way concerned; and
- (d) stop up each of the public rights of way specified in columns (1) and (2) of Part 2 of Schedule 5 (public rights of way to be permanently stopped up for which no substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule.

(2) No public right of way specified in columns (1) and (2) of Part 1 of Schedule 5 may be wholly or partly stopped up under this article unless the permanent substitute public rights of way referred to in column (4) of Part 1 of Schedule 5 or an alternative temporary substitute public right of way agreed by the relevant highway authority has first been provided by the undertaker, to the reasonable satisfaction of the relevant highway authority.

(3) Any temporary substitute right of way must be maintained by the undertaker with appropriate signage until the completion and opening of the permanent substitute public right of way specified in column (4) of Part 1 of Schedule 5.

(4) The undertaker must in connection with carrying out of the authorised development provide the new public rights of way specified in columns (1) and (2) of Part 3 of Schedule 5 (new public rights of way to be created) to the extent specified in column (3) of that Part of that Schedule.

(5) The undertaker must in connection with carrying out of the authorised development provide the new public rights of way specified in columns (1) and (2) of Part 4 of Schedule 5 (new public footpath to be created) between the points specified in column (3) of that Part of that Schedule on an alignment agreed with the relevant highway authority.

~~(5)~~(6) Subject to the provisions of this article, where a relevant level crossing is crossed by a public right of way which is stopped up under paragraph (1), the relevant level crossing is stopped up and discontinued at the same time.

~~(6)~~(7) In paragraph (6), “relevant level crossing” means Thorney Fields Farm level crossing, Elmesthorpe level crossing, Earl Shilton level crossing, Barwell level crossing and The Outwoods level crossing identified on the level crossings plan.

Accesses

14.—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

(3) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access to be replaced) may be removed by the undertaker and if removed must be replaced by the means of access as set out in column (3) of Part 1 of Schedule 6 at the stage of the authorised development identified in column (4) of that Part of that Schedule.

(5) The private means of access as set out in column (2) of Part 2 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker at the stage of the authorised development identified in column (3) of that Part of that Schedule without a substitute being provided.

(6) The undertaker must provide the private means of access as set out in column (2) of Part 3 of Schedule 6 (new private means of access created) at the stage of the authorised development identified in column (3) of that Part of that Schedule.

Maintenance of highway works

15.—(1) The highway works must be completed in accordance with the provisions of Parts 2, 3 and 4 of Schedule 13 (protective provisions).

(2) With effect from the date of the final certificate referred to in paragraph 14 of Part 2 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of National Highways.

(3) With effect from the date of the final certificate referred to in paragraph 5 of Part 3 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of Leicestershire County Council.

(4) With effect from the date of the final certificate referred to in paragraph 7 of Part 4 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of Warwickshire County Council.

(5) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 10 of Part 2 of Schedule 13 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(6) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 4 of Part 3 of Schedule 13 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(7) For the purposes of this article, the definition of “maintain” in article 2 (interpretation) shall not apply and the word “maintain” shall be given its ordinary meaning when applied to highways.

Classification of highways

16.—(1) The new highways described in Part 1 of Schedule 7 (new highways) are to be—

- (a) classified as set out in column (3) of Part 1 of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such; and
- (b) provided for the use of the classes of traffic defined in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act as set out in column (4) of Part 1 of Schedule 7.

(2) From the date on which the undertaker notifies the Secretary of State that the new highways described in Part 1 of Schedule 7 have been completed as evidenced by issue of the provisional certificate in accordance with paragraph 6 of Part 2 and paragraph 6 of Part 3 of Schedule 13 (protective provisions) or are open for through traffic, whichever is the earliest—

- (a) the body set out in column (5) of Part 1 of Schedule 7 is the highway authority for those highways; and
- (b) the new highways identified as special roads in column (3) of Part 1 of Schedule 7 are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

Speed limits

17.—(1) The order referred to in column (1) of Part 1 (existing order) of Schedule 8 (speed limits) is varied as set out in column (3) of that Part of that Schedule upon the event listed in column (4) occurring.

(2) Upon the event listed in column (3) of Part 2 (highways subject to 40 mph speed limit) of Schedule 8 no person is to drive any motor vehicle at a speed exceeding 40 miles per hour along the lengths of highway identified in columns (1) and (2) of that Part of that Schedule.

(3) Upon the event listed in column (3) of Part 3 of Schedule 8 (derestricted highways) the lengths of highway specified in columns (1) and (2) of that Part of that Schedule shall cease to be restricted highways for the purpose of section 81 of the 1984 Act.

(4) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development, impose a temporary speed limit either at all times or at times, on days or during such periods, and on such highways as may be specified by the undertaker.

(5) The undertaker must not exercise the powers in paragraph (4) unless it has given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority.

(6) The speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

- (a) have the same effect; and
- (b) may be varied by the relevant traffic authority in the same manner,

as any other speed limit imposed by an order under that Act.

(7) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^(a) when used in accordance with regulation 3(5) of those Regulations.

(a) S.I. 2011/935.

Traffic regulation

18.—(1) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) suspend or authorise the use as a parking place of any highway;
- (d) make provision as to the direction or priority of vehicular traffic on any highway; and
- (e) permit or prohibit vehicular access to any highway,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker shall not exercise the powers in paragraph (1) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) shall—

- (a) have effect as if duly made by, as the case may be—
 - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
 - (ii) the relevant highway authority as an order under section 32 of the 1984 Act^(a); and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).

(4) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) at any time.

(5) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

(6) If the relevant traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (3) that is accompanied by all relevant information the relevant traffic authority shall be deemed to have given consent.

Clearways and no waiting

19.—(1) Subject to paragraphs (3) and (4), following the event specified in column (3) of Part 1 of Schedule 9 (clearways), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any part of a carriageway specified in columns (1) and (2) of that Part of that Schedule, other than a lay-by.

(2) Subject to paragraphs (3) and (5), following the event specified in column (3) of Part 2 of Schedule 9 (no waiting at any time), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait at any time

(a) 1984 c. 27. Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51). There are other amendments to section 32 which are not relevant to this Order.

on any day on the sides of the carriageway specified in columns (1) and (2) of that Part of that Schedule or its adjacent verge.

(3) Nothing in paragraphs (1) and (2) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A to the 2003 Act(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, National Highways, a safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person's control.

(4) Nothing in paragraph (1) applies to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

(5) Nothing in paragraph (2) applies—

- (a) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary—
 - (i) to enable a person to board or alight from the vehicle;
 - (ii) to enable goods to be loaded on to or unloaded from the vehicle; or
 - (iii) to enable goods to be sold from the vehicle provided such goods are immediately delivered at, or taken into, premises adjacent to the vehicle from which the sale is effected;
- (b) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary to enable that vehicle, if it cannot conveniently be used for such purpose without waiting on such verge, to be used in connection with any building operation or demolition, the removal of any obstruction or potential obstruction to traffic, the maintenance, improvement or reconstruction of such verge or of a carriageway immediately adjacent to such verge or the erection, laying, placing, maintenance, testing, alteration, repair or removal of any structure, works or apparatus in, on, under or over that verge or carriageway;

(a) 2003 c. 21.
(b) 1991 c. 56.
(c) 2000 c. 26.

- (c) to a vehicle waiting on any verge specified in paragraph (2) while any gate or other barrier at the entrance to premises to which the vehicle requires access or from which it has emerged is opened or closed.

(6) Paragraphs (1) to (5) have effect as if made by a traffic regulation order under the 1984 Act and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

Agreements with highway authorities

20.—(1) A relevant highway authority and the undertaker may enter into agreements related to the authorised development with respect to—

- (a) the construction and/or maintenance of any new highway, including any structure carrying the highway over the existing railway and any railway authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any highway under the powers conferred by this Order;
- (c) the maintenance of landscaping or structure within a highway constructed as part of the highway works;
- (d) the maintenance of highway related assets which fall outside of the extent of highway maintained by a relevant highway authority;
- (e) any stopping up, alteration or diversion of a highway as part of or to facilitate the authorised development;
- (f) the carrying out in the highway of any of the works referred to in article 9 (street works); or
- (g) the erection of signage in connection with the authorised development.

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the relevant highway authority to carry out any function under this Order which relates to the highway in question;
- (b) include an agreement between the undertaker and relevant highway authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

21.—(1) Subject to paragraphs (3), (4), (5) and (6) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(a) 1991 c.56. Section 106 was amended by sections 35(1) and (8), 43(2) and 56(7) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(3) The undertaker must not discharge any water into any public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the relevant highway authority consider appropriate such consent not to be unreasonably withheld or delayed.

(5) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(6) The undertaker must not work on, over, under or near an ordinary watercourse (within 3 metres of the landward toe of the bank), makes changes to any structure that helps control water or discharge any water into any watercourse except with the approval of the lead local flood authority, and such approval may be given subject to such terms and conditions as the lead local flood authority may reasonably impose but must not be unreasonably withheld.

(7) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(8) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(a).

(9) All expressions excluding “watercourse” and “public sewer or drain”, which are used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(10) If a person who has received an application for consent under paragraphs (3) or (4) or approval under paragraph (5)(a) fails to notify the undertaker of its decision within 42 days of receiving the application submitted with all relevant information, that person is deemed to have granted consent or given approval as the case may be.

Protective works to buildings and structures

22.—(1) Subject to the provisions of this article, the undertaker may at its own expense carry out the protective works to any building or structure which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building or structure of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of five years beginning with the day on which that part of the authorised development first comes into use or becomes operational.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building or structure to which the power applies and any land within its curtilage and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out the protective works under this article to a building or structure the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and

(a) S.I. 2016/1154. There are amendments to regulation 12 which are not relevant to this Order.

- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building or structure;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or structure or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a) or (c) specifying the planned protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner and or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question as to whether the protective works proposed by the undertaker are necessary or expedient to be referred to arbitration under article 52 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(3) of the 2008 Act (compensation in cases where no right to claim as nuisance).

(9) Any compensation payable under paragraph (7) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act 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.

(11) In this article “protective works” in relation to a building or structure means those works the purpose of which is to prevent damage which may be caused to the building or structure which may include monitoring, underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

23.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 28 days' notice has been served on every owner, who is not the undertaker, and occupier of the land.

(3) Any person entering land under the powers conferred by this article on behalf of the undertaker—

- (a) must, if so required, produce written evidence of their authority to do so; and
 - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes may be made under this article—
- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
 - (b) in a private street without the consent of the relevant street authority,
- but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).
- (6) If either a highway authority or a street authority which has received an application for consent under paragraph (4) that includes all relevant information fails to notify the undertaker of its decision within 42 days of receiving the application the authority is deemed to have granted the consent.

Removal of human remains

24.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains within the Order limits it must remove those human remains or cause them to be removed, in accordance with the provisions of this article.

(2) Before any such remains are removed from within the Order limits the undertaker must give notice of the intended removal, describing the Order limits land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred within the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be —

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by a county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;

- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by a county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representatives of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In this article references to a relative of the deceased are to a person who—

- (a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased;
- (b) is, or is a child of, a brother, sister, uncle or aunt of the deceased;
- (c) is the lawful executor of the estate of the deceased; or
- (d) is the lawful administrator of the estate of the deceased.

(14) Any jurisdiction or function conferred on a county court by this article may be exercised by the district judge of the court.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

25.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it.

(2) The undertaker must not under this Order acquire or take temporary possession pursuant to articles 34 or 35 of a total area of more than 200 square metres of common land provided that nothing in this article 25 prevents the undertaker from exercising both temporary possession and compulsory acquisition powers over that land.

(3) This article is subject to article 27 (compulsory acquisition of rights), article 29 (time limit for exercise of authority to acquire land compulsorily), article 30 (private rights) and article 34(1) (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land - minerals

26.—(1) Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for the “acquiring authority” substitute “the undertaker”;
- (c) for “undertaking” substitute “authorised development”; and
- (d) for “compulsory purchase order” substitute “this Order”.

Compulsory acquisition of rights

27.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land), by creating them as well as by acquiring rights and the benefit of restrictions already in existence.

(2) In the case of the Order land specified in column (2) of Schedule 11 (land in which new rights, may be created), the undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of, and Schedule 2A (counter notice requiring purchase of land not in notice to treat) to, the 1965 Act (as substituted by Schedule 12 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 12 has effect for the purpose of modifying the enactments referred to in that Schedule in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(5) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Power to override easements and other rights

28.—(1) Any authorised activity undertaken by the undertaker which takes place within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it or by any contractors, servants or agents of the Undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of the land arising by virtue of a contract.

(2) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of the land arising by virtue of a contract.

(3) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provisions as to compensation for injurious affection) of the 1965 Act^(a); and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(7) Subsection (2) of section 10 of the 1965 Act applies to paragraph (5) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act^(b).

(8) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(9) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

- (a) is liable to pay compensation; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(10) For the purposes of this article, “authorised activity” means—

- (a) the erection, construction, carrying out or maintenance of any building or works on land;
- (b) the erection, construction or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

Time limit for exercise of authority to acquire land and rights compulsorily

29.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act (as modified by article 33 (modification of Part 1 of the 1965 Act)); and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(c) (execution of declaration) as applied by article 32 (application and modification of the 1981 Act).

(2) The authority conferred by article 34 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in

(a) 1965 c. 56. Section 10 was amended by S.I. 2009/1307.

(b) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(c) 1981 c. 66. Section 4 was amended by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession was taken before the end of that period.

Private rights

30.—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of the acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act(a),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right by the undertaker, whether compulsorily or by agreement or through the grant of a lease of the land by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation in accordance with the terms of section 152 (compensation where no right to claim in nuisance) of the 2008 Act(b) to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act(c) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 36 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights over land;
 - (ii) the undertaker's appropriation of the land;
 - (iii) the undertaker's entry onto the land; or
 - (iv) the undertaker's taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) 1965 c. 56. Section 11(1) was amended by section 34(1) of, and Schedule 4 to the Acquisition of Land Act 1981 (c. 67), section 14 of and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provision) Measure 2006 (No 1) and sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

(b) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(c) 2008 c. 29. Section 138 was amended by sections 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include references to any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and including restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Rights under or over streets

31.—(1) Subject to paragraph (6), the undertaker may temporarily enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is a statutory undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

(6) Paragraph (1) does not apply to any street which is part of the strategic road network.

Application and modification of the 1981 Act

32.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “and this subsection” to the end.

(5) Omit section 5A(a) (time limit for general vesting declaration).

(6) In section 5B(b) (extension of time limit during challenge) for subsection (1) there is substituted—

“(1) If an application is made under section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year

(a) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(b) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

period mentioned in article 29 of the Hinckley National Rail Freight Interchange Order 202X is to be extended by—

- (a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined; or
- (b) if shorter, one year.”

(7) In section 6(a) (notices after execution of declaration) for subsection (1)(b) there is substituted—

“(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”

(8) In section 7(b) (constructive notice to treat) in subsection (1)(a), “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.

(9) In section 11(c) (recovery of compensation overpaid), for subsection (1) substitute—

“(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”

(10) In Schedule A1(d) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(11) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 33 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Modification of Part 1 of the 1965 Act

33.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(e) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 29 of the Hinckley National Rail Freight Interchange Order 202X”.

(3) In section 22 (2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act substitute “article 29 of the Hinckley National Rail Freight Interchange Order 202X”.

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) after paragraph 29, insert—

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- (a) Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).
 - (b) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11 was amended by S.I. 2009/1307.
 - (d) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
 - (e) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

“PART 4 INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development) of the Hinckley National Rail Freight Interchange Order 202X.”

Temporary use of land for carrying out the authorised development

34.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act^(a) (powers of entry) (other than in connection with the acquisition of rights or restrictive covenants only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act^(b);
- (b) remove any buildings and vegetation from that land;
- (c) construct any permanent or temporary works (including the provision of means of access), haul roads, fencing and other means of enclosure, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site (including storage of materials and siting of equipment and apparatus) with access in connection with the authorised development;
- (e) construct or carry out any works (including mitigation works or operations) or use the land for the purpose of the authorised development;
- (f) construct such works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) 1965 c. 56. Section 11 was amended by section 34(1) of, and paragraph 14(3) of Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and sections 186, 187 and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22)..

(b) 1981 c. 66. Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

- (a) in the case of land specified in paragraph (1)(a)(i) above, after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land or has otherwise acquired the land subject to temporary possession.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act of otherwise acquired the land or rights over land subject to temporary possession, before giving up possession of the land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land; but the undertaker is not required to—

- (a) replace a building or structure removed under this article;
- (b) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works);
- (c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development;
- (d) remove or reposition any apparatus belonging to statutory undertakers or any necessary mitigation works; or
- (e) restore the land on which any permanent works have been constructed under paragraph (1).

(6) Any dispute as to the satisfactory removal of temporary works and restoration of the land under paragraph (5) does not prevent the undertaker from giving up possession of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act^(a) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

(10) Unless provided for in the book of reference and article 25 (compulsory acquisition of land) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

- (a) acquiring new rights over any part of that lands under article 27 (compulsory acquisition of rights);
- (b) carrying out a survey of that land under article 23 (authority to survey and investigate the land).

(11) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act^(b) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory

(a) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(b) 1965 c. 56. Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals Courts and Enforcement Act 2007 (c. 15).

acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act^(a).

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land.

Temporary use of land for maintaining the authorised development

35.—(1) Subject to paragraph (2) and Parts 2, 3 and 4 of Schedule 13 (protective provisions), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act^(b) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(a) 2008 c. 29. Section 125 was amended by section 190 of, and Schedule 16 to, the Housing and Planning Act 2016.

(b) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(11) Section 13 of the 1965 Act^(a) (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act^(b) (application of compulsory acquisition provisions).

(12) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first occupied for commercial use or becomes operational.

Statutory undertakers

36.—(1) Subject to Schedule 13 (protective provisions) and article 27 (compulsory acquisition of rights), the undertaker may—

- (a) acquire compulsorily, or acquire new rights over, any Order land belonging to statutory undertakers;
- (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers within the Order land; and
- (c) extinguish the rights of, remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1)(c) has no effect in relation to apparatus in respect of which article 37 (apparatus and rights of statutory undertakers in stopped up streets) applies.

(3) In this article, a reference to statutory undertaker includes a reference to a public communications provider.

Apparatus and rights of statutory undertakers in stopped up streets

37.—(1) Where a street is stopped up under article 11 (permanent stopping up of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 11 any statutory undertaker whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory undertaker may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory undertaker an amount equal to the cost reasonably incurred by the statutory undertaker in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(a) 1965 c. 56. Section 13 was amended by section 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals Courts and Enforcement Act 2007 (c. 15).

(b) 2008 c. 29. Section 125 was amended by section 190 of, and Schedule 16 to, the Housing and Planning Act 2016.

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or land at the same depth as the existing apparatus, then the amount payable to the statutory undertaker is to be reduced by a sum equivalent to those additional costs.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory undertaker in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works must be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs must be borne by the undertaker and the statutory undertaker in such proportions as may be prescribed by any such regulations.

(8) In this article—

- (a) reference to a statutory undertaker includes a public communications code provider; and
- (b) “relocation works” means work executed, or apparatus provided, under sub-paragraph (2).

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 36, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 37 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article “public utility undertaker” has the same meaning as in the 1980 Act.

No double recovery

39. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Guarantees in respect of payment of compensation

40.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place a guarantee or alternative form of security approved by the relevant planning authority in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the relevant power in relation to that land.

(2) The provisions are—

- (a) article 25 (compulsory acquisition of land);
- (b) article 26 (compulsory acquisition of land - minerals);
- (c) article 27 (compulsory acquisition of rights);
- (d) article 30 (private rights);
- (e) article 31 (rights under or over streets);
- (f) article 34 (temporary use of land for carrying out the authorised development);
- (g) article 35 (temporary use of land for maintaining the authorised development); and
- (h) article 36 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order must be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Special category land

41.—(1) Upon entry by the undertaker onto the special category land under article 25 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights), so much of the special category land as is required for the purposes of the exercise by the undertaker of the order rights is discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of the Order rights.

(2) In this article—

“the Order rights” means rights exercisable over the special category land by the undertaker under article 25 (compulsory acquisition of land); article 27 (compulsory acquisition of rights); article 34 (temporary use of land for carrying out the authorised development) or article 35 (temporary use of land for maintaining the authorised development);

“rights, incidents and trusts” means all such provisions attaching to the land, and in respect of the Burbage Common and Woods includes all such provisions attaching to that land contained in or having effect under the Common Registration Act 1965(a), the Commons Act 2006(b) and section 193 of the Law of Property Act 1925(c); and

“special category land” has the same meaning as “common land” in article 2 (interpretation) of this Order.

(a) 1965 c.64.

(b) 2006 c.26.

(c) 1925 c.20. Section 193 was amended by section 189(4) of the Local Government Act 1972, sections 37, 38 and 46 of the Criminal Justice Act 1982, section 16 and paragraph 10(5) of Schedule 8 to, the Local Government Act 1985, and section 46(3) and paragraph 1 of Schedule 4 to the Countryside and Rights of Way Act 2000.

PART 6

MISCELLANEOUS AND GENERAL

Operation and use of railways

42.—(1) The undertaker may operate and use the railway comprised in the authorised development and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

(2) In respect only of that part of the existing Leicester to Hinckley railway within the order limits nothing in this order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

Operational land for the purposes of the 1990 Act

43. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

Charges

44. The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, and for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Defence to proceedings in respect of statutory nuisance

45.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisance)(a) in relation to a nuisance falling within section 79(1) of that Act (statutory nuisances and inspections therefore) no order may be made, and no fine may be imposed, under section 82(2)(b) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(c); or
 - (ii) is a consequence of complying with a requirement or any other provision of this Order and that it cannot reasonably be avoided; or
- (b) the nuisance is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) it relates to premises used by the undertaker for the purposes of or in connection with the maintenance, operation or use of the authorised development and that the nuisance is attributable to the maintenance, operation or use of the authorised development which is being maintained, operated or used in compliance with a requirement or any other provision of this Order and that it cannot be reasonably avoided.

(a) 1990 c. 43. There are amendments to this section which are not relevant to this Order.

(b) 1990 c. 43.

(c) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55). Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c. 25), and section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of the premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Felling or lopping of trees and removal of hedgerows

46.—(1) Subject to paragraphs (4), (5) and (6) the undertaker may fell or lop any tree, shrub or hedgerow within 15 metres of any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person who suffers any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The provisions of paragraph (1) do not apply without the agreement of the relevant planning authority to any tree or hedgerow identified to be retained in arboriculture method statement approved as part of the construction environmental management plan approved under requirement 7(2)(d).

(5) The provisions of paragraph (1) do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway.

(6) The undertaker may fell or lop or cut back any tree or shrub which is subject to a tree preservation order with the prior approval of the relevant planning authority, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(7) In carrying out any activity authorised by paragraph (6)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and must pay compensation to any person who suffers any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(8) The authority given by paragraph (6) shall constitute a deemed consent under the relevant tree preservation order.

Protective provisions

47. Schedule 13 to this Order has effect.

Governance of requirements and governance of protective provisions relating to highway works

48.—(1) When in any requirement or in Parts 2, 3 and 4 of Schedule 13 (protective provisions) approval or agreement is required of, or with, anybody in relation to the detail, carrying out or use of the authorised development (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development which would give rise to any materially new or materially different significant

effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations(a).

(2) When any details, plans or other matters have been agreed or approved by the relevant planning authority under a requirement or the relevant highway authority under a requirement or Parts 2, 3 and 4 of Schedule 13 then they may subsequently be amended by agreement with the relevant planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development outside the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(3) Where a consent, agreement or approval is required or requested by the undertaker under a requirement then the procedure set out in Part 2 of Schedule 2 (procedure for approvals etc. under requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, shall apply.

Disapplication, application and modification of legislative provisions

49.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the authorised development—

- (a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991(b);
- (b) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(c) in relation to watercourses for which Leicestershire County Council is the drainage board concerned;
- (c) section 32 (variation of awards) of the Land Drainage Act 1991(d);
- (d) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(e);
- (e) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981(f); and
- (f) section 25 of the Burial Act 1857(g) (offence of removal of body from burial grounds) does not apply to a removal carried out in accordance with article 24 (removal of human remains) of this Order.

(2) The provisions of the Neighbourhood Planning Act 2017(h) do not apply in so far as they relate to the temporary possession of land under articles 34 (temporary use of land for carrying out the authorised development) and 35 (temporary use of land for maintaining the authorised development) of this Order.

(a) S.I. 2017/572 as amended by S.I. 2017/1012.

(b) 1991 c. 57. Paragraph 5 was amended by section 106 of the Natural Environmental and Rural Communities Act 2006, section 31 of, and paragraphs 40 and 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29), and sections 84 and 146(1) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6 was amended by section 105 of, and paragraph 6 of Schedule 15 to, the Environment Act 1995 (c. 25), sections 233(1), 224 and 321 of, and paragraphs 20 and 24 of Schedule 16 and Part 5(b) of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6A was inserted by section 103(3) of the Environment Act 1995 (c. 25).

(c) 1991 c. 59. Section 23 was amended by section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).

(d) 1991 c. 59.

(e) 1991 c.59. Section 66 was amended by section 31 of, and paragraphs 25 and 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).

(f) 1981 c. 69. Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16).

(g) 1857 c. 81.

(h) 2017 c. 20.

(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order shall be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act^(a) and such development or planning permission shall not at any time be construed as preventing the further construction, maintenance or use of the authorised development (or any part of it) in accordance with this Order.

(4) Regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007^(b) does not apply to any advertisement erected in the location and in accordance with the parameters shown on the parameters plans.

(5) This Order shall not constitute a planning permission for the purpose of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within article 5 of the 2010 Regulations (meaning of planning permission).

(6) Schedule 14 (miscellaneous controls) to this Order which makes provision applying, modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order has effect.

(7) Paragraphs (1) to (6) only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

Certification of plans and documents

50.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the plans and documents identified in Schedule 15 (certification of plans and documents) for certification that they are true copies of the plans and documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in this Order as made,

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in this Order as made.

(4) The undertaker must liaise with the relevant planning authority to ensure that—

- (a) as soon as practicable following the making of this Order, a copy of each of the documents listed in Schedule 15 is included under Part 2 of the local planning register as if this Order were a planning permission granted under the 1990 Act^(c);
- (b) a register of those requirements contained in Part 1 of Schedule 2 of this Order (requirements) that provide for further approvals to be given by the relevant planning authority is included within the local planning register under regulation 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015^(d)

(a) 2008 c. 29. Sections 160 and 161 were amended by regulation 4(1) of, and paragraph 41 of Part 1 of Schedule 4 to, S.I. 2015/664. Section 161 was also amended by section 112(2) of, and paragraph 4 of Part 1 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c. 23).

(b) S.I. 2007/783.

(c) 1990 c. 8.

(d) S.I. 2015/595, amended by S.I. 2016/873, S.I. 2016/873, S.I. 2016/912, S.I. 2017/402, S.I.2017/571, S.I. 2017/1013, S.I. 2017/1243, S.I. 2017/1309, S.I. 2018/119, S.I.2018/695, S.I. 2020/505, S.I. 2021/746, S.I. 2021/814, S.I. 2023/1279 and S.I. 2024/50.

as if each requirement were a condition of a planning permission granted under the 1990 Act; and

- (c) the reference number, the date and the effect of the decision of the Secretary of State of an appeal under paragraph 4 of Part 2 of Schedule 2 of this Order is included within the local planning register under regulation 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Service of notices

51.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of that land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(a) 1978 c. 30

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article—

“electronic transmission” means a communication transmitted—

- (a) by means of electronic communications network; or
- (b) by other means but while in electronic form; and

“legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

52.—(1) Subject to paragraph (2) except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order, other than a difference which falls to be determined by the tribunal must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party, after giving notice in writing to the other, by—

- (a) in the case of matters pertaining to land and the surveying of such land, the president of the Royal Institute of Chartered Surveyors;
- (b) in the case of matters of legal interpretation, the president of the Law Society; and
- (c) in the case of all other matters the president of the Institute of Civil Engineers.

(2) Paragraph (1) does not apply to any decisions of the Secretary of State made pursuant to the provisions of this Order.

Signed by the authority of the Secretary of State

Address
Date

Name
Position
Department

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Leicestershire and the District of Blaby, in the Borough of Hinckley and Bosworth, the Borough of Rugby and the District of Harborough—

A nationally significant infrastructure project as defined in sections 14 and 26 of the 2008 Act and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising—

<i>Work No.</i>	<i>Description</i>
1	Within the area shown on the works plans for Work No. 1—

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 including—

- (a) construction of a new railway track and associated rail infrastructure;
- (b) formation of new railway embankments, cuttings and all necessary earthworks and drainage;
- (c) construction of railway improvements including—
 - (i) the alteration of the existing railway infrastructure including track, points, signals and associated plant;
 - (ii) railway signage and warning lights;
- (d) new arrival and departure railway tracks adjacent to the existing railway;
- (e) works to accommodate the demolition of the Burbage Common Road bridge over the Leicester to Hinckley railway line;
- (f) works to accommodate the construction of a new bridge over the Leicester to Hinckley railway line and all necessary superstructures and substructures including footings, abutments and wingwalls to be provided as part of Work No. 7;
- (g) a headshunt;
- (h) works to stop up the existing public rights of way shown on the access and rights of way plans including works associated with the closure of the existing Barwell level crossing and Earl Shilton level crossings;
- (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;
- (j) works to accommodate a new foul rising main within Burbage Common Road underneath the rail corridor, connecting to the rising main constructed as part of Work No. 18;
- (k) the closure of existing private accesses shown on the access and rights of way plans; and
- (l) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans.

2 Within the area shown on the works plans for Work No. 2—

The construction of a rail freight terminal to connect with the rail infrastructure described in Work No. 1, the general arrangement of which is shown on the railway plans including—

- (a) construction of an intermodal freight loading/unloading terminal including but not exclusively—
 - (i) railway sidings to load/unload freight and cripple sidings;
 - (ii) gantry cranes, crane rails, reach stacker loading/unloading areas and freight dock platforms; and
 - (iii) freight and container storage areas;
- (b) earthworks to achieve a terminal plateau;
- (c) railway infrastructure including signals, gantry signals and signs;
- (d) rail freight terminal refuelling and minor maintenance areas;
- (e) terminal entrance and exit gateways, loading lanes, internal roads, gatehouses and parking areas;
- (f) rail freight terminal administrative building including staff and visitor welfare facilities;
- (g) works to accommodate the demolition of the Burbage Common Road bridge

- over the Leicester to Hinckley railway line;
- (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;
 - (i) storage and workshop buildings;
 - (j) the stopping up of existing public rights of way shown on the access and rights of way plans;
 - (k) the closure of the existing private accesses shown on the access and rights of way plans; and
 - (l) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans.
- 3 Within the area shown on the works plans for Work No. 3 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, including—
- (a) railway tracks and points;
 - (b) signals and signs; and
 - (c) associated infrastructure.
- 4 Within the area shown on the works plans for Work No. 4 the construction of road infrastructure including—
- (a) roads and associated junctions;
 - (b) roundabout junctions;
 - (c) footways and shared use footways/cycleways;
 - (d) the stopping up of existing public rights of way as shown on the access and rights of way plans;
 - (e) bus stops, bus stop lay-bys, bus interchange, shelters and signage;
 - (f) street lighting and signage;
 - (g) demolition of existing buildings;
 - (h) the closure of existing private accesses shown on the access and rights of way plans; and
 - (i) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans.
- 5 Within the area shown on the works plans for Work No. 5 the construction of rail served warehousing including—
- (a) construction of development plateaux;
 - (b) demolition of existing buildings;
 - (c) warehouses and ancillary buildings including estate management office and gatehouses;
 - (d) drainage, swales, bunding, landscape and planting works;
 - (e) vehicle, cycle, equestrian and pedestrian access routes and signage;
 - (f) roof mounted photovoltaics;
 - (g) external plant;
 - (h) vehicle maintenance, service yards, washing and refuelling facilities, weighbridges and electric vehicle charging units;
 - (i) hardstandings and container storage;
 - (j) parking for HGVs and other vehicles (including cycles), driver welfare facilities and HGV fuelling area;
 - (k) energy centre;

- (l) works to accommodate a revised public right of way from Burbage Common Road to be provided as part of Work No. 6;
 - (m) the stopping up of the lengths of existing public rights of way as shown on the access and rights of way plans;
 - (n) the closure of existing private accesses shown on the access and rights of way plans;
 - (o) the stopping up of the length of Burbage Common Road shown on the access and rights of ways plans; and
 - (p) primary electricity substation.
- 6 Within the area shown on the works plans for Work No. 6 the provision of hard and soft landscape works including—
- (a) demolition of existing buildings;
 - (b) earthworks to create screening bunds;
 - (c) soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements;
 - (d) basins for surface water attenuation (including flood alleviation related drainage infrastructure);
 - (e) new and diverted footpaths and bridleways as shown on the access and rights of way plans;
 - (f) wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest;
 - (g) amenity open space;
 - (h) noise attenuation including acoustic fencing and/or landscape screening;
 - (i) the stopping up of existing public rights of way shown on the access and rights of way plans; and
 - (j) signage and totems located within the areas indicated on the parameters plans.
- 7 Within the area shown on the works plans for Work No. 7 the construction of the A47 link road the general arrangement of which is shown on the highway plans including—
- (a) connection into a new arm provided at the roundabout at junction 2 of the M69 motorway (Work No. 9);
 - (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;
 - (c) upgrading and realignment of the B4668 either side of the new three arm roundabout;
 - (d) two no. roundabouts to connect to Work No. 4 and one further roundabout;
 - (e) a new bridge over the Leicester to Hinckley railway line;
 - (f) a new private access to Bridge Farm as shown on the access and rights of way plans;
 - (g) signalised crossings for pedestrians, cyclists and horse-riders;
 - (h) the closure of existing private accesses as shown on the access and rights of way plans;
 - (i) the stopping up of existing public rights of way as shown on the access and rights of way plans;
 - (j) the provision of a bridleway linking the A47 link road to Burbage Common Road as shown on the access and rights of way plans;
 - (k) bus stops and bus stop lay-bys;
-

- (l) acoustic barriers; and
- (m) demolition of the Burbage Common Road bridge over the Leicester to Hinckley railway line.
-
- 8 Within the area shown on the works plans for Work No. 8, 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—
- (a) construction of a new slip road for southbound traffic joining the M69 at junction 2;
 - (b) construction of a new slip road for northbound traffic leaving the M69 at junction 2;
 - (c) minor alterations to the existing slip road for southbound traffic leaving the M69 at junction 2;
 - (d) roadside landscape works and planting, to include structural tree planting and landscape bunds;
 - (e) motorway signage;
 - (f) improvements to bridleway V29/6; and
 - (g) diversion and protection of existing services.
- 9 Within the area shown on the works plans for Work No. 9, 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 comprising—
- (a) realignment, widening and signalisation of the B4669 Hinckley Road to the east and west of the M69 junction 2 roundabout;
 - (b) realignment, widening and signalisation of the circulatory carriageway of the M69 junction 2 roundabout;
 - (c) works to connect the A47 link road (Work No. 7) and new slip roads (Work No. 8) into the M69 junction 2 roundabout;
 - (d) an acoustic barrier;
 - ~~(d)~~(e) signalisation of the M69 approaches to the M69 junction 2 roundabout; and
 - ~~(e)~~(f) closure of existing private accesses and provision of new private accesses as shown on the access and rights of way plans.
- 10 Within the area shown on the works plans for Work No. 10 works to the B4669 Hinckley Road the general arrangement of which is shown on the highways plans including—
- (a) the provision of improvements to the footway along the B4669 Hinckley Road; and
 - (b) carriageway widening and signalisation of the junction between the B4669 Hinckley Road and Stanton Lane.
- 11 Within the area shown on the works plans for Work No. 11 works to Stanton Lane and works to Hinckley Road, B581 Station Road and B581 New Road in Stoney Stanton, the general arrangement of which is shown on the highways plans including conversion of the mini roundabout at the junction between Hinckley Road, B581 Station Road and B581 New Road to a signalised junction.
- 12 Within the area shown on the works plans for Work No. 12 works to the B4669 Hinckley Road and B4669 Leicester Road in Sapcote, the general arrangement of which is shown on the highways plans including—
- (a) provision of a zebra crossing of the B4669 Leicester Road to the immediate east of the junction with Church Street;
 - (b) kerb realignments at the junction between the B4669 and Church Street;
 - (c) kerb realignments to widen footways on the northern side of the B4669

between the new zebra crossing and Stanton Road;

(d) kerb realignments on the B4669 to create wider footways;

(e) widening of the carriageway around the junction between the B4669 and New Walk;

(f) provision of road markings to guide larger vehicles away from footway areas;

(e)(g) relocation of ~~the west bound~~ bus stop ~~from outside the Co-operative store~~; and

(d)(h) public realm scheme including seating and planting.

- 13 Within the area shown on the works plans for Work No. 13 works to the junction of the A47 Normandy Way and A447 Ashby Road, the general arrangement of which is shown on the highways plans including—
- (a) lane widening;
 - (b) pedestrian crossing; and
 - (c) signage.
- 14 Within the area shown on the works plans for Work No. 14 works to the junction of the A47 Normandy Way and B4668 Leicester Road, the general arrangement of which is shown on the highways plans including the widening of the B4668 northbound approach to the roundabout.
- 15 Within the area shown on the works plans for Work No. 15 works to the junction of the B4114 Coventry Road and Croft Road, the general arrangement of which is shown on the highways plans including the widening of the B4114 southbound approach to the junction.
- 16 Within the area shown on the works plans for Work No. 16 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 including—
- (a) widening of all approaches to the roundabout to increase capacity; and
 - (b) realignment of the B4027 Lutterworth Road arm of the roundabout to improve entry deflection.
- 17 Within the area shown on the works plans for Work No. 17 works to the junction of the B4114 Coventry Road, B581 Broughton Road and B581 Coventry Road, the general arrangement of which is shown on the highways plans including—
- (a) signalisation of the junction between the B4114 Coventry Road and the B581 Broughton Road;
 - (b) carriageway widening; and
 - (c) a lay-by.
- 18 Within the area shown on the works plans for Work No. 18—
- (a) the installation of a new foul rising main within Burbage Common Road and the B581 Stanton Road;
 - (b) the construction of a connection with the existing public sewer within the B581 Stanton Road;
 - (c) provision of a turning head on Burbage Common Road, the general arrangement of which is shown on the highway plans; and
 - (d) connection to a new public bridleway shown on the access and rights of way plans.
- 19 Within the area shown on the works plans for Work No. 19—
- (a) earthworks to create screening bunds and a bund to the north of the railway works (Work No. 1);
 - (b) soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements;
 - (c) basins for surface water attenuation (including flood alleviation related

- drainage infrastructure);
 - (d) new and diverted footpaths and bridleways as shown on the access and rights of way plans;
 - (e) wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest;
 - (f) amenity open space;
 - (g) noise attenuation including acoustic barriers and/or landscape screening;
 - (h) connection into the existing ditch at Burbage Common;
 - (i) the stopping up of existing public rights of way as shown on the access and rights of way plans;
 - (j) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans;
 - (k) the reinstatement of agricultural land; and
 - (l) the provision of a new turning head on Burbage Common Road as shown on the highway plans.
- 20 Within the area shown on the works plan for Work No. 20—
- (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 Leicester to Hinckley railway line to connect into existing footpath U52/3 as shown on the access and rights of way plans; and
 - (b) removal of existing infrastructure associated with the above.
- 21 Within the area shown on the works plans for Work No. 21—
- (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; and
 - (b) removal of existing infrastructure associated with the above.
- 22 Within the area shown on the works plans for Work No. 22—
- (a) the stopping up of public footpath T89/1 as shown on the access and rights of way plans including closure of the Elmesthorpe level crossing and removal of associated infrastructure; and
 - (b) provision of an uncontrolled crossing over the B581 Station Road as shown on the highway plans.

Further works

The following further works provided that such works do not give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations—

1. Within the area shown on the works plans for Work Nos. 1 to 6 the provision of—
 - (a) weighbridges;
 - (b) internal estate roads and accesses;
 - (c) parking facilities for all vehicles including cycles and electric vehicles;
 - (d) site preparation works, site clearance, regrading and adjustments to ground levels and excavation;
 - (e) footways, cycle tracks, permissive paths for pedestrians and cyclists, bridleways, ramps, footpath linkages and crossing facilities;

- (f) water supply works, foul drainage and storage, foul pumping stations, surface water management systems, drainage conveyance system, balancing ponds (surface and underground), attenuation and culverting;
- (g) utilities and services including connections to mains services and provision of utilities infrastructure including primary and secondary electricity substations, catenary and pressure reducing stations;
- (h) demolition of existing buildings and surface structures;
- (i) public art;
- (j) security fencing;
- (k) gatehouses, barriers and CCTV;
- (l) acoustic barriers;
- (m) the clearing of and making good to existing watercourses, works to alter the course of or otherwise interfere with a watercourse;
- (n) ducting;
- (o) removal of existing hedgerows and making good;
- (p) swales, landscaping, fencing, bunds, embankments, aprons, abutments, shafts, foundations, retaining walls, wing walls, cuttings, landscaping and boundary treatments, earthworks and earthwork retaining structures;
- (q) environmental mitigation;
- (r) pavements, surface treatments, kerbs and channels;
- (s) works to alter or remove road furniture;
- (t) refurbishment works to existing structures;
- (u) traffic signs, traffic signals, surface course and carriageway markings;
- (v) lighting and electrical equipment;
- (w) diversion of sewers, pipelines, utilities and services;
- (x) works for the benefit or protection of land affected by the authorised development;
- (y) works required for the strengthening, improvement, maintenance or reconstruction of any streets; and
- (z) works associated with archaeology and heritage investigation.

2. Within the area of land described on the works plans as Work nos. 7 to 22 the provision where appropriate of—

- (a) site clearance and excavation;
- (b) removal of existing and creation of new private means of accesses in the locations shown on the access and rights of way plans;
- (c) fencing for boundary treatment and acoustic barriers;
- (d) safety barriers;
- (e) surface water drainage works including swales, attenuation, outfalls, headwalls and culverting;
- (f) ducting;
- (g) bunds, embankments, cuttings, landscaping, earthworks and earthwork retaining structures;
- (h) pavements, surface treatments, refuge islands, kerbs and channels;
- (i) footways, cycle tracks, bridleways and footpath linkages;
- (j) traffic signs, traffic signals and road markings;
- (k) street lighting and electrical equipment;
- (l) retaining walls;

- (m) motorway communications and control equipment;
- (n) diversion and provision of utilities including foul water sewers; and
- (o) demolition of buildings and structures.

3. Within the area of land described on the works plans as Work Nos. 1 to 22 temporary works as necessary including but not limited to—

- (a) traffic management;
- (b) earthworks, trenching, ducting and stock piling of topsoil and subsoil material;
- (c) statutory undertakers plant diversions;
- (d) haulage roads;
- (e) temporary road construction;
- (f) signage and fencing;
- (g) rail sidings;
- (h) construction compounds including temporary buildings, welfare facilities, batching plants, storage and parking areas; and
- (i) drainage systems.

4. Such other works as may be necessary or expedient for the purpose of or in connection with the construction and operation of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“A47 link road concept drainage strategy” means the document of that description referred to in Schedule 15 and certified as the A47 link road concept drainage strategy by the Secretary of State for the purposes of this Order;

“archaeological mitigation strategy” means the document of that description referred to in Schedule 15 and certified as the archaeological method statement by the Secretary of State for the purposes of this Order;

“biodiversity impact assessment” means the document of that description referred to in Schedule 15 and certified as the biodiversity impact assessment by the Secretary of State for the purposes of this Order;

“CEMP” means the document of that description referred to in Schedule 15 and certified as the construction environmental management plan by the Secretary of State for the purposes of this Order;

“commencement of construction works” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), as part of the authorised development with the exception of any works related to archaeological investigation, ecological mitigation or site investigation;

“construction traffic management plan” means the document of that description referred to in Schedule 15 and certified as the construction traffic management plan by the Secretary of State for the purposes of this Order;

“design code” means the document of that description referred to in Schedule 15 and certified as the design code by the Secretary of State for the purposes of this Order;

“ecological mitigation and management plan” means the document of that description referred to in Schedule 15 and certified as the ecological mitigation and management plan by the Secretary of State for the purposes of this Order;

“energy strategy” means the document of that description referred to in Schedule 15 and certified as the energy strategy by the Secretary of State for the purposes of this Order;

“Euro VI compliant” means compliant with the Euro VI standard for the vehicle in question contained in Regulation (EC) no 595/2009;

“flood risk assessment” means the document of that description referred to in Schedule 15 and certified as the flood risk assessment by the Secretary of State for the purposes of this Order;

“framework site wide travel plan” means the document of that description referred to in Schedule 15 and certified as the framework site wide travel plan by the Secretary of State for the purposes of this Order;

“HGV route management plan and strategy” means the document of that description referred to in Schedule 15 and certified as the HGV route management plan and strategy by the Secretary of State for the purposes of this Order;

“illustrative landscape strategy” means the document of that description referred to in Schedule 15 and certified as the illustrative landscape strategy by the Secretary of State for the purposes of this Order;

“lighting strategy” means the document of that description referred to in Schedule 15 and certified as the lighting strategy by the Secretary of State for the purposes of this Order;

“lorry park management plan” means the document of that description referred to in Schedule 15 and certified as the lorry park management plan by the Secretary of State for the purposes of this Order;

“M69 Junction 2 concept drainage strategy” means the document of that description referred to in Schedule 15 and certified as the M69 Junction 2 concept drainage strategy by the Secretary of State for the purposes of this Order;

“main HNRFI site concept surface water drainage strategy” means the document of that description referred to in Schedule 15 and certified as the HNRFI site concept surface water drainage strategy by the Secretary of State for the purposes of this Order;

“main HNRFI site concept foul water drainage strategy” means the document of that description referred to in Schedule 15 and certified as the HNRFI site concept foul water drainage strategy by the Secretary of State for the purposes of this Order;

“outline landscape and ecological management plan” means the document of that description referred to in Schedule 15 and certified as the outline landscape and ecological management plan by the Secretary of State for the purposes of this Order;

“passive provision” means in relation electric vehicle charging points, the design and construction of the relevant part of the development so as not to preclude the provision of the remainder of the electric charging points referred to in paragraph 4(3) of Part 1 of this Schedule at a later date;

“phase” means a phase of the authorised development as shown in the latest written phasing scheme approved by the relevant planning authority pursuant to requirement 3;

“public rights of way appraisal and strategy” means the document of that description referred to in Schedule 15 and certified as the public rights of way appraisal and strategy by the Secretary of State for the purposes of this Order;

“rail infrastructure” means the provision of any rail infrastructure as part of the authorised development excluding any such works to the existing Felixstowe to Nuneaton railway line or within the operational estate of Network Rail;

“Sapcote enhanced s278 works general arrangement plan” means the document of that description referred to in Schedule 15 and certified as the Sapcote enhanced s278 works general arrangement plan by the Secretary of State for the purposes of this Order;

“site waste and materials management plan” means the document of that description referred to in Schedule 15 and certified as the site waste and materials management plan by the Secretary of State for the purposes of this Order;

“sustainable drainage statement” means the document of that description referred to in Schedule 15 and certified as the sustainable drainage statement by the Secretary of State for the purposes of this Order;

“sustainable transport strategy” means the document of that description referred to in Schedule 15 and certified as the sustainable transport strategy by the Secretary of State for the purposes of this Order;

“woodland management plan” means the document of that description referred to in Schedule 15 and certified as the woodland management plan by the Secretary of State for the purposes of this Order.

Time limits

2. The authorised development must commence no later than the expiration of five years beginning with the date on which this Order comes into force.

Phasing of Development

3.—(1) No commencement of construction works are to take place until a written phasing scheme setting out all the phases of the authorised development, has been submitted to and approved in writing by the relevant planning authority.

(2) The written phasing scheme must include phasing details of—

- (a) earthworks;
- (b) rail infrastructure;
- (c) roads and bridges;
- (d) highway works;
- (e) surface water and foul drainage;
- (f) development plots;
- (g) landscape works and planting, including mounding and acoustic fencing;
- (h) public rights of way and the creation of private means of access;
- (i) the energy centre; and
- (j) mains utility services.

(3) The authorised development must be carried out in accordance with the approved phasing scheme.

Detailed design approval

4.—(1) Commencement of construction works must not take place on any phase until details of that phase have been submitted to and approved in writing by the relevant planning authority. The details of each phase must be in accordance with the parameters plans and the principles set out in the design code.

(2) The details of each phase must include details of the following where they are located within that phase—

- (a) rail infrastructure, rail freight terminal, container storage and container returns area;
- (b) built development design and layout (including external plant);
- (c) vehicular circulation routes;

- (d) cycle tracks, footpaths and bridleways, including highway crossing points for pedestrian, bicycle and equestrian traffic;
- (e) telecommunication masts;
- (f) energy centre;
- (g) hard and soft landscaping;
- (h) surface and foul drainage;
- (i) vehicle, cycle and motorcycle parking including the location and quantum of electrical charging points;
- (j) embankments and bunds;
- (k) site levels and finished floor levels;
- (l) roads within the main site;
- (m) bridges;
- (n) fuelling and maintenance areas;
- (o) freight storage area (including containers);
- (p) weighbridges;
- (q) gatehouses;
- (r) security fencing;
- (s) substations;
- (t) flagpoles;
- (u) public transport infrastructure;
- (v) the height, position, form, construction and appearance of acoustic barriers including provision for landscaping between the acoustic barrier and the Aston Firs Gypsy and Traveller Site and between the acoustic barrier and the site boundary at the junction of the A47 link road with the B4668 Leicester Road;
- (w) fencing, walls and other permanent means of enclosure;
- (x) location and quantum of bin stores;
- (y) location and type of litter bins;
- (z) any temporary site notices or advertisements;
- (aa) permanent advertisements in the locations identified on the parameters plans;
- (bb) temporary accesses and rights of way;
- (cc) any temporary means of enclosure;
- (dd) outdoor gym and seating areas;
- (ee) sprinkler tanks;
- (ff) external canopies;
- (gg) standby generators;
- (hh) site compounds; and
- (ii) cycle storage.

(3) A minimum of 20% of the total number of car parking spaces to be provided within the authorised development is to be equipped with electrical vehicle charging points with a minimum rating of 7.4 kWh and passive provision for the remainder (the rating for which remainder is to be determined by the building occupier in accordance with their requirements).

(4) (a) Details of any acoustic barriers submitted under sub-paragraph (2) must be included within the phase generating the noise source for which they are designed to mitigate.

(b) No acoustic barriers are to be constructed within the buffer zone detailed on Figure 10.10A (Acoustic Barrier Locations) of the environmental statement and the height of

each acoustic barrier must not exceed the relevant maximum height specified on that figure.

(5) Each phase must be carried out in accordance with the approved details for that phase.

Design and phasing of highway works

5.—(1) Subject to sub-paragraphs (2) and (3), the undertaker must complete the highway works identified in columns (1) and (2) of the following table by no later stage than the stage of the authorised development as set out in column (3) of that table below or such alternative later stage as agreed by the relevant body or bodies identified in column (4) or such successor body as may replace them in function.

<i>(1)</i> <i>Work Nos.</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Stage of development</i>	<i>(4)</i> <i>Relevant body</i>
8 and 9	M69 Junction 2 works including new northbound exit slip road and new southbound entry slip road	To be completed prior to the occupation of any warehouse floorspace	National Highways (Work No. 8) and Leicestershire County Council (Work No. 9)
7	A47 link road	To be completed prior to the opening of the earlier of— (a) the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or (b) the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
11	Works to junction of B581 Station Road/New Road and Hinckley Road, Stoney Stanton	To be completed prior to the opening of the earlier of— (a) the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or (b) the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
12	Works to junction of B4669 Hinckley Road and Stanton Lane, west of Sapcote and to B4669 Hinckley Road/Leicester Road, Sapcote	To be completed prior to the opening of the earlier of— (a) the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or (b) the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
10	Works to Stanton Lane/Hinckley Road, south-west of Stoney Stanton	To be completed prior to the opening of the earlier of— (a) the new northbound exit slip road at M69	Leicestershire County Council

		Junction 2 comprised in Work No. 8; or	
		(b) the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	
17	Works to junction of B4114 Coventry Road and B581 Broughton Road at Soar Mill, south-east of Stoney Stanton	To be completed prior to the opening of the earlier of— (a) the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or (b) the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
15	Works to junction of B4114 Coventry Road and Croft Road, south-west of Narborough	To be completed prior to the opening of the earlier of— (a) the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; (b) the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
13	Works to junction of A47 Normandy Way and A447 Ashby Road, Hinckley	To be completed prior to the opening of the earlier of— (a) the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or (b) the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
14	Works to junction of A47 Normandy Way/Leicester Road, the B4668 Leicester Road and The Common, south-east of Barwell	To be completed prior to the opening of the earlier of— (a) the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or (b) the new southbound entry slip road at M69 Junction 2 comprised in Work No. 8	Leicestershire County Council
16	Works at Cross in Hand roundabout at the junction of the A5 Watling Street, B4027 Lutterworth Road and Coal Pit Lane, west of Lutterworth	To be completed prior to the opening of the earlier of— (a) the new northbound exit slip road at M69 Junction 2 comprised in Work No. 8; or (b) the new southbound	National Highways and Warwickshire County Council and Leicestershire County Council

entry slip road at M69
Junction 2 comprised in
Work No. 8

(2) The undertaker is not obliged to undertake Work No. 17 if a third party has commenced construction of works shown coloured green on sheet 8C of the highways plans prior to the stage of development specified in column (3).

(3) The undertaker is not obliged to undertake any individual work specified in sub-paragraph (1) where—

- (a) the undertaker has agreed with the relevant planning authority and the relevant highway authority that an alternative to that work has been proposed which will mitigate the effect of the authorised development at the location of that work; and
- (b) the relevant planning authority and the relevant highway authority agree that such alternative work should be carried out in lieu of the individual work specified in sub-paragraph (1), and either—
 - (i) an agreement for carrying out that alternative work has been entered into between the relevant highway authority and a third party; or
 - (ii) the undertaker has entered into an agreement with the relevant highway authority in relation to the carrying out of that alternative work.

(4) No phase is to commence until the undertaker has entered into an agreement with the relevant highway authority pursuant to section 278 of the 1980 Act to secure the delivery of the highway works shown on the Sapcote enhanced s278 works general arrangement plan.

Public rights of way and level crossing closures

6.—(1) The undertaker must stop up the public rights of way identified in column (1) of the following table by no later than the stage of the authorised development set out in column (2) of that table or such later stage as agreed by the relevant body identified in column (3) or such successor body as may replace them in function.

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Stage of the authorised development by which time the stopping up must have been completed</i>	<i>(3)</i> <i>Relevant body</i>
U17/2 to the extent shown by the dashed green line between point 19 and point 20 on the access and rights of way plan (Document 2.3B)	Commencement of Work No. 21	Leicestershire County Council
U8/1 to the extent shown by the dashed green line between point 21 and point 22 on the access and rights of way plan (Document 2.3C)	Commencement of Work No. 20	Leicestershire County Council
V29/7 to the extent shown by the solid green line between point 15 and point 31 on the access and rights of way plan (Document 2.3D)	Commencement of Work No. 5, Work No. 6 or Work No. 7	Leicestershire County Council
V29/6 to the extent shown by the solid green line between point 16 and point 31 on the access and rights of way plan (Document 2.3D)	Commencement of Work No. 5	Leicestershire County Council
U52/9 to the extent shown by	Commencement of Work No. 19	Leicestershire County

the solid green line between point 2 and point 27 on the access and rights of way plan (Document 2.3A)		Council
V23/1 to the extent shown by the dashed green line between point 9 and point 11 on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1, Work No. 2 or Work No. 19	Leicestershire County Council
U50/3 to the extent shown by the dashed green line between point 10 and point 12 on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1, Work No. 2, Work No. 3, Work No. 5 or Work No. 19	Leicestershire County Council
U50/1 to the extent shown by the dashed green line between point 6 and point 7 in the access and rights of way plan (Document 2.3D)	Completion of Work No. 6 in accordance with the phasing details approved pursuant to requirement 3	Leicestershire County Council
U52/6 to the extent shown by the dashed green line between point 4 and point 32 on the access and rights of way plan (Document 2.3A and Document 2.3C)	Commencement of Work No. 2, Work No. 6 or Work No. 7	Leicestershire County Council
U52/7 to the extent shown by the dashed green line between point 32 and point 3 on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 2, Work No. 3 or Work No. 7	Leicestershire County Council
V35/2 to the extent shown by the dashed green line between point 29 and point 32 on the access and rights of way plan (Document 2.3A and Document 2.3D)	Commencement of Work No. 5, Work No. 6 or Work No. 7	Leicestershire County Council
U50/2 to the extent shown by the dashed green line between point 28 and point 29 on the access and rights of way plan (Document 2.3A and Document 2.3D)	Commencement of Work no. 4, Work No. 5, Work No. 6 or Work No. 7	Leicestershire County Council
U53/1 to the extent shown by the dashed green line between point 30 and point 31 on the access and rights of way plan (Document 2.3A and Document 2.3D)	Commencement of Work No. 4, Work No. 5 or Work No. 6	Leicestershire County Council
T89/1 to the extent shown by the dashed green line between point 24 and point 25 and point 26 on the access and rights of way plan (Document 2.3B)	Commencement of Work No. 22	Leicestershire County Council

(2) Notwithstanding the provisions of sub-paragraph (1), the rail freight terminal forming part of Work No. 2 must not commence operation (which for the purposes of this sub-paragraph shall

include any testing of rail tracks within the rail freight terminal which may take place before the commencement of commercial operation) until the following level crossings have been closed in accordance with article 13—

- (a) Thorney Fields Farm on footpath U17/2;
- (b) Elmesthorpe on footpath T89/1;
- (c) Earl Shilton on footpath U50/3;
- (d) Barwell on footpath V23/1; and
- (e) The Outwoods on footpath U8/1.

Construction Environmental Management Plan

7.—(1) Prior to commencement of construction works on each phase a detailed construction environmental management plan for that phase, in accordance with the principles set out in the CEMP, must be submitted to and approved in writing by the relevant planning authority.

(2) The detailed construction environmental management plan for each phase must include—

- (a) details of the methods to control noise and vibration arising from construction activities including—
 - (i) proposals for monitoring of construction noise and vibration;
 - (ii) a noise and vibration management plan; and
 - (iii) proposals for the introduction of mitigation measures or alternative working practices where required.
- (b) details of a dust management plan setting out the methods to be used to control dust from the site in line with ‘highly recommended’ measures set out in tables 9.40 and 9.41 of Chapter 9 of the environmental statement (air quality);
- (c) details of all temporary fencing, temporary buildings, temporary compound areas and temporary parking areas including arrangements for their removal following completion of construction;
- (d) an arboriculture method statement detailing measures to protect retained trees and hedgerows, including details of built development and construction buffers which must be a minimum of 15 metres from Sites of Special Scientific Interest and ancient woodland;
- (e) measures to protect the safety and amenity of public rights of way users during construction;
- (f) details of existing and proposed landscaping which needs to be protected during construction;
- (g) details of areas to be used for the storage of fuel, oil and other chemicals, including measure to prevent pollution;
- (h) details of the facilities to be provided for the storage of fuel, oil and other chemicals, including measures to prevent pollution and adverse impacts on the Narborough Bog Site of Special Scientific Interest;
- (i) details of temporary signage;
- (j) details of any temporary surface water management system including measures to prevent sediment mobilisation to nearby watercourses and adverse effects on the Narborough Bog Site of Special Scientific Interest;
- (k) details of any groundwater contamination remediation strategy;
- (l) an earthworks specification, remediation strategy and verification report informed by ground investigation work;
- (m) proposals for gas monitoring and associated gas protection measures for buildings if required;
- (n) proposals for the disposal of asbestos if required;

- (o) details of site rules and communication with the community;
- (p) details of temporary lighting; and
- (q) a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development.

(3) The approved detailed construction environmental management plan for each phase must be complied with during the construction works in that phase until the completion of construction works on that phase. The detailed construction environmental management plan for each phase is to be kept under review by the undertaker and updated if necessary as construction proceeds and any such update to the detailed construction environmental management plan is to be approved in writing by the relevant planning authority.

Travel plan

8.—(1) The provisions of the framework site wide travel plan must be complied with at all times following commencement of the authorised development.

(2) Prior to each and every occupation of an individual warehouse unit an occupier-specific travel plan is to be submitted to, and approved in writing by, the relevant planning authority following consultation with the relevant highway authority. Each occupier specific travel plan must be in accordance with the framework site wide travel plan and include provisions for promoting the travel plan across the occupiers work force for the site. Each occupier must comply with their occupier specific travel plan from not less than three months of the date on which they first occupy the relevant warehouse unit for the duration of the occupation of the relevant warehouse by that occupier. Each occupier must monitor the operation of the occupier specific travel plan for the period of their occupation.

(3) No warehouse units may be occupied until the undertaker has established arrangements, including inviting participation from the relevant planning authority and the relevant highway authorities, for the travel plan steering group to discharge the role of that group in relation to the provision of the framework site wide travel plan.

Sustainable transport strategy

9.—(1) The sustainable transport strategy must be complied with following the first occupation of any warehouse floorspace on the authorised development.

(2) The undertaker must use reasonable endeavours to maximise the use of Euro VI compliant HGV and public transport in respect of—

- (a) Any HGV fleets operated by occupiers of the warehouse units which visit those warehouses; and
- (b) Any public transport service provided pursuant to the public transport strategy and dedicated to serving the authorised development.

Rail

10.—(1) No more than 105,000 square metres of warehouse (including ancillary office) floorspace to be provided as part of the authorised development may be 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.

(2) The undertaker must notify the relevant planning authority of the date of the first occupation of more than 105,000 square metres of warehousing within 28 days of such occupation occurring.

(3) Following completion of the rail terminal works the undertaker must retain, manage and keep the rail terminal available for use throughout the period of occupation of the warehousing floorspace.

Container stack height

11.—(1) The height of any stack of containers within the container storage area approved pursuant to the details submitted in accordance with requirement 4(2) must—

- (a) not exceed 8.7 metres from finished floor level prior to the second anniversary of the date on which the container storage area first comes into use;
- (b) not exceed 11.6 metres from finished floor level prior to the third anniversary of the date on which the container storage area first comes into use; and
- (c) not exceed 14.5 metres from finished floor level at any time thereafter.

(2) The height of any stack of containers within the returns area approved pursuant to the details submitted in accordance with requirement 4(2) must not—

- (a) exceed 8.7 metres from finished floor level prior to the fifth anniversary of the date on which the returns area first comes into use; and
- (b) exceed 14.5 metres from finished floor level at any time thereafter.

Archaeology and building recording

12.—(1) No phase is to commence until such time as a written scheme of investigation for that phase, informed by the provisions of the archaeological mitigation strategy, has been submitted to and approved in writing by the relevant planning authority.

(2) The written scheme of investigation submitted for approval must include—

- (a) the statement of significance and research objections;
- (b) details of the on-site recording methodology;
- (c) details of sampling, analysis and reporting strategy;
- (d) details of monitoring arrangements;
- (e) details of timetable and personnel; and
- (f) details of post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material.

(3) No part of the authorised development on the main site is to commence until a level 3 record of the buildings and structures of historic interest identified in the archaeological mitigation strategy has been undertaken. The record must be carried out in accordance with a written specification first agreed with the relevant planning authority in consultation with Leicestershire County Council and prepared by a competent building recorder in accordance with Historic England Understanding Historic Buildings, A Guide to Good Recording Practice, 2016.

(4) A copy of any analysis, reporting and publication required as part of the written scheme of investigation must be deposited with the Leicestershire and Rutland Historic Environment Record within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme of investigation.

(5) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported by way of a notice to the relevant planning authority, as soon as reasonably practicable from the date they are identified.

(6) Each phase must be carried out in accordance with the approved written scheme of investigation.

Sustainable drainage

13.—(1) No phase is to commence until a sustainable drainage strategy for that phase based on (in so far as relevant to that phase)—

- (a) sustainable drainage statement;
- (b) main HNRFI site concept surface water drainage strategy;

- (c) main HNRFI site concept foul water drainage strategy;
- (d) A47 link road concept drainage strategy; and
- (e) M69 Junction 2 concept drainage strategy

has been submitted to and approved in writing by the relevant planning authority.

(2) The development of each phase must be carried out in accordance with the approved sustainable drainage strategy for that phase.

Surface water

14.—(1) No phase is to commence until a surface water drainage scheme for that phase based on sustainable drainage principles and the assessment of the hydrological and hydrogeological context of the development in accordance with the flood risk assessment has been submitted to and approved in writing by the relevant planning authority. The scheme must include—

- (a) the limitation of surface water run-off generated by all rainfall events up to the critical 1 in 100 year return period rainfall event (plus 20% for climate change) to the equivalent greenfield rate;
- (b) detailed design (plans, cross sections and calculations) in support of any surface water drainage scheme, including details of any attenuation system and the outfall arrangements;
- (c) details in relation to the management of surface water on site during construction of the development in order to mitigate flood risk, and for the removal of suspended solids from surface water discharging from the site. Details shall demonstrate how surface water will be managed on site to prevent an increase in flood risk during the various construction stages of development from initial site works through to completion. This shall include temporary attenuation, additional treatment, controls, maintenance and protection; and
- (d) infiltration testing to BRE Digest 365 or suitable evidence that infiltration methods of disposal on-site is not technically viable. Where infiltration results indicate that infiltration is a viable method of surface water disposal, the surface water strategy should be amended to incorporate infiltration disposal methods.

(2) The surface water drainage scheme for each phase must be implemented in accordance with the approved scheme for that phase.

(3) No phase is to be occupied until details of the long-term maintenance of the surface water drainage system within that phase have been submitted to and approved in writing by the relevant planning authority. The maintenance details must include—

- (a) details of routine maintenance, access, remedial actions and monitoring of the separate elements of the surface water drainage system that will not be adopted by a third party; and
- (b) where relevant, procedures that must be implemented in the event of pollution incidents.

(4) The long term maintenance strategy for each phase must be implemented in accordance with the approved details for that phase.

Contaminated land

15.—(1) No phase is to commence until a remediation strategy to deal with any risks associated with contamination of land and controlled waters for that phase has been submitted to and approved by the relevant planning authority following consultation with the Environment Agency. This strategy must include the following components—

- (a) a preliminary risk assessment which has identified—
 - (i) all previous uses;
 - (ii) potential contaminants associated with those uses;
 - (iii) a conceptual model of the site indicating sources, pathways and receptors; and

- (iv) potentially unacceptable risks arising from contamination at the site
- (b) a site investigation scheme, based on sub-paragraph (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
- (c) the results of the site investigation and the detailed risk assessment referred to in sub-paragraph (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
- (d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in sub-paragraph (c) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components requires the written consent of the relevant planning authority.

(2) The remediation strategy for each phase must be implemented in accordance with the approved strategy for that phase.

(3) No phase of the authorised development is to be brought into use until a verification report demonstrating that any works required by the approved remediation strategy for that phase have been completed has been submitted to and approved in writing by the relevant planning authority following consultation with the Environment Agency. The report must include results of sampling and monitoring carried out in accordance with the approved verification plan.

Construction hours

16.—(1) Construction works relating to the authorised development must not take place on Sundays, bank holidays, public holidays, nor otherwise outside the hours of 7:00 to 19:00 on week days and 7:00 to 15:00 on Saturdays in the phase of the authorised development which includes the earthworks as detailed in the written phasing scheme submitted and approved pursuant to requirement 3. Construction works relating to all phases of the authorised development must not take place on Sundays, bank holidays, public holidays, nor otherwise outside of the hours of 7:00 to 19:00 Monday to Friday and 7:00 to 13:00 on Saturday.

(2) The restrictions in sub-paragraph (1) do not apply to construction works where these—

- (a) are carried out within existing buildings or buildings constructed as part of the authorised development;
- (b) works to the railway including demolition of Burbage Common Road Bridge and installation of the replacement bridge across the railway forming part of the ‘A47 Link Road’;
- (c) works to the highway agreed with the relevant highway authority;
- (d) are carried out with the prior approval of the relevant planning authority;
- (e) are associated with slip form working;
- (f) deliveries, movements to work, maintenance and general preparation works but not including running plant and machinery for a period of one hour either side of the above times;
- (g) any oversize deliveries or deliveries where daytime working would be disruptive due to normal traffic operation;
- (h) removal or protection of overhead powerlines;
- (i) are associated with an emergency;
- (j) overnight traffic management measures; and
- (k) completion of an operation that would otherwise cause greater interference with the environment/general public if left unfinished.

(3) Any emergency works carried out under sub-paragraph (2)(i) must be notified to the relevant planning authority within 72 hours of their commencement.

Energy strategy

17.—(1) No phase of the authorised development is to be occupied until a detailed energy strategy for that phase has been submitted to and approved in writing by the relevant planning authority. Each detailed energy strategy submitted and approved must be in accordance with the energy strategy.

(2) The energy strategy for each phase must be implemented in accordance with the approved detailed energy strategy for that phase and complied with throughout the occupation of that phase.

HGV route management plan and strategy

18. The HGV route management plan and strategy must be complied with at all times following the first occupation of any warehouse floorspace on the authorised development.

Landscape and Ecological Management Plan

19.—(1) No phase is to commence until a detailed landscape and ecological management plan for that phase has been submitted to and approved in writing by the relevant planning authority. The detailed landscape and ecological management plan must be in accordance with the principles set out in the outline landscape and ecological management plan.

(2) The content of any detailed landscape and ecological management plan will—

- (a) identify features of ecological importance;
- (b) provide a management framework for the conservation and enhancement of habitats and other features of ecological interest; and
- (c) provide a work schedule (including an annual work plan).

(3) Any detailed landscape and ecological management plan must be implemented as approved as part of the relevant phase of the authorised development and must be reviewed on the 5th anniversary of commencement of the relevant phase of the authorised development and at five yearly intervals thereafter for the lifetime of the relevant phase of the authorised development. Any review of a detailed landscape and ecological management plan is to be approved in writing by the relevant planning authority.

Ecological mitigation management plan

20.—(1) Subject to sub-paragraph (3) no phase is to commence until a detailed ecological mitigation and management plan for that phase has been submitted to and approved in writing by the relevant planning authority. The detailed ecological mitigation and management plan must be in accordance with the principles set out in the ecological mitigation and management plan and must—

- (a) apply a precautionary approach to working methodologies and habitat creation for reptiles and amphibians;
- (b) ensure that mitigation and compensation measures have demonstrable and measurable outcomes, which are monitored and reported on; and
- (c) create alternative habitats to an agreed form to compensate for the loss of irreplaceable habitats.

(2) Any detailed ecological mitigation and management plan approved under sub-paragraph (1) must include an implementation timetable and must be carried out as approved in writing by the relevant planning authority.

(3) If a phase does not include ecological mitigation or management then a statement from the undertaker must be provided to the relevant planning authority prior to the relevant phase being commenced, confirming that the phase includes no ecological mitigation or management and therefore no ecological mitigation and management plan is required for that phase pursuant to sub-paragraph (1). A phase for which a notification has been given in accordance with this sub-

paragraph must not commence until the relevant planning authority has confirmed in writing that no ecological mitigation and management plan is required for that phase.

(4) Where specified as required in the framework ecological mitigation and management plan, works must be supervised by a suitably qualified person or body.

Landscape scheme

21.—(1) No phase is to commence until a written landscaping scheme for that phase (including any strategic landscaping included within that phase) in accordance with the illustrative landscape strategy has been submitted to and approved in writing by the relevant planning authority.

(2) The written landscaping scheme must be in accordance with the parameters plans and must include details of all proposed soft landscaping works, including—

- (a) details of any trees and hedgerows to be removed;
- (b) location, number, species, size, layout, method of trees support, plant protection measures and planting density of any proposed planting;
- (c) cultivation, importation of materials and other operations to ensure plant establishment;
- (d) a programme for the implementation of the works; and
- (e) a landscape management plan setting out for a period of 30 years from completion of that phase the arrangements for future maintenance including methods of funding and future monitoring, review and the maintenance of new trees, shrub, hedgerows, woodlands and grassed areas and retained trees, shrub, hedgerows, woodlands and grassed areas.

(3) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

(4) The detailed written landscape scheme for each phase must be implemented in accordance with the approved scheme for that phase.

Site waste and materials management plan

22.—(1) Prior to the commencement of construction work on each phase of the authorised development a detailed site waste and materials management plan for that phase in accordance with the principles set out in the site waste and materials management plan must be submitted to and approved by the relevant planning authority.

(2) The detailed site waste and materials management plan for each phase must be implemented in accordance with the approved plan for that phase.

Construction traffic management plan

23.—(1) Prior to the commencement of construction works on each phase a detailed construction traffic management plan for that phase must be submitted to and approved by the relevant planning authority following consultation with the relevant highway authority. The detailed construction traffic management plan must be in accordance with the principles set out in the construction traffic management plan and must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) the construction programme; and

(d) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(2) Notices must be erected and maintained thorough the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(3) The detailed construction traffic management plan for each phase are to be kept under review by the undertaker and updated if necessary with the approval of the relevant planning authority following consultation with the relevant highway authority.

(4) The detailed construction traffic management plan for each phase must be implemented in accordance with the approved plan for that phase.

Temporary highway accesses

24.—(1) 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 between any part of the Order limits and the public highway to be used by vehicular traffic during construction of that phase, and the means of reinstating any such means of access after completion of construction shall be submitted to and approved by the relevant planning authority following consultation with the relevant highway authority.

(2) Any works for the layout of any new or modified temporary means of access and the means for reinstating any such means of access referred to in sub-paragraph (1) above for each phase are to be carried out in accordance with the approved details for that phase.

Public rights of way strategy

25.—(1) Prior to commencement of construction works on any phase a detailed public rights of way strategy for that phase in accordance with the principles set out in the public rights of way appraisal and strategy must be submitted to and approved by the relevant planning authority following consultation with the relevant highway authority.

(2) The detailed public rights of way strategy for each phase must be implemented in accordance with the approved strategy for that phase.

Control of operational noise

26.—(1) Prior to their installation, details of all mechanical and ventilation plant and any other noisemaking machinery, or mobile plant (including HGV chiller units) that is intended to be used within the main site, must be submitted to and approved in writing by the relevant planning authority including details of mitigation measures to any machinery and the provision of details of automated hardware and software to lift and place containers. This will include an assessment of the expected noise impact at relevant receptors in accordance with BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound and BS8233:2014 Guidance on sound insulation and noise reduction for buildings (or such other amendment or replacement of such documents as shall apply at the time of submission of the relevant application). The assessment will consider noise from the proposed plant and machinery to demonstrate compliance with government and local policy on noise. The installation of all mechanical and ventilation plant and any other noisemaking machinery or mobile plant (including HGV chiller units) must be carried out in accordance with the approved details. Any fixed plant or ventilation equipment must also be installed and operated in accordance with manufacturers' instructions at all times.

Acoustic barriers

27.—(1) Acoustic barriers to be provided as part of any phase in accordance with the details approved pursuant to requirement 4 and must be completed prior to the first occupation of that phase.

(2) The acoustic barriers must be maintained and retained for the lifetime of the authorised development.

Combined heat and power

28. The combined heat and power plant may not be operated for more than 30% of the hours in a calendar year. ~~The~~For the lifetime of the authorised development the undertaker must maintain an up-to-date ~~annual~~ usage report ~~for~~covering a period of at least 12 months and shall make the information available to the relevant planning authority within 14 days of it being requested by the relevant local planning authority.

Biodiversity net gain

29.—(1) The authorised development must not commence until a biodiversity net gain strategy to deliver an overall 10% biodiversity net gain in respect of the authorised development (taken as a whole) in accordance with the principles set out in the biodiversity impact assessment calculations has been submitted to and approved by all of the planning authorities in whose areas any of the authorised development is to be constructed (whether or not any element of the biodiversity net gain strategy is to be provided within a particular planning authority’s area).

(2) The biodiversity net gain strategy must be implemented in accordance with the approved strategy.

Lighting

30.—(1) No phase of the authorised development is to be commenced until a report detailing the lighting scheme for all permanent external lighting to be installed in that phase has been submitted to and approved by the relevant planning authority. The reports and schemes submitted and approved must be in accordance with the lighting strategy and include the following—

- (a) a layout plan with beam orientation;
- (b) an Isolux contour map showing light spillage to 1 lux both vertically and horizontally and areas identified in the detailed ecological mitigation and management plan approved pursuant to requirement 20 as being of ecological importance;
- (c) a quantitative light intrusion and luminous intensity assessment in accordance with ILP Guidance Note 01/21; and
- (d) measures to avoid glare on surrounding railway and highways.

(2) The lighting scheme for each phase must be implemented and maintained in accordance with the approved strategy for that phase and may be reviewed by the undertaker as necessary with the approval of the relevant planning authority. No external lighting other than that approved under this requirement may be installed.

Woodland management plan

31.—(1) No phase is to commence until a detailed woodland management plan for that phase in accordance with the principles set out in the woodland management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The detailed woodland management plan must include details of—

- (a) the maintenance and management of existing woodland habitat; and
- (b) new proposed woodland planting and its maintenance.

(3) The detailed woodland management plan must be reviewed annually during the establishment period and at five yearly intervals thereafter for the lifetime of the development. During the establishment period, newly created shrub, ecotone, understory and hedgerow planting will be subject to an annual assessment.

(4) In sub-paragraph (3) “the establishment period” means a period of five years from the first spring following planting.

(5) The detailed woodland management plan for each phase must be implemented in accordance with the approved plan.

Amendments to approved details

32.—(1) With respect to any requirement which requires the authorised development or any phase to be carried out in accordance with details approved by the relevant planning authority or another person, the authorised development or phase must be carried out in accordance with the details as approved unless an amendment or variation is agreed in writing by the relevant planning authority or that other person in accordance with sub-paragraph (2).

(2) Any amendments to or variation from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or (as the case may be) by that other person that the subject matter of the amendment or variation sought is unlikely to give rise to any materially greater environmental effect from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.

Lorry park management plan

33. The lorry park management plan must be complied with at all times following the first occupation of any warehouse floorspace on the authorised development.

PART 2

PROCEDURE FOR APPROVALS ETC UNDER REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

“appeal documentation” means the application submitted to the discharging authority, any further information submitted under paragraph 3 and any notice of a decision to refuse;

“the appeal parties” means the discharging authority, the undertaker and any requirement consultee(s);

“discharging authority” means the authority from whom a consent, approval or agreement is required or requested by the undertaker under the requirement concerned; and

“requirement consultee” means anybody named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement.

Applications made for certain approvals

2.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated under the requirements in Part 1 of this Schedule the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

(a) where no further information is requested under paragraph 3 (further information), 56 days from the day immediately following that on which the application is received by the discharging authority;

(b) where further information is requested under paragraph 3, 56 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 3; or

- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in paragraph (a) or (b).

Further information

3.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary it must, within 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the discharging authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

Appeals

4.—(1) The undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated under the requirements or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 2 (applications for certain approvals);
- (c) on receipt of a request for further information under paragraph 3 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 2 (applications for certain approvals) in this Schedule;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must within 7 working days provide copies of the appeal documentation to the discharging authority and any requirement consultee;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State is to appoint a person to determine the appeal (“the appointed person”)(a) and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 20 working days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 20 working days of receipt of written representations under paragraph (d).

(a) The appointment is made at the discretion of the Secretary of State, and such appointment may be made by the Planning Inspectorate on behalf of the Secretary of State.

(3) The appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (2)(e).

(4) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(5) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(6) Any further information required under sub-paragraph (5) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 working days of that date.

(7) On an appeal under this paragraph, the appointed person must—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(8) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or time limits set by the appointed person and notified to the appeal parties under this sub-paragraph.

(9) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, or any other time limit set in accordance with sub-paragraph (8).

(10) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(11) If an approval is given by the appointed person under this Part of this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the requirement as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the undertaker^(a).

(13) The appointed person may, following an application by the discharging authority or the undertaker, or in the absence of such application, give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance or guidance which may from time to time replace it.

Fees

5.—(1) Where an application is made to the discharging authority for consent, agreement or approval in respect of a requirement, other than where the parties have agreed otherwise, the fee that would have been payable had the fee been determined under the Town and Country Planning

(a) The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under s78/s79 of the PA2008. See the National Infrastructure Planning website for more information: <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

(Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a), as though the application were a reserved matters application, is to be paid to that authority.

(2) Any fee paid under this Part of this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph (1),

unless within that period the undertaker agrees, in writing, that the fee is to be returned by the discharging authority and credited in respect of a future application.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> Area	<i>(2)</i> <i>Street within the Order limits subject to street works</i>
District of Blaby	M69 B4669 B581 B4114 Burbage Common Road Stanton Lane Church Street Stanton Road Croft Road
Borough of Hinckley & Bosworth	M69 A47 A447 B4668 B4667 The Common
District of Harborough	A5 A4303 B581
Borough of Rugby	B4027 Coal Pit Lane

SCHEDULE 4

Article 11

STREETS TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Stage of the authorised development</i>
District of Blaby	Burbage Common Road	Through the main site along the route shown hatched red on access and rights of way plan (Document 2.3A) and (Document 2.3 B)	Commencement of any of works numbered 1 to 7
	Smithy Lane	At the entrance to the main site along the route shown hatched red on access and rights of way plan (Document 2.3D)	Commencement of any of works numbered 1 to 7

SCHEDULE 5

Article 13

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Substitute to be provided</i>
District of Blaby	U17/2	The dashed green line between point 19 and point 20 on the access and rights of way plan (Document 2.3B)	The footpaths shown dashed and dotted brown between point 19 and point 20 on the access and rights of way plan (Document 2.3B)
	U8/1	The dashed green line between point 21 and point 22 on the access and rights of way plan (Document 2.3C)	The footpath shown dashed and dotted brown between point 21 and point 22 on the access and rights of way plan (Document 2.3C)
	V29/7	The solid green line between point 15 and point 31 on the access and rights of way plan (Document 2.3D)	The bridleway shown with a solid yellow line between point 16 and point 37 and point 14, point 17 and point 18 on the access and rights of way plan (Document 2.3D)
	V29/6	The solid green line between point 16 and point 31 on the access and rights of way plan (Document 2.3D)	The bridleway shown with a solid yellow line between point 16 and point 37 and point 14, point 17 and point 18 on the access and rights of way plan (Document 2.3D)
	U50/1	The dashed green line between point 6 and point 7 in the access and rights of way plan (Document 2.3D)	The bridleway shown with a solid yellow line between point 6 and point 7 on the access and rights of way plan

U52/9	The solid green line between point 2 and point 27 on the access and rights of way plan (Document 2.3A)	(Document 2.3D) The bridleway shown with a solid yellow line between point 1 and point 2 on the access and rights of way plan (Document 2.3A)
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PART 2

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
District of Blaby	V23/1	The dashed green line between point 9 and point 11 on the access and rights of way plan (Document 2.3A)
	U50/3	The dashed green line between point 10 and point 12 on the access and rights of way plan (Document 2.3A)
	U52/6	The dashed green line between point 4 and point 32 on the access and rights of way plan (Document 2.3A and Document 2.3C)
	U52/7	The dashed green line between point 32 and point 3 on the access and rights of way plan (Document 2.3A)
	V35/2	The dashed green line between point 29 and point 32 on the access and rights of way plan (Document 2.3A and 2.3D)
	U50/2	The dashed green line between point 28 and point 29 on the access and rights of way plan (Document 2.3A and Document 2.3D)
	U53/1	The dashed green line between point 30 and point 31 on the access and rights of way plans (Document 2.3A and Document 2.3D)
	T89/1	The dashed green line between point 24 and point 25 and point 26 on the access and rights of way plan (Document 2.3B)

PART 3

NEW PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be created</i>	<i>(3)</i> <i>Extent of new public right of way to be created</i>
District of Blaby	Public bridleway	The bridleway shown with a solid yellow line between point 5 and point 7 on the access and rights of way plan (Document 2.3C (point 5) and Document 2.3D (point 7))
	Public footpath	The footpath shown dashed brown between point 8 and point 10 on the access and rights of way plan (Document 2.3A)

Public footpath	The footpath shown dashed brown between point 33 and point 34 on the access and rights of way plan (Document 2.3D)
Public footpath	The footpath shown dashed brown between point 35 and point 36 on the access and rights of way plan (Document 2.3D)
Public bridleway	The bridleway shown with a solid yellow line between point 7 and point 18 on the access and rights of way plan (Document 2.3D)
Public bridleway	The bridleway shown with a solid yellow line between point 13 and point 37 on the access and rights of way plan (Document 2.3B (point 13) and Document 2.3D (point 37))
Public bridleway	The bridleway shown with a solid yellow line between point 38 and point 39 on the access and rights of way plan (Document 2.3A)
Public footpath	Extension of U17/2 between point 19 and point 20 shown dashed brown on the access and rights of way plan (Document 2.3B)
<u>Public footpath</u>	<u>The bridleway shown with a solid yellow line between point 14 and point 42 on the access and rights of way plan (Document 2.3D)</u>

PART 4

NEW FOOTPATH TO BE CREATED

<u>(1) Area</u>	<u>(2) Public right of way to be created</u>	<u>(3) Extent of new public right of way to be created</u>
<u>District of Blaby</u>	<u>Public footpath</u>	<u>Between the points marked 40 and 41 on the access and rights of way plans (Document 2.3B (point 40) and Document 2.3D (point 41)) and shown indicatively with a dashed blue line on a detailed alignment to be agreed with the relevant highway authority.</u>

SCHEDULE 6

Article 14

PRIVATE MEANS OF ACCESS

PART 1

PRIVATE MEANS OF ACCESS TO BE REPLACED

<i>(1) Area</i>	<i>(2) Private means of Access</i>	<i>(3) Replacement</i>	<i>(4) Stage of the authorised development</i>
Borough of	The private means of	The private means of access	Commencement of

Hinckley and Bosworth	access shown coloured blue and labelled A on the access and rights of way plan (Document 2.3A)	shown hatched blue and labelled B on the access and rights of way plan (Document 2.3A)	Work No. 7
District of Blaby	The private means of access shown coloured blue and labelled Z on the access and rights of way plan (Document 2.3D)	The private means of access shown coloured hatched blue and labelled AA on the access and rights of way plan (Document 2.3D)	Commencement of Work No. 9
	The private means of access shown coloured blue and labelled F on the access and rights of way plan (Document 2.3A)	The private means of access marked E and shown hatched blue on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 7

PART 2

PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Private Means of Access</i>	(3) <i>Stage of the authorised development</i>
District of Blaby	The private means of access shown coloured blue and labelled D on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1
	The private means of access shown coloured blue and labelled G on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1 or Work No. 2
	The private means of access shown coloured blue and labelled H on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1
	The private means of access shown coloured blue and labelled I on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1
	The private means of access shown coloured blue and labelled J on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 1
	The private means of access shown coloured blue and labelled K on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 2
	The private means of access shown coloured blue and labelled L on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 5
	The private means of access shown coloured blue and labelled M on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 5
	The private means of access shown coloured blue and labelled N on the access and right of way plan (Document 2.3A)	Commencement of Work No. 5
	The private means of access shown coloured blue and labelled O on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 5
	The private means of access shown coloured blue and labelled P on the access and rights of	Commencement of Work Nos. 4 or Work No. 5

way plan (Documents 2.3A)	
The private means of access shown coloured blue and labelled Q on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled R on the access and rights of way plan (Document 2.3A)	Commencement of Work No 4. or Work No. 5
The private means of access shown coloured blue and labelled S on the access and rights of way plan (Document 2.3A)	Commencement of Work No 4. or Work No. 5
The private means of access shown coloured blue and labelled T on the access and rights of way plan (Document 2.3A)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled U on the access and rights of way plan (Document 2.3B)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled V on the access and rights of way plan (Document 2.3 B)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled W on the access and rights of way plan (Document 2.3B)	Commencement of Work No. 4 or Work No. 5
The private means of access shown coloured blue and labelled AB on the access and rights of way plan (Document 2.3D)	Commencement of Work No. 5 or Work No. 6

PART 3

NEW PRIVATE MEANS OF ACCESS CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of Access</i>	<i>(3)</i> <i>Stage of the authorised development</i>
District of Blaby	The private means of access marked C and shown hatched blue on the access and rights of way plan (Document 2.3A)	Completion of Work No. 19 in accordance with the phasing details approved pursuant to requirement 3.
	The private means of access marked AC and shown hatched blue on the access and rights of way plan (Document 2.3B)	Completion of Work No. 6 in accordance with the phasing details approved pursuant to requirement 3.
	The private means of access marked X and shown hatched blue on the access and rights of way plan (document 2.3B)	Completion of Work No. 6 in accordance with the phasing details approved pursuant to requirement 3.
	The private means of access shown hatched blue and labelled AD on the access and rights of way plan (Document 2.3D)	Completion of Work Nos. 4 and 7 in accordance with the phasing details approved pursuant to requirement 3.
	The private means of access shown hatched blue and labelled AE on the access and rights of way plan (Document 2.3D)	Completion of Work Nos. 4 and 7 in accordance with the phasing details approved pursuant to requirement 3.
	The private means of access shown hatched blue and labelled AF on the access and rights of	Completion of Work Nos. 4 and 7 in accordance with the phasing

way plan (Document 2.3D)

The private means of access shown hatched blue and labelled AG on the access and rights of way plan (Document 2.3D)

details approved pursuant to requirement 3.

Completion of Work Nos. 4 and 6 in accordance with the phasing details approved pursuant to requirement 3.

SCHEDULE 7

Article 16

CLASSIFICATION OF HIGHWAYS

PART 1

NEW HIGHWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of Highway</i>	<i>(3)</i> <i>Classification</i>	<i>(4)</i> <i>Classes of traffic</i>	<i>(5)</i> <i>Relevant Highway Authority</i>
District of Blaby and Borough of Hinckley and Bosworth	The A47 link road shown with a solid pink line between point 1 and point 2 on the highway classification plans (Documents 2.5A and 2.5B)	Classified	All purpose	Leicestershire County Council
	The A47 link road shown with a solid pink line and following a circular route around point 2 and point 3 and returning to point 2 on the highway classification plans (Document 2.5B)	Classified	All purpose	Leicestershire County Council
	The A47 link road shown with a solid pink line between point 3 and point 4 on the highway classification plans (Document 2.5B)	Classified	All purpose	Leicestershire County Council
	The A47 link road shown with a solid pink line and following a circular route around point 4 and point 5 and returning to point 4 on the highway classification plans (Document 2.5B)	Classified	All purpose	Leicestershire County Council
	The A47 link road shown with a solid pink line between point 5 and point 6 on the highway classification	Classified	All purpose	Leicestershire County Council

plans (Document 2.5B) The A47 link road shown with a solid pink line and following a circular route around point 6 and point 7 and returning to point 6 on the highway classification plans (Document 2.5B)	Classified	All purpose	Leicestershire County Council
The A47 link road shown with a solid pink line between point 7 and point 8 on the highway classification plans (Document 2.5B)	Classified	All Purpose	Leicestershire County Council
M69 junction 2 roundabout shown with a solid pink line between point 10 and point 11 on the highway classification plans (Document 2.5C)	Classified	All purpose	Leicestershire County Council
M69 junction 2 roundabout shown with a solid pink line between point 12 and point 13 on the highway classification plans (Document 2.5C)	Classified	All purpose	Leicestershire County Council
M69 junction 2 shown with a solid blue line between point 9 and point 10 on the highway classification plans (Document 2.5C)	Special Road	Class I and II	National Highways
M69 junction 2 shown with a solid blue line between point 13 and point 14 in the highway classification plans (Document 2.5C)	Special Road	Class I and II	National Highways

SCHEDULE 8

Article 17

SPEED LIMITS

PART 1

EXISTING ORDERS

<i>(1)</i> <i>Statutory</i> <i>Instrument/Order Title</i>	<i>(2)</i> <i>S.I.</i> <i>Number</i>	<i>(3)</i> <i>Changes</i>	<i>(4)</i> <i>Event</i>
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The Leicestershire County Council (B4668 Leicester Road, Hinckley) (Imposition of 30mph, 40mph and 50mph Speed Limits) Order 2008	N/A	In Schedule 3— For, B4668 Leicester Road, Hinckley From a point 7 metres south west of the southern boundary of the property Penryl in a south westerly direction to a point approximately 17 metres east of its junction with the access to Fairways Court for a distance of approximately 950 metres Substitute B4668 Leicester Road, Hinckley From a point 35 metres south west of the roundabout junction between the B4668 and the A47 to M69 link road to a point approximately 17 metres east of its junction with the access to Fairways Court for a distance of approximately 580 metres	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
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PART 2

HIGHWAYS SUBJECT TO 40 MPH SPEED LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Event</i>
B4668	The B4668 as shown by a solid pink line on the speed limit plan between point D and point C (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
B4668	The B4668 as shown with a solid pink line on the speed limit plan and following a circular route around point C and point B and point E and returning to point C (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
B4668	The B4668 as shown by a solid pink line on the speed limit plan between point B and point A (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point E and point F (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point G and point H (Document 2.7A and Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown with a solid pink line on the speed limit plan and following a circular route around point H and point J and point R and returning to point H (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink	The date on which the relevant

	line on the speed limit plan between point J and point K (Document 2.7B)	part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point R and point S (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown with a solid pink line on the speed limit plan and following a circular route around point K and point L and point T and point S and returning to point K (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point L and point M (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point T and point V (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown with a solid pink line on the speed limit plan and following a circular route around point M and point N and point W and point V and returning to point M (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point N and point P (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between point W and point X (Document 2.7B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
Stanton Lane	Stanton Lane as shown by a solid pink line on the speed limit plan between point AD and point AE (Document 2.7C)	The date on which the relevant part of Work No. 11 becomes maintainable by the relevant highway authority pursuant to article 15

PART 3 DERESTRICTED HIGHWAYS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Event</i>
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line on the speed limit plan between point X and point Y (Documents 2.7B and 2.7C)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority

Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line on the speed limit plan between point P and point Q (Document 2.7B)	pursuant to article 15 The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line on the speed limit plan between point Z and point AA (Document 2.7C)	The date on which the relevant part of Work No. 8 becomes maintainable by the relevant highway authority pursuant to article 15
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line on the speed limit plan between point AB and point AC (Document 2.7C)	The date on which the relevant part of Work No. 8 becomes maintainable by the relevant highway authority pursuant to article 15
Roundabout J2 M69 and A47 link road	The A47 link road as shown by a dashed light blue line on the speed limit plan between point F and point G (Document 2.7A)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15

SCHEDULE 9

Article 19

CLEARWAYS AND NO WAITING

PART 1

CLEARWAYS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Event</i>
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 1 and point 2 of the traffic regulation plans (Documents 2.6A and 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 15 and point 16 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 8 and point 9 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 17 and point 18 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 8 becomes maintainable by the relevant highway authority pursuant to article 15
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between point 19 and point 20 of the traffic	The date on which the relevant part of Work No. 8

clearway)	regulation plan (Document 2.6B)	becomes maintainable by the relevant highway authority pursuant to article 15
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PART 2
NO WAITING AT ANY TIME

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Zone</i>	<i>(3)</i> <i>Event</i>
A47 link road (local highway)	The A47 link road as shown with a solid blue line on the traffic regulation plan and following a circular route around point 2 and point 3 and point 10 and returning to point 2 (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 3 and point 4 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 10 and point 11 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line on the traffic regulation plan and following a circular route around point 4 and point 5 and point 12 and point 11 and returning to point 4 (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 5 and point 6 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 12 and point 13 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line on the traffic regulation plan and following a circular route around point 6 and point 7 and point 14 and point 13 and returning to point 6 (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 7 and point 8 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15
A47 link road (local highway)	The A47 link road as shown with a solid blue line between point 14 and point 15 of the traffic regulation plan (Document 2.6B)	The date on which the relevant part of Work No. 7 becomes maintainable by the relevant highway authority pursuant to article 15

SCHEDULE 10

Article 34

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
District of Blaby	44	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	45	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	46	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	47	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	49	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	50	The closure of the Elmesthorpe railway level crossing and the diversion of public footpath T89/1 including access and construction compounds.	Work No. 22
District of Blaby	57	The closure of the Thorney Fields railway level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No. 21
District of Blaby	58	The closure of the Thorney Fields railway level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No. 21
District of Blaby	59	The closure of the Thorney Fields railway level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No. 21
District of Blaby	60	The closure of the Thorney Fields railways level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No.21
District of Blaby	61	The closure of the Thorney Fields railway level crossing and the diversion of public footpath U17/2 including access and construction compounds.	Work No. 21
District of Blaby	77	Improvements to bridleway V29/6	Work No. 8
District of Blaby	101	Construction laydown sites and stock piling areas for topsoil and subsoil material and construction of temporary haul roads including access in connection with the works to junction 2 of the M69 motorway.	Work No. 9
Borough of Hinckley and Bosworth	112	The closure of the Outwoods railway level crossing and the diversion of public footpath U8/1 including the installation of a new footbridge over the Felixstowe to Nuneaton railway line to connect into existing footpath U52/3 including access and construction compounds.	Work No. 20
Borough of Hinckley	113	The closure of the Outwoods railway level crossing and the diversion of public footpath U8/1 including the installation of a new footbridge over the Felixstowe to	Work No. 20

of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 12 to the Hinckley National Rail Freight Interchange Order 202X)(a);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 12 to the Hinckley National Rail Freight Interchange Order 202X) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purposes of exercising that right.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(b) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken” substitute “a right over land is purchased”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable”.

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act, and modified by article 33 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under article 25 (compulsory acquisition of land) applies to the compulsory acquisition of a right by the creation of a new right under article 27 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(3) For section 7 (measure of compensation) of the 1965 Act substitute—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from

(a) S.I. [202X/X]
(b) 1973 c.26

other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 25 (compulsory acquisition of land)), it has the power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on a specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (tenants at will etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act, as modified by article 33(2) (modification of Part 1 of the 1965 Act) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

Article

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as

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- (a) Section 11 was amended by section 34(1) of, and paragraph 14(3) of Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and sections 186, 187 and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c. 22).
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

applied by article 32 (application and modification of the 1981 Act) of the Hinckley Rail Freight Interchange Order 202X in respect of the land to which the notice to treat relates.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to-

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the acquiring authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right;
- (b) the use to be made of the right proposed to be acquired; and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 13

Article 47

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“bridge” means the new bridge to be constructed as part of the A47 link road over the Leicester to Hinckley railway line which, for the purposes of this Part of this Schedule, is to include the superstructure of the new bridge including deck, piers, footings, abutments and wingwalls to be provided as part of Work No. 7 but does not include the highway, approach embankments, road approaches/embankments, footpaths, street lighting and all necessary highway related structures and apparatus (which are to be maintained by the local highway authority);

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging

(a) 1993 c 43. Section 8 was amended by section 216 of, and paragraphs 1 and 4 of Schedule 17 and Part 4 of Schedule 31 to, the Transport Act 2000 (c. 38), paragraphs 1 and 4 of Schedule 2 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 3 of Schedule 1, and Part 1 of Schedule 13, to the Railways Act 2005 (c. 14) and S.I. 2015/1682.

(b) 2006 c. 46.

proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approval of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 6 (maintenance of authorised development) in respect of such works.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent granted by the Order);
- (b) article 6 (maintenance of authorised development);
- (c) article 12 (public rights of way – creation, substitution, stopping up and closure of level crossings);
- (d) article 14 (accesses);
- (e) article 21 (discharge of water);
- (f) article 23 (authority to survey and investigate the land);
- (g) article 25 (compulsory acquisition of land);
- (h) article 27 (compulsory acquisition of rights);
- (i) article 28 (power to override easements and other rights);
- (j) article 30 (private rights);
- (k) article 34 (temporary use of land for carrying out the authorised development);
- (l) article 35 (temporary use of land for maintaining the authorised development);

- (m) article 36 (statutory undertakers);
- (n) article 42 (operation and use of railways);
- (o) article 46 (felling or lopping of trees and removal of hedgerows);
- (p) the powers conferred by section 11(3) (powers of entry) of the 1965 Act;
- (q) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (r) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (s) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(4) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 28 (power to override easements and other rights), or article 33 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(6) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(7) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(8) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on

the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the

reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and

facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 52(1)(c) (arbitration) to the institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 39 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable notice of any such claims or demands;

- (b) must not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstance to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Network Rail and the undertaker agree that, following the construction and completion of the bridge and payment of an appropriate commuted sum to Network Rail, Network Rail will take a transfer of the bridge and maintain the bridge from the date of such transfer.

~~19-20.~~ Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

~~20-21.~~ The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 7 (benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

~~21.22.~~ The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 50 (certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

PART 2

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.

1.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) The undertaker and National Highways and Warwickshire County Council and Leicestershire County Council or their successors in function as highway authorities for their respective road networks may in respect of Work No. 16 in its entirety agree with each other that any one of the highway authorities may assume responsibility for that work pursuant to section 4 or 6 or 8 (as relevant) of the 1980 Act or by agreement.

(3) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

2.—(1) Where the terms used in this Part of this Schedule are defined in article 2 (interpretation) of this Order save where inconsistent with subparagraph (2) below the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information where applicable—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during the construction phase of the project;

- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
 - (k) the health and safety file; and
 - (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highways' Asset Data Management Manual as is in operation at the relevant time including CCTV surveys;
- “the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) index linked;
- “the cash surety” means the sum agreed between the undertaker and National Highways;
- “commuted sum” means such sum calculated as provided for in paragraph 16 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus provided under the Order;
- “condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;
- “contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;
- “defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;
- “detailed design information” means such of the following drawings specifications and calculations as are relevant to the specified works—
- (a) site clearance details;
 - (b) boundary, environmental and mitigation fencing;
 - (c) road restraints systems and supporting road restraint risk appraisal process assessment;
 - (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
 - (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
 - (f) pavement, pavement foundations, kerbs, footways and paved areas;
 - (g) traffic signs and road markings;
 - (h) traffic signal equipment and associated signal phasing and timing detail;
 - (i) road lighting (including columns and brackets);
 - (j) regime of California Bearing Ratio testing;
 - (k) electrical work for road lighting, traffic signs and signals;
 - (l) motorway communications as required by DMRB;
 - (m) highway structures and any required structural approval in principle;
 - (n) landscaping;
 - (o) proposed departures from DMRB standards;
 - (p) walking, cycling and horse riding assessment and review report;
 - (q) stage 1 and stage 2 road safety audits and exceptions agreed;
 - (r) utilities diversions;
 - (s) topographical survey;
 - (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
 - (u) health and safety information including any asbestos survey required by GG105 or any successor document; and

(v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 914;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 710 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works, street works and signalisation, authorised by this Order including any maintenance of that work, as is undertaken in, on under or over the strategic road network for which National Highways is the highway authority, except in those circumstances where the undertaker, National Highways, Warwickshire County Council and Leicestershire County Council have in respect of Work No. 16, agreed that any one of those relevant highway authorities is to assume responsibility for that work as highway authority in which case the relevant Part of Schedule 13 shall apply in respect of that work;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway for which National Highways is the highway authority;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

General

3. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part 2 of Schedule 13 but for the purposes of any approvals required under this Part of Schedule 13 the undertaker shall liaise directly with National Highways.

4. Notwithstanding the limits of deviation permitted pursuant to article 4 (parameters of authorised development) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road unless such works are agreed in writing with National Highways at the reasonable discretion of National Highways.

5. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

6. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

7.—(1) The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
 - (ii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;
 - (iii) the identity and qualification of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding or any successor document; and

- (vi) until a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (d) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
- (e) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (f) the undertaker has agreed the estimate of the commuted sum with National Highways;
- (g) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
- (h) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
- (i) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) National Highways must prior to the commencement of the specified works inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1).

(3) Any approval of National Highways required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been given if neither given nor refused within 42 days of the receipt of the information for approval or, where further particulars are requested by National Highways within 42 days of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways acting reasonably considers necessary.

(4) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(5) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(1) ~~of this Part~~ above.

Construction of the specified works

8.—(1) The undertaker must give National Highways 3 months' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures when booking road space on the strategic road network prior to and during the carrying out of the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works pursuant to the Order including all land in which National Highways has an interest for the purposes of inspection and supervision of the specified works.

(5) If any part of the specified works is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(6) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(7) If within 28 days on which a notice under sub-paragraph (5) or sub-paragraph (6) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(8) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(9) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(10) Until such time that National Highways issues the provisional certificate the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 7(1)(hg) and the undertaker must carry out such maintenance at its own cost.

(11) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 7(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

9.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 7(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the specified works and sub-paragraphs (a) to (d); and
- (f) any value added tax which is payable by National Highways only in respect of such costs and expenses arising under this paragraph and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs notified pursuant to sub-paragraph (2) it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (the excess) and, if the excess is considered by the undertaker to be reasonable and proper, the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess. If the excess is not considered reasonable and proper by the undertaker paragraph 21 (expert determination) shall apply.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).

(6) Within 28 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National Highways, subject to such sum being considered to be reasonable and proper by the undertaker, the undertaker must pay to National Highways the sum shown due to it; and
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

10.—(1) Following the completion of any specified works or prior to reopening any part of the strategic road network following any closure or partial closure, whichever shall be sooner, the undertaker shall notify National Highways who will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 10(3)(b) have been completed to the satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audit as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

11. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date and must not open the strategic road network to the public prior to the expiration of that period.

Final condition survey

12.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 12(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 12(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

13.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issuing of the provisional certificate National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

14.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the strategic road network; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).

(4) When National Highways is satisfied that—

- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
- (b) the NH costs have been paid to National Highways in full,

National Highways must issue the final certificate and upon the issue of the final certificate the bond is released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to the provisions in this paragraph 14.

Security

15. The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; or where agreed by National Highways
- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 9 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule, or a combination of a bond and cash surety together totalling 200%.

Commuted sums

16.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

17. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £50,000,000.00 (fifty million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

18. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

19.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) During any maintenance works, the undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 11 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

20.—(1) Following the issue of the final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives a notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) Where any land or interest is proposed to be acquired by the undertaker for the benefit of National Highways authorised by the Order, the undertaker must, unless otherwise agreed by National Highways, exercise article 25 (compulsory acquisition of land) and article 27 (compulsory acquisition of rights) as applied by articles 32 (application and modification of the 1981 Act) and article 33 (modification of Part 1 of the 1965 Act) of this Order to directly vest in National Highways any such land or interest.

(4) The undertaker agrees not to exercise powers of compulsory acquisition in respect of National Highways' interests only in land parcels 84, 101, 101a, 102, 103 and 104 identified on the land plans.

(5) The undertaker must ensure that any land to which the strategic road network drains and which the undertaker has acquired, either by agreement or through the exercise of compulsory acquisition or temporary possession, continues to receive such highway drainage at all times and must grant to National Highways such rights of access as are reasonably necessary for maintenance of that highway drainage.

(6) National Highways and the undertaker hereby agree to cooperate in the execution of any transfer or deed of grant, licence or easement as may be necessary provided always that the undertaker is not prevented from exercising any powers under Part 5 of this Order, subject to sub-paragraph (5) above.

Expert Determination

21.—(1) Article 52 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 52 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

22. As referred to in paragraph 15—

Form 1

Bond – National Highways

BY THIS BOND [] [(Company Regn No)] whose registered office is situated at [] (“**the undertaker**”) and [] [(Company Regn No)] whose registered office is situated at [] (“**the Surety**”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 202[] in the sum of [] pounds (£[Surety Sum]) to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns.

WHEREAS under a Development Consent Order known as The Hinckley National Rail Freight Interchange Order 202[X] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to National Highways such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 2 of Schedule 13 to the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by National Highways thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by National Highways under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of National Highways shall in any way release the Surety from any liability under this Bond.

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 10 and 14 of Part 2 of Schedule 13 of the DCO.

[Attestation]

PART 3
**FOR THE PROTECTION OF LEICESTERSHIRE COUNTY COUNCIL AS
HIGHWAY AUTHORITY**

Application

1.—(1) The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Leicestershire County Council.

(2) The undertaker and Leicestershire County Council and National Highways and Warwickshire County Council or their successors in function as highway authorities for their respective road networks may in respect of Work No. 16 in its entirety agree with each other that any one of the highway authorities may assume responsibility for that work pursuant to section 4 or 6 or 8 (as relevant) of the 1980 Act or by agreement.

Interpretation

2. In this Part of this Schedule—

“acoustic barrier(s)” means the acoustic barrier(s) to be provided as part of any phase of the highway works;

“as built information” means the following information—

- (a) drawings showing the highway works as constructed;
- (b) list of supplies and materials, test results and CCTV drainage;
- (c) product data sheets, technical specifications for all materials to be used;
- (d) as built information for any utilities discovered or moved during the highway works;
- (e) method statements for highway works to be carried out;
- (f) road lighting, signs and traffic signals;
- (g) organisation and methods manuals for all products used;
- (h) as built programme;
- (i) drawings referred to in paragraphs (a), (k) and (l) in Auto CAD;
- (j) test results and records;
- (k) landscape drawings;
- (l) highway drainage drawings;
- (m) plans identifying land which is highway maintainable at public expense; and
- (n) RSA3 and exceptions agreed;

“bridge” means the new bridge to be constructed as part of the A47 link road over the Leicester to Hinckley railway line which, for the purposes of this Part of this Schedule, is to include the highway approach embankments, road approaches/embankments, footpaths, street lighting and all necessary highway related structures and apparatus but does not include the superstructures of the new bridge including deck, piers, footings, abutments and wingwalls to be provided as part of Work No. 7, and forming part of the highway works ~~for the purpose of this Schedule 13 Part 3;~~

“detailed design information” means the drawings, specifications and other information which must be in accordance with the general arrangements of the highway works shown on the highway plans unless otherwise agreed between the local highway authority and the undertaker which show the following—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian);
- (d) drainage and ducting;

- (e) earthworks;
- (f) road pavements;
- (g) kerbs, footways and paved areas;
- (h) traffic signs, signals and road markings;
- (i) road lighting (including columns and brackets);
- (j) CCTV masts and cantilever masts;
- (k) electrical work for road lighting and traffic signs;
- (l) motorway communications;
- (m) highway structures;
- (n) landscaping;
- (o) utility diversions; and
- (p) identification of any land to be dedicated as highway;

“development inspector” means the officer of the highway authority appointed by it to inspect the highway works on its behalf;

“director” means the director of Environment and Transport of the highway authority or any successor post responsible for the highway authority function of Leicestershire County Council;

“final certificate” means the final certificate issued by the director for each phase of the highway works in accordance with paragraph 5;

“highway authority” means Leicestershire County Council;

“highway plans” means Highway Works Plans 2.4A, 2.4B, 2.4C, 2.4E, 2.4F, 2.4H, 2.4K relating to the highway works;

“highway related structures fees” means the total costs properly and reasonably incurred in undertaking the technical approval, design checking and inspection of any highway related structure;

“highway works” means those parts of the authorised development to be carried out in the areas identified as Work Nos. 7 to 17 (inclusive) on the highway plans the general arrangement of which is shown on the highway plans and any ancillary works thereto, except in those circumstances where the undertaker, National Highways, Warwickshire County Council and Leicestershire County Council have in respect of Work No. 16, agreed that any one of those relevant highway authorities is to assume responsibility for that work as highway authority in which case the relevant Part of Schedule 13 shall apply in respect of that work;

“maintenance period”, in relation to each phase of the highway works, means 12 months from the date of issue of the provisional certificate for that phase;

“phase” means those parts of the highway works to be carried out as separate packages of works in the areas identified as Work Nos. 7 to 17 (inclusive) on the highway plans or such other arrangement as must be agreed in writing by the highway authority in advance of commencement of that package of works;

“provisional certificate” means the provisional certificate of completion issued by the director for each phase of the highway works in accordance with paragraph 4;

“specification” means—

- (a) in relation to design—
 - (i) Leicestershire Highway Design Guide; and
 - (ii) Design Manual for Roads and Bridges;
- (b) in relation to specification—
 - (i) Leicestershire County Council’s Specification for highway works for new developments; and
 - (ii) Leicestershire County Council’s Standard drawings;

- (c) in relation to street lighting—
 - (i) design in accordance with BS5489; and
 - (ii) Leicestershire County Council’s Street Lighting Specification; and
 - (d) in relation to traffic signs—
 - (i) the Traffic Signs Regulations and General Directions 2016 and any modifications of them;
 - (ii) the Traffic Signs Manual (DfT); and
 - (iii) Leicestershire County Council’s Traffic Signs and Road Markings Specification;
- “works fees” means the actual costs of the carrying out of the highway works in relation to—
- (a) considering and approving the detailed design information;
 - (b) the work carried out by the development inspector including travel expenses to and from the highway works and all other expenses properly incurred by the development inspector in connection with his duties;
 - (c) administration in relation to paragraphs (a) and (b) above; and
 - (d) highway related structures fees.

Highway works

- 3.—(1) The undertaker must carry out and complete the highway works in accordance with—
- (a) the detailed design information approved under paragraph 13; and
 - (b) the programme of works approved under paragraph 23 or as subsequently varied by agreement between the undertaker and the highway authority.
- (2) The undertaker must carry out and complete the highway works in accordance with the stipulations, requirements and conditions laid down in this Schedule.
- (3) Before commencement of the highway works and at no expense to the highway authority the undertaker shall obtain such consents, licences or permissions as may be required for the purposes of carrying out the highway works (including all requirements under the Traffic Management Act 2004), save where the need for such consents, licences or permissions is disapplied by this Order, and shall comply with the highway authority’s requirements for booking the necessary time and permits to carry out the highway works and to indemnify and keep the highway authority indemnified from and against all liabilities, costs, claims, actions, demands or expenses which may arise from the undertaker’s failure to obtain or to comply with such consents, licences or permissions.
- (4) The undertaker shall, once having commenced the highway works, proceed with them conscientiously and expeditiously and with all due diligence.
- (5) Subject to the provisions of this Schedule and immediately on the issuing of the provisional certificate for each phase of the highway works the undertaker shall dedicate as public highway (and the highway authority shall forthwith accept) all such land as is within its ownership and is required for the construction of that phase of the highway works which does not already form part of the public highway or is already maintained as if it were a public highway.

Provisional certificate and maintenance period

4. When and so soon as each phase of the highway works (including the bridge) has been completed including such road safety audits as required in accordance with paragraph 28 to the reasonable satisfaction of the director. the director must issue a provisional certificate for each phase of the highway works (including a phase containing the bridge), and the undertaker at its own expense must maintain that phase of the highway works (including a phase containing the bridge) in a good state of repair and to the satisfaction of the director for the duration of the maintenance period and must carry out such routine maintenance as may be necessary or required by the director to facilitate use by the public; and for the avoidance of doubt the undertaker must undertake all other work and maintenance in respect of that work, including but not limited to any

defect or damage until issue of the final certificate in respect of that phase under paragraph 5, and that phase of the highway works (including a phase containing the bridge) becomes highways maintainable at the public expense.

Final certificate

5.—(1) The undertaker must apply to the director for issue of the final certificate in respect of each phase at the expiration of the maintenance period in respect of that phase or on a date (whichever is the later) on which any defect or damage arising during the maintenance period is made good to the reasonable satisfaction of the director or completion of all or any works identified by any road safety audit required in accordance with paragraph 26.

(2) Upon receipt of the as built information in respect of a phase and approval of the same and if the phase includes acoustic barriers the entering into a licence between the highway authority and the undertaker pursuant to article 20 granting access to the undertaker to the highway for the purpose of securing the ongoing maintenance of the acoustic barrier(s) by the undertaker, the director must issue a final certificate in respect of that phase (including a phase containing the bridge) and as from the date of such final certificate the highway works (including the bridge) become highways maintainable at the public expense.

(3) If the undertaker does not apply for a final certificate for a phase within two years of the issue of the provisional certificate in respect of that phase the undertaker must pay to the highway authority a further administration charge of five hundred pounds (£500.00).

(4) From the date of issue of a final certificate in respect of the phase containing the acoustic barrier(s), the undertaker must continue to maintain (at the undertaker's expense) the acoustic barrier(s) for the lifetime of the development in accordance with the terms of the licence to be entered into between the highway authority and the undertaker pursuant to paragraph 5(2).

Indemnity

6. The undertaker must indemnify the highway authority from and against all costs, expenses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design, carrying out and maintenance of the highway works including but without limitation on the scope of this paragraph any claim against the highway authority under the Land Compensation Act 1973(a) or by virtue of the application of the provisions of the Noise Insulation Regulations Act 1975(b), including any liability falling upon the highway authority by virtue of its exercising its discretionary powers under the said Regulations, provided that—

- (a) the foregoing indemnity must not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the highway authority or its officers, servants, agents or contractors or any person or body for whom the highway authority is responsible;
- (b) the highway authority must notify the undertaker straight away upon receipt of any claim;
- (c) the highway authority must not accept any such claim without first having given the undertaker details of such claim and having given the undertaker the opportunity to make representations to the highway authority as to the validity and quantum of such claim;
- (d) the highway authority must, in settling any such claim, give full and due regard to any representations made by the undertaker in respect of the claim;
- (e) the highway authority must, following the acceptance of any claim, notify the quantum of the claim to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the highway authority the amount specified as the quantum of such claim;

(a) 1973 c. 26.

(b) S.I. 1975/1763, amended by S.I. 1988/2000.

- (f) the undertaker must notify the highway authority of the intended date of the opening of each phase of the highway works to public traffic not less than 14 days in advance of the intended date; and
- (g) the undertaker must notify the highway authority of the actual date that each phase of the highway works are open to public traffic on each occasion within 14 days of that occurrence.

Construction (Design and Management) Regulations 2015

7. The undertaker must comply with all aspects of the Construction (Design and Management) Regulations 2015(a) and in particular must ensure that all obligations imposed on the client (as defined in those Regulations) are satisfied and must indemnify the highway authority against all claims, liabilities and actions arising out of a failure to so do.

Security

8. Prior to the commencement of each phase of the highway works the undertaker must secure the cost of it by the deposit with the highway authority of a bond, drafted substantially as detailed in Form 2 contained in paragraph 9, in a sum equal to 100% of all the costs of the carrying out of the phase of the highway works (including any statutory undertakers works) together with any commuted sum payable to the highway authority or such other sum agreed between the undertaker and the highway authority, or must provide some alternative form of security acceptable to the highway authority. Upon issue of the provisional certificate the highway authority shall refund to the undertaker 90% of the deposit remaining, 10% being refunded after the issue of the final certificate.

9. Form 2 as referred to in paragraph 8 of this Part of this Schedule—

Form 2

Bond – Leicestershire County Council

BY THIS BOND WE [the undertaker] whose registered office is situated at [] (hereinafter called “the Undertaker”) and [the Surety] (Company Registration No []) whose registered office is situated at [] (hereinafter called “the Surety”) are held and firmly bound unto **LEICESTERSHIRE COUNTY COUNCIL** (hereinafter called “the Authority”) in the sum of (£[]) (“the Surety Sum”) the payment of which sum the Undertaker and the Surety bind themselves their successors and assigns jointly and severally by the presents

WHEREAS the Developer intends to carry out Phase [] of the highway works referred to in Schedule 13 in the Hinckley National Rail Freight Development Consent Order [] (“the DCO”) **NOW THE CONDITIONS** of the above written bond is such that if the undertaker well and truly performs and fulfils its obligations in Schedule 13 to the DCO or if on failure by the Undertaker so to do the Surety must pay to the Authority the Surety Sum then the above written Bond is null and void but otherwise it must be and remain in full force and the giving by the Authority of any extension of time for the performing of the obligations in Schedule 13 Part 3 to the DCO on behalf of the Undertaker to be performed or fulfilled or any forbearance or forgiveness on the part of the Authority to the Undertaker in respect of any matter referred to in or concerning provisions of Schedule 13 Part 3 to the DCO must not in any way release the Surety from the Surety’s liability under the above written Bond provided that upon the issue of the provisional certificate under Schedule 13 Part 3 to the DCO the liability of the Undertaker

(a) S.I. 2015/51.

and the Surety under this Bond is to be reduced to a sum equivalent to ten per cent of the cost of the phase of the highway works together with the value of the commuted sum of one thousand pounds (£1,000) whichever is the greater and upon the issue of the final certificate in respect of that phase the liability of the Undertaker and the Surety under this Bond must absolutely cease.

[Attestation]

Notices etc.

10. Where under the provisions of this Schedule the highway authority or the director is required to agree, to approve, to express satisfaction with or to give notice of any matter such agreement, approval, satisfaction or notice must not be unreasonably withheld or delayed and is to be deemed to have been given or expressed if not given or refused (along with reasons for such refusal) within 42 working days.

Dispute resolution

11. Regardless of article 52 (arbitration) any dispute under or arising out of the operation of this Schedule may be referred to a single arbitrator if all parties to the dispute agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996(a) or any statutory modification or re-enactment thereof for the time being in force.

Privately and publicly owned apparatus

12. For the avoidance of doubt it is expressly declared that the undertaker in carrying out the highway works must at its own expense divert or protect all or any pipes, wires, cables or equipment belonging to any person having power or consent to undertake street works under the 1991 Act as may be necessary to enable such works to be properly carried out or may be reasonably directed by the director and all alterations to existing services must be carried out to the reasonable satisfaction of the appropriate persons, authorities and statutory undertakers.

Detailed design approval

13.—(1) The undertaker must take the specifications into account in preparing the detailed design information for submission to the highway authority.

(2) No phase of the highway works is to commence until the detailed design information (including traffic signal equipment) has been submitted to and approved by the director.

Workmanship

14. All the highway work is to be carried out to the reasonable satisfaction of the director.

Traffic and safety control

15. In carrying out work in or adjoining the public highway the undertaker must comply in all respects with chapter 8 of the Traffic Signs Manual 2009.

(a) 1996 c. 23.

Site safety

16. The undertaker must in respect of each phase of the highway works keep that phase safe and in a good state of efficiency and repair including the fencing and lighting of all open trenches and must keep all building materials and plant clear of the carriageway and footways.

Approval of persons undertaking the highway works

17. The undertaker must not engage or permit the engagement of any person to carry out the highway works (or any part thereof including their design) unless that person has first been approved in writing by the highway authority as suitable to carry out such works.

Inspection of the highway works

18. The undertaker must permit and must require any contractor or sub-contractor engaged on the highway works to permit at all reasonable times persons authorised by the highway authority whose identity has been previously notified to the undertaker to gain access to the site of the highway works for the purpose of inspection to verify compliance with the provisions of this Schedule in accordance with the highway authority's inspection policy.

Design and inspection payment

19.—(1) The undertaker must pay the works fees to the highway authority within 30 working days following receipt of an invoice issued by the highway authority to the undertaker following the first submission of detailed design information for approval.

(2) The undertaker must provide the following for the development inspector—

- (a) workplace on the site of the highway works including welfare facilities;
- (b) safe route for transportation around the highways works; and
- (c) parking provisions.

Commuted sum

20.—(1) Immediately prior to the issue of the final certificate in respect of any phase, the undertaker must pay to the highway authority any commuted sum payable in respect of that phase calculated as provided for in sub-paragraph (3).

(2) Upon completion of works relating to a public right of way within the Order limits as part of a phase of the authorised development pursuant to requirement 3 (Part 1 of Schedule 2) the undertaker must pay to the highway authority a commuted sum (if necessary) towards the maintenance of such public right of way (including the surfacing of the new footbridge at the Outwoods railway crossing) calculated as provided for in sub-paragraph (3).

(3) The rates to be applied in calculating the commuted sums payable must be based on those contained with the Leicestershire Highway Design Guide (or any replacement of it) or in the absence of relevant rates within that Guide must be agreed between the undertaker and the highway authority at the date of calculation.

Programme of works

21. The undertaker must, prior to the commencement of each phase of the highway works, submit to the director for their approval a programme of works setting out the undertaker's proposed timetables for executing those works and following such approval (which may be given with or without modification) the undertaker must use all reasonable endeavours to ensure that the programme of works is complied with.

Power to execute works in default or emergency

22.—(1) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any phase of the highway works, having been given notice of an alleged breach and opportunity to remedy it by the director, the highway authority must, on giving to the undertaker 14 days' notice in writing to that effect, be entitled to carry out and complete that phase of the highway works and any maintenance works on the undertaker's behalf and the undertaker must within 28 days pay to the highway authority the cost so incurred by the highway authority.

(2) Nothing in this Schedule prevents the highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public, the cost to the highway authority of such work or action being chargeable to and recoverable from the undertaker.

Insurance

23. The undertaker must, prior to commencement of the highway works, effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 for any one claim against any legal liability for damage, loss or injury to any property or any persons as a direct result of the execution and maintenance of the highway works or any part of them by the undertaker.

Notice of commencement of highway works

24. The undertaker must, prior to the commencement of each phase of the highway works, give the highway authority at least five weeks' notice (or such shorter period to be agreed between the undertaker and the highway authority) in writing of the proposed date on which each phase of the highway works will start and such date must be subject to the agreement of the director.

Approval of team undertaking Road Safety Audits

25. The undertaker must not engage or permit the engagement of any audit team unless that audit team has first been approved by the highway authority as suitable to undertake Road Safety Audits in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit (formerly HD19/15) or any replacement or modification of that design manual.

Road Safety Audits

26.—(1) At any time during the detailed design stages the director may require that an interim Road Safety Audit be carried out in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit and be submitted to the director and if so required by the director any recommendations in such interim report must be implemented to the director's satisfaction.

(2) Prior to the approval of the detailed design information for a phase, a Stage 2 Road Safety Audit must be carried out in respect of that phase in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit or any replacement or modification of that design manual and must be submitted to the director and if so required by the director any recommendations made in the Stage 2 report must be implemented to the director's satisfaction.

(3) Prior to the issue of the provisional certificate in respect of a phase, a Stage 3 Road Safety Audit must be carried out for that phase in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit and must be submitted to the director and if so required by the director any recommendations made in the Stage 3 report must be implemented to the director's satisfaction.

(4) A Stage 4 12-month monitoring Report ("the 12-month report") carried out in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit in respect of each phase of the highway works must be submitted to the director no sooner than 8 weeks and no later than 12 weeks following the first anniversary of the opening of that phase for public use and if so required by the director any recommendations made in the 12-month report must be implemented to the director's satisfaction AND the undertaker will secure by the deposit of a bond with the

highway authority a sum equivalent to the director's reasonable estimate of the cost of the potential liability of the developer in respect of works arising from the Stage 4 12-month report prior to the issue of the final certificate.

(5) In the event that the director does not require a 12-month report to be submitted following receipt of the Stage 3 Road Safety Audit then the final certificate shall be issued following the implementation of any recommendations made in that report to the director's satisfaction.

Traffic signal equipment

27. The undertaker must permit the highway authority access at all reasonable times to any part of the site upon which the highway works are being carried out and in which cables, pipes, ducts or other apparatus associated with the traffic signal equipment is to be or are located to enable the highway authority to undertake works reasonably required for the maintenance of the said cables, pipes, ducts or other apparatus including any works which are undertaken to improve the performance of the traffic signals.

Use of sums paid

28. The highway authority must use such sums as are payable in accordance with the terms of this Schedule together with any interest which may accrue only for the purposes for which they are expressed to be paid.

Statutory procedures and orders

29. The undertaker must pay to the highway authority upon demand the total costs properly and reasonably incurred by the highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the highway works and whether or not such procedure or order is or are experimental, temporary or permanent provided that this paragraph does not apply to the making of any orders which duplicate the orders contained in this Order.

Consultation

30. The undertaker shall pay to the highway authority upon demand the total costs properly and reasonably incurred by the highway authority in undertaking any public consultation in respect of the highway works, be the consultation a statutory requirement or any other form of consultation that the highway authority would normally carry out if it were undertaking the highway works.

PART 4

FOR THE PROTECTION OF WARWICKSHIRE COUNTY COUNCIL - AS HIGHWAY AUTHORITY

Application

1.—(1) The provisions of this Part of this Schedule have effect, and apply as follows unless otherwise agreed in writing between the undertaker and the local highway authority.

(2) The undertaker and Warwickshire County Council and National Highways and Leicestershire County Council or their successors in function as highway authorities for their respective road networks may in respect of Work No. 16 in its entirety agree with each other that any one of the highway authorities may assume responsibility for that work pursuant to section 4 or section 6 or section 8 of the 1980 Act (as applicable) or by agreement.

Interpretation

2.—(1) The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which shall prevail.

(2) In this Part of this Schedule—

“as built information” means one digital copy of the following information where applicable to the phase in question—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, test results and CCTV surveys;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) plan of temporary signage indicating new road layouts;
- (h) organisation and methods manuals for all products used in the construction of the county highway works;
- (i) as constructed programme;
- (j) test results and records required by the Detailed Design Information and during the construction phase of the project;
- (k) RSA3 and exceptions agreed; and
- (l) health and safety file;

“the bond sum” means the sum equal to 200% of all the costs of the carrying out of the phase of the county highway works concerned and 200% of the commuted sum relating to that phase or such other sum agreed between the undertaker and the local highway authority;

“commuted sum” means such sum as shall be calculated for each phase as provided for in paragraph 9(2) of this Part of this Schedule and to be used to fund the future cost of maintenance of the county highway works;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the county highway works or any phase of the county highway works and approved by the local highway authority pursuant to paragraph 3(2) below;

“county highway works” means that part of the authorised development to be carried out in the areas identified as Works No. 16 on the works plans the general arrangement of which is shown on the highway plans and any ancillary works thereto within the administrative area of the local highway authority except in those circumstances where the undertaker, National Highways, Warwickshire County Council and Leicestershire County Council have in respect of Work No. 16, agreed that any one of those relevant highway authorities is to assume responsibility for that work as highway authority in which case the relevant Part of Schedule 13 shall apply in respect of that work;

“detailed design information” means drawings, specifications and other information which must be in accordance with the general arrangements of the county highway works shown on the highway plans unless otherwise agreed between the local highway authority and the undertaker—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraints systems (vehicle and pedestrian) and supporting Road Restraint Risk Appraisal Process assessment (RRRAP);
- (d) drainage and ducting;

- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures;
- (l) Stage 2 Road Safety Audit and exceptions;
- (m) landscaping;
- (n) utilities diversions;
- (o) topographical survey;
- (p) identification of any land to be dedicated as highway; and
- (q) pre- construction health and safety information

where relevant to the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed pursuant to paragraphs 5(1) and (5) of this Part of this Schedule;

“the excess” means the amount by which the local highway authority estimates that the costs referred to in paragraph 5(1) will exceed the estimated costs pursuant to paragraph 5(5)(b);

“local highway authority” means Warwickshire County Council or its successor in function as highway authority for the county highway works;

“nominated persons” means the undertakers representatives or the contractors representatives on site during the carrying out of the county highway works as notified to the local highway authority from time to time;

“phase” means that part of the county highway works which is to be carried out in separate phases in the areas identified as separate works numbers on the works plans or such other phasing arrangements as shall be agreed with the local highway authority;

“programme of works” means a document setting out the sequence and timetabling of the phase in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard GG 119 or any successor document;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

Prior approvals and security

3.—(1) No work must commence on any phase of the county highway works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by the local highway authority.

(2) No works must commence on any phase of the county highway works other than by a contractor employed by the undertaker for that phase but first approved by the local highway authority.

(3) No work must commence on any phase of the county highway works until the local highway authority has agreed the bond sum for that phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 8 of this Part of this Schedule or some other form of security acceptable to the local highway authority.

(4) No work must commence on any phase of the county highway works until a Stage 2 Road Safety Audit has been carried out in respect of that phase and all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

(5) No work must commence on any phase of the county highway works until a scheme of traffic management has been submitted by the undertaker and approved by the local highway authority.

(6) For that phase no work must commence on any phase of the county highway works until the local highway authority has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that phase in accordance with the Road Safety Audit Standard.

(7) No works must commence on any phase of the county highway works until the undertaker has agreed the commuted sum for that phase with the local highway authority to be calculated in accordance with paragraph 9(2) of this Part of this Schedule.

(8) No works must commence on any phase of the county highway works until the undertaker has—

- (a) provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the county highway works;
- (b) obtained all necessary consents and approvals;
- (c) provided a completed collateral warranty to the local highway authority in accordance with paragraph 12 of this Part of this Schedule;
- (d) provided a completed construction contract for that phase of the highway works to the local highway authority;
- (e) provided a copy of the certificate of insurance to the local highway authority obtained in accordance with paragraph 10 of this Part of this Schedule.

Carrying out of works

4.—(1) The undertaker must prior to commencement of each phase of the county highway works give the local highway authority 28 days' notice in writing of the date on which that phase will start unless otherwise agreed with the local highway authority.

(2) The undertaker must comply with the local highway authority's road space booking processes for the carrying out of each phase of the county highway works.

(3) Each phase of the county highway works must be carried out to the satisfaction of the local highway authority in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph 3(1) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works), the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the highway plans or a departure from such standards has been approved by the local highway authority;
- (c) such approvals or requirements of the local highway authority that are required by the provisions of paragraph 3 of this Part of this Schedule to be in place prior to the relevant phase of the county highway works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker as client shall ensure that all client duties (as defined in those regulations) are undertaken to the satisfaction of the local highway authority.

(4) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the land upon which the county highway works are being carried out for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the nominated persons with whom the local highway authority should liaise during the carrying out of the county highway works.

(5) Unless otherwise directed by the local highway authority or as provided for in this subparagraph (5), the undertaker shall not cover up or put out of view any county highway works without the approval of the local highway authority. The undertaker shall give at least 5 working days written notice to the local highway authority whenever any of the county highway works are ready or about to be ready for examination. The undertaker shall give the local highway authority full opportunity to examine any works about to be covered up or put out of view and to examine foundations before any permanent work is placed on top. The local highway authority shall arrange to inspect the relevant county highway works following receipt of the written notice, and will do this within a reasonable timescale and without undue delay.

(6) At any time during the carrying out of the county highway works the local highway authority may from time to time order such changes to the county highway works as it considers necessary. Any such changes to the county highway works are hereinafter called “necessary changes” and the undertaker shall ensure that such necessary changes are implemented by the nominated person via the construction contract. The local highway authority may from time to time request such changes to the county highway works as it considers desirable (as opposed to necessary) for the satisfactory completion and functioning of the county highway works in consultation and agreement with the undertaker provided always that the local highway authority’s decision as to whether changes are necessary or desirable shall be final.

(7) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase of the county highway works having been given notice of an alleged breach and an adequate opportunity to remedy it by the local highway authority then the local highway authority shall on giving to the undertaker 14 days’ notice in writing to that effect be entitled to either—

- (a) carry out and complete that phase of the county highway works and any maintenance works which the undertaker would have been responsible for on the undertaker’s behalf; or
- (b) carry out such necessary works of reinstatement of the highways and other land and premises of the local highway authority

and in either case the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(8) If at any time the undertaker in carrying out any phase of the county highway works causes any damage or disruption to the local road network not hereby authorised then the local highway authority is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of the local highway authority then the local highway authority, on giving the undertaker 7 days’ notice in writing to that effect, is entitled to carry out such necessary works deemed appropriate to remedy the damage or disruption, and the undertaker shall within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(9) Nothing in this Part of this Schedule shall prevent the local highway authority from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public the cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the county highway works.

(10) The undertaker in carrying out each phase of the county highway works must at its own expense divert or protect all utilities as may be necessary to enable the county highway works to

be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of the local highway authority.

(11) The undertaker must notify the local highway authority of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify the local highway authority of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

Payments

5.—(1) The undertaker must fund the whole of the cost of the county highway works and all costs incidental to the county highway works and must also pay to the local highway authority in respect of each phase of the county highway works a sum equal to the whole of any costs and expenses which the local highway authority incur including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to the county highway works and arising out of them and their implementation including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of the inspection of that phase; and
- (d) all legal and administrative costs in relation to (a) and (b) and (c) above, together comprising “the estimated costs”.

(2) The undertaker must pay to the local highway authority upon demand and prior to such costs being incurred the total costs that the local highway authority believe will be properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the county highway works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the local highway authority must agree a schedule of the estimated costs to be incurred pursuant to sub-paragraph (1) above in respect of each phase prior to the commencement of that phase.

(4) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed estimated costs to the local highway authority prior to the local highway authority undertaking those tasks in respect of any phase of the county highway works; and
- (b) if at any time or times after the payment in respect of a phase referred to in paragraph ~~(5)~~(4)(a) of this Part of this Schedule has become payable the local highway authority reasonably estimates that the costs in respect of that phase referred to in paragraph (1) above will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to the local highway authority within 28 days of the date of that notice a sum equal to the excess.

(5) Prior to the issue of the final certificate for each phase of the county highway works pursuant to paragraph 7 of this Part of this Schedule the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the party to whom it was due interest at 4% above the Bank of

England base rate for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional certificate and defects and maintenance period

6.—(1) As soon as each phase of the county highway works has been completed and inspected by the county highways authority and—

- (a) a Stage 3 Road Safety Audit for that phase has been carried out;
- (b) any resulting recommendations have been complied with and any exceptions agreed;
- (c) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by the local highway authority upon the issue of the final certificate referred to in paragraph 7 of this Part of this Schedule;
- (d) the undertaker providing confirmation that any additional land which is to be dedicated as highway maintainable at public expense is so dedicated; and
- (e) the as built information has been provided to the local highway authority,

the local highway authority must issue a provisional certificate of completion in respect of that phase of the county highway works within 10 working days of receipt of a written application.

(2) The undertaker must at its own expense remedy any and all defects arising out of defective design materials or workmanship or of any other nature whatsoever in that phase of the county highway works as reasonably required to be remedied by the local highway authority and identified by the local highway authority during a period of 12 months from the date of the provisional certificate in respect of that phase.

(3) The undertaker must submit Stage 4 Road Safety Audits for each phase of the county highway works as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

Final certificate

7.—(1) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of each phase at the expiration of the 12 month period in respect of that phase referred to in paragraph 6(2) of this Part of this Schedule or if later on the date on which any defects or damage arising during that period which are the responsibility of the undertaker under the provisions of paragraph 6 of this Part of this Schedule have been made good to the reasonable satisfaction of the local highway authority.

(2) If the provisions of sub-paragraph (1) are satisfied and all fees due to the local highway authority under paragraph 5 of this Part of this Schedule the local highway authority must issue a final certificate for the phase of the county highway works concerned, such certificate not to be unreasonably withheld or delayed.

Security

8.—(1) Subject to paragraph 3(3) of this Part of this Schedule the undertaker must provide security for the carrying out of the county highway works as follows—

- (a) prior to the commencement of each phase the county highway works within that phase will be secured by a bond from a bondsman first approved by the local highway authority drafted substantially as detailed in Form 3 contained at paragraph 15 of this Part of this Schedule, or such other form that may be agreed between the undertaker and the local highway authority to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase of the county highway works under the provisions of this Part of this Schedule provided that the maximum liability of the bond shall not exceed the bond sum relating to that phase.

(2) Each bond sum shall be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor the local highway authority must in writing authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 50% of those payments provided that an evaluation of the county highway works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors. The local highway authority will only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the county highway works plus an additional 10%;
- (b) within 20 working days of completion of each phase of the county highway works (as evidenced by the issuing of the provisional certificate in respect of that phase pursuant to paragraph 6(1) of this Part of this Schedule) the local highway authority must in writing release the bond provider from its obligations in respect of 50% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date; and
- (c) following 12 months after the issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority must in writing reduce the amount of the bond to a sum representing 25% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date;
- (d) following the expiration of three years from the date of issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority must in writing release the bond provider from all its obligations in respect of the bond relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.

Commuted sums

9.—(1) Within 28 days following the issue of the final certificate in respect of any phase the undertaker must pay to the local highway authority any commuted sums payable in respect of that phase calculated as provided for in sub-paragraph (2).

(2) The rates to be applied in calculating the commuted sums payable must be calculated in accordance with Leicestershire County Council's commuted sum calculator or as otherwise agreed between the undertaker and the relevant local highway authority prior to commencement of work on any phase.

Insurance

10. The undertaker must prior to commencement of the county highway works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) for any one claim against any legal liability for damage loss or injury to any property or any person arising out of or in connection with the execution of the county highway works or any part thereof by the undertaker.

Indemnification

11.—(1) The undertaker must in relation to the carrying out of the county highway works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of

the county highway works including for the avoidance of doubt claims under Part 1 of the Land Compensation Act 1973; provided that—

- (a) the foregoing indemnity shall not extend to any costs expenses liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers servants agents or contractors or any person or body for whom it is responsible;
- (b) the local highway authority must notify the undertaker upon receipt of any claim; and
- (c) the local highway authority must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the local highway authority the amount specified as the quantum of such claim.

Warranties

12. The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant and that any patent or latent damage or defect in the county highway works will be remedied and made good for a period of 12 years from the issue of the final certificate such warranties to be provided to the local highway authority before that phase commences.

Approvals

13.—(1) Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approvals, certificates, consents or agreements shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Schedule; or
- (b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority or within 28 days of the date in sub-paragraph (a),

whichever is the later.

Expert Determination

14.—(1) Article 52 (arbitration) does not apply to this Part 4 of Schedule 13 except in respect of sub-paragraph (5).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission; and

(c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 52 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

15. Form 3 as referred to in paragraph 8 of this Part of this Schedule—

Form 3

Bond – Local Highway Authority

BY THIS BOND [] [(Company Regn No)] whose registered office is situated at [] (“**the undertaker**”) and [] [(Company Regn No)] whose registered office is situated at [] (“**the Surety**”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 202[] in the sum of [] pounds (£[Surety Sum]) to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The Hinckley National Rail Freight Interchange Order 202[X] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the local highway authority such sums as are therein provided **NOW**

THE CONDITIONS of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 4 of Schedule 13 of the DCO on the undertaker's part to be observed and performed according to the true purpose intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by the local highway authority thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the local highway authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the local highway authority shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 8 of Part 4 of Schedule 13 of the DCO.

[Attestation]

PART 5

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

1. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

2.—(1) In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipelines, pipes, pressure governors, ventilators, cathodic protection (including transformed rectifiers and associated groundbeds or cables), cables, marker posts, block valve installations, hydrogen above ground installations or other apparatus belonging to or maintained by, Cadent for the purposes of the transportation and/or storage of gas and/or hydrogen and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus and for the avoidance of doubt includes alternative apparatus once constructed;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Limited (Company Number 10080864) whose registered office is situate at Registered office to be updated Cadent Pilot Way Ansty Coventry CV7 9JU and any successor in title or assign including any successor to their license as a gas transporter under Part 1 of the Gas Act 1986(a);

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

(a) 1986 c. 44.

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes for the purposes of this Schedule the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“rights” includes rights and restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 65(2) or otherwise; and/or
- (b) include any of the activities that are referred to in the Cadent guidance CD/SP/SSW/22 (“Cadent’s policies for safe working in the vicinity of Cadent’s apparatus”).

On Street Apparatus

3.—(1) Except for paragraphs 4 (apparatus of Cadent in stopped up streets), 5 (removal of apparatus) and 6 (facilities and rights for alternative apparatus) (in so far as paragraph 3(2) below applies), 7 (retained apparatus: protection), 8 (expenses) and 9 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 5 and 6 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within adopted public highway.

(3) Notwithstanding article 31 (rights under or over streets) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

Apparatus of Cadent in stopped up streets

4.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 11 (permanent stopping up of streets), if

Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph shall affect any right of the undertaker or Cadent to require removal of the Apparatus under paragraph 5.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 12 (temporary closure of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up street and/or to execute all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 36 (statutory undertakers) of this Order which do not apply to Cadent.

Removal of apparatus

~~5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 or in any other authorised manner,~~ the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, and is in operation and the facilities and rights referred to in sub-paragraph (2) have been provided to the reasonable satisfaction of Cadent in accordance with subparagraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent not less than 56 days advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) in other land or land secured by the undertaker; and
- (b) subsequently for the access and maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, within 56 days of receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it elects (in its absolute discretion) to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of any such facilities and rights as are referred to in

subparagraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

(6) As a condition of an agreement between the parties in sub-paragraph 5(1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the construction, use, access, decommissioning or maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph 6(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 13 of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

7.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (1) applies until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing

its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such requirements as may be made in accordance with sub-paragraphs (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If Cadent in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) (to 3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent guidance CD/SP/SSW/22 "Cadent's policies for safe working in the vicinity of Cadent's apparatus" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional costs) incurred by Cadent as a consequence of Cadent—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under 5(3) if it elects to do so; and/or

- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) or article 37 (apparatus and rights of statutory undertakers in stopped up streets) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Cadent must, in respect of the sums referred to in this paragraph 8 provide such details of the costings (including the formula by which those sums have been calculated if available) as the undertaker may reasonably require.

Indemnity

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works or undertake its supervision properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (transfer of the benefit of certain provisions of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 9; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

10. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to Cadent on the date on which this Order is made.

Co-operation

11.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 5(2) Cadent makes requirements for the protection or alteration of apparatus under paragraph 6, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

12. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expert determination

13.—(1) Article 52 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between Cadent and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of Cadent and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination, the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert’s appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;

- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) Cadent’s service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 52 (arbitration).

Notices

14. The plan and scheme submitted to Cadent by the undertaker pursuant to paragraph 7(1) must be sent to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to toby.feirn@cadentgas.com and sent to the General Counsel Department at Cadent’s registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 6

FOR THE PROTECTION OF SEVERN TRENT WATER LIMITED

1. For the protection of Severn Trent Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Severn Trent Water, have effect.

2. In this Part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Severn Trent for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Severn Trent Water under The Water Industry Act 1991(a);
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(b) of The Water Industry Act 1991 or an agreement to adopt made under section 104(c) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works;

“alternative apparatus” means alternative apparatus adequate to enable Severn Trent to fulfil its statutory functions in no less efficient a manner than previously;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes sections, drawings, specifications and method statements;

“Severn Trent” means Severn Trent Water Limited (company number 02366686) registered at Severn Trent Centre, 2 St John’s Street, Coventry, CV1 2LZ and any successor in function; and

“standard protection strips” means the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25 metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres, 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres.

(a) 1991 c. 56.

(b) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37) and section 56 of, and paragraph 90 of Schedule 7 to the Water Act 2014 (c. 21)..

(c) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37), section 42(3) of the Flood and Water Management Act 2010 (c. 29) and sections 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014 (c. 21).

3. The undertaker shall not interfere with, build over or within 6 metres of any apparatus within the Order Land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with Severn Trent, such agreement not to be unreasonably withheld or delayed.

4. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2010 or other legislations and any other associated consents are obtained, and any approval or agreement required from Severn Trent on alternative outfall locations as a result of such re-location are approved, such approvals from Severn Trent not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Severn Trent has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Severn Trent for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

5. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Severn Trent has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

6. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Severn Trent to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Severn Trent, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Severn Trent such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 52 (arbitration).

7. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Severn Trent to maintain or use the apparatus no less effectively than was possible before such obstruction.

8. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the company, notification of the location of such assets will immediately be given to Severn Trent and afforded the same protection of other Severn Trent assets.

9. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 6 and 8 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Severn Trent, or there is any interruption in any service provided, or in the supply of any goods, by Severn Trent, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by Severn Trent in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Severn Trent for any other expenses, loss, damages, penalty or costs incurred by Severn Trent,

by reason or in consequence of any such damage or interruption.

PART 7

FOR THE PROTECTION OF ELECTRICITY UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means any licence holder within the meaning of Part 1 of the Electricity Act 1989 (excluding National Grid Electricity Distribution (East Midlands) Plc and National Grid Electricity Transmission Plc for whom the protective provisions in Part 9 and Part 10 respectively of this Schedule shall have effect) for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 11 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph ~~65~~ or the power of the undertaker to carry out works under paragraph ~~87~~.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary closure of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this

(a) 1989 c. 29.

Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 52 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any

apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 65(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

10. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 5(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 8

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in Part 1 of Schedule 3 of the Digital Economy Act 2017(b);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide; and

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 of Schedule 3A to the 2003 Act.

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 52 (arbitration).

(5) This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

(a) 2003 c. 21.

(b) 2017 c. 30.

(c) See section 106 of the Communications Act 2003 (c. 21). Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

PART 9
FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION
(EAST MIDLANDS) PLC

Application

1. For the protection of National Grid Electricity Distribution (East Midlands) plc, the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and NGED.

Interpretation

2.—(1) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989)(a) belonging to or maintained by NGED for the purposes of electricity transmission and its distribution;

“diversion” means an alteration to the NGED Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“NGED” means National Grid Electricity Distribution (East Midlands) plc (Company Registration Number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“NGED Network” means NGED’s distribution network operated pursuant to its distribution licence issued pursuant to section 6(b) of the Electricity Act 1989; and

other terms have the meaning given in article 2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by section 108 of, and paragraphs 24 and 38(1) and (3) of Schedule 6 to, the Utilities Act 2000 (c. 27).

(b) Section 6 was amended by section 30 of the Utilities Act 2000, sections 89(3), 136(1) and (2), 145(5), (6) and (7) and 198(2) of, and paragraph 5 of Schedule 19 and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20), section 121(5)(c) of, and paragraph 3 of Schedule 1 to, the Energy Act 2011 (c. 16), S.I. 2011/2704 and S.I. 2012/2400.

No acquisition except by agreement

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of Apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that NGED's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land or gain access to it must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGED written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities, alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED must use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED must consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which must be determined by the undertaker acting reasonably), NGED may but must not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 10 of this Part of this Schedule, and after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus

and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (7), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 10 of this Part of this Schedule; and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or the alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted;
- (c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work, where the removal of the apparatus in question has not been required under paragraph 5, the undertaker must submit to NGED a plan, section and description of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below, the undertaker must not commence any works to which sub-paragraph (1) applies until NGED has given written approval of the submitted plan, and identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted, NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it must be deemed not to have any such requirements and the undertaker must be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED, and NGED must be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with NGED's "Avoidance of Danger from Electricity Overhead Lines and Underground Cables" (2014), the Energy Network Association's "A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines" (undated), the Health and Safety Executive's GS6 "Avoiding Danger from Overhead Power Lines" and the Health and Safety Executive's "HSG47 Avoiding Danger from Underground Services (3rd edition, 2014) as the same may be replaced from time to time.

(6) If NGED, in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement in accordance with sub-paragraph (2), this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 5(2) of this Part of this Schedule.

(7) Nothing in this paragraph 7 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and submit a plan, section and description of those works to NGED as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) with sub-paragraph (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

8.—(1) The undertaker must pay to NGED the reasonable expenses incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus or the construction of any new connection or alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED must reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NGED, or there is any interruption in any service provided, or in the supply of any goods by, NGED, the undertaker is to—

- (a) bear and pay the cost reasonably incurred by NGED in making good such damage or restoring the supply; and
- (b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NGED's liability to the undertaker for negligence or breach of contract, in respect of each diversion, must be limited to the value of that diversion and NGED must not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

10.—(1) Article 52 (arbitration) must apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7), any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination,

the costs and fees of the expert are payable equally by the parties who must each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) NGED's service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 52 (arbitration).

Cooperation

11.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or NGED requires the removal of apparatus under paragraph 5(3) or NGED makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NGED's undertaking and NGED must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGED's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by NGED, it must not be unreasonably withheld or delayed.

PART 10

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

1.—(1) For the protection of NGET as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGET, where the benefit of this Order is transferred or granted to another person under article 8 (transfer of the benefit of certain provisions of the Order)—

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between NGET and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to NGET on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to NGET (but without prejudice to 11(3)(b)).

Interpretation

2. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: “A-“ if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event Such insurance shall be maintained—

- (a) during the construction period of the authorised works; and
- (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation)—
 - (i) a waiver of subrogation and an indemnity to principal clause in favour of NGET;
 - (ii) a pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of NGET to cover the undertaker’s liability to NGET to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGET and where required by NGET, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of NGET to cover the undertaker’s liability to NGET for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGET);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of NGET to enable NGET to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by NGET together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of NGET for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and

interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by NGET (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for NGET’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction NGET receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGET: construct, use, repair, alter, inspect, renew or remove the apparatus;

“NGESO” means as defined in the STC;

“NGET” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1 – 3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by NGET acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, under, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”;

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against NGET arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of NGET’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC;

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (apparatus in stopped up streets), 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of NGET, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGET in stopped up streets

4.—(1) Where any street is stopped up under article 11 (permanent stopping up of streets), if NGET has any apparatus in the street or accessed via that street NGET has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to NGET, or procure the granting to NGET of, legal easements reasonably satisfactory to NGET in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or NGET to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (temporary closure of streets), NGET is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 22 (protective works to buildings and structures), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of NGET otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between NGET and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of NGET or affect the provisions of any enactment or agreement regulating the relations between NGET and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGET and the undertaker acting reasonably and which must be no less favourable on the whole to NGET unless otherwise agreed by NGET, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between NGET and the undertaker the undertaker and NGET agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGET and/or other enactments relied upon by NGET as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by NGET under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGET advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGET reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, NGET may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for NGET to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGET and the undertaker.

(5) NGET must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGET of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the

payment of compensation by the undertaker to NGET as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGET a plan of the works to be executed and seek from NGET details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to NGET under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by NGET's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until NGET has given written approval of the plan so submitted.

(5) Any approval of NGET required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, NGET may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET will be entitled to watch and inspect the execution of those works.

(8) Where NGET requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to NGET's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and NGET shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If NGET in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGET notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with NGET's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

10.—(1) Save where otherwise agreed in writing between NGET and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET within 30 days of receipt of an itemised invoice or claim from NGET all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGET in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by NGET in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET as a consequence of NGET;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to NGET by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to NGET in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NGET any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of NGET, or there is any interruption in any service provided, or in the supply of any goods, by NGET, or NGET becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from NGET the cost reasonably and properly incurred by NGET in making good such damage or restoring the supply; and
- (b) indemnify NGET for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGET, by reason or in consequence of any such damage or interruption or NGET becoming liable to any third party and

including STC Claims or an Incentive Deduction other than arising from any default of NGET.

(2) The fact that any act or thing may have been done by NGET on behalf of the undertaker or in accordance with a plan approved by NGET or in accordance with any requirement of NGET or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless NGET fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of NGET, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by NGET as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (Transfer of the benefit of certain provisions of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) NGET must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NGET must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) NGET must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NGET’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGET’s control and if reasonably requested to do so by the undertaker NGET must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker must not commence construction (and not permit the commencement of such construction) of the authorised works on any land owned by NGET or in respect of which NGET has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGET’s apparatus until the following conditions are satisfied—

- (a) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGET has confirmed the same to the undertaker in writing; and
- (b) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to NGET that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGET has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGET from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGET and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGET in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGET requires the removal of apparatus under paragraph 7(2) or NGET makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of NGET's undertaking and NGET shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGET's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGET to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15.—(1) Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1) and 9 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 52 (arbitration).

Notices

16. Notwithstanding article 51 (service of notices), any plans submitted to NGET by the undertaker pursuant to paragraph 8 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as NGET may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 14

Article 49

MISCELLANEOUS CONTROLS

Public general legislation

Introduction

1. This Schedule applies, modifies and excludes statutory provisions which relate to matters for which provision may be made in this Order.

Highways Act 1980

2.—(1) Section 141 of the 1980 Act(a) (restriction on planting trees etc. in or near carriageway) shall not apply to any tree or shrub planted in the course of the authorised development before completion of construction.

(2) Section 167 of the 1980 Act(b) (powers relating to retaining walls near streets) shall not apply in relation to—

- (a) the erection of a wall in the course of the authorised development before completion of construction; or
- (b) a wall on land on which works are being carried out, or are to be carried out, in pursuance of the authorised development before completion of construction.

New Roads and Street Works Act 1991

3.—(1) The powers conferred by section 56(1) and (1A) of the 1991 Act(c) (powers to give directions as to the timing of proposed and subsisting street works) shall not apply in relation to the authorised development.

(2) Section 56A of the 1991 Act(d) (power to give directions as to placing of apparatus) shall not apply in relation to the placing of apparatus in the course of the authorised development.

(3) No restriction under section 58(1) of the 1991 Act(e) (power to impose restriction on execution of street works in the twelve months following completion of substantial road works) shall have effect in relation to the authorised development.

(4) Section 61(1) of the 1991 Act (under which the consent of the street authority is required for the placing of apparatus in a protected street) shall not apply to the placing of apparatus in the course of the authorised development.

(5) Section 62(2) of the 1991 Act (power following designation of a protected street to require removal or repositioning of apparatus already placed in the street) shall not apply in relation to apparatus placed in the course of the authorised development.

(6) Section 62(4) of the 1991 Act (power when designation as protected street commences or ceases to give directions with respect to works in progress) shall not apply in relation to the authorised development.

(7) Section 63(1) of the 1991 Act (under which Schedule 4 to that Act has effect for requiring the settlement of a plan and section of street works to be executed in a street designated by the street authority as having special engineering difficulties) shall not apply in relation to the authorised development.

(8) The powers conferred by section 73A(1) and 78A(1) of the 1991 Act(f) (requirements for undertaker to re-surface street) may not be exercised in relation to the authorised development.

(9) Sections 74 and 74A of the 1991 Act(g) (charge for occupation of the highway and charge determined by reference to duration of works) shall not apply in relation to the authorised development.

(a) 1980 c. 66. Section 141 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).

(b) 1980 c. 66. Section 167 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48).

(c) 1991 c. 22. Section 56(1) and (1A) were amended by section 43 of the Traffic Management Act 2004 (c. 18).

(d) 1991 c. 22. Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(e) 1991 c. 22. Section 58(1) was amended by section 51(1), (2) of the Traffic Management Act 2004 (c. 18).

(f) 1991 c. 22. Section 73A was inserted by section 55(1) of the Traffic Management Act 2004 (c. 18). Section 78A was inserted by section 57(1) of the Traffic Management Act 2004 (c. 18).

(g) 1991 c. 22. Section 74 was amended by sections 256 and 274 of, and Part 5(2) of Schedule 31 to, the Transport Act 2000 (c. 38), section 40(4) and section 52(5) of the Traffic Management Act 2004 (c. 18), and section 1(6) of, and paragraphs 113 and 119 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). Section 74A was inserted by section 255(1) of the Transport Act 2000 (c. 38) and was amended by section 1(6) of, and paragraphs 113 and 120 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and section 40(4) of the Traffic Management Act 2004 (c. 18).

(10) Schedule 3A to the 1991 Act (restriction on works following substantial street works) shall not apply where a notice under section 54 (advance notice of certain works) or 55 (notice of starting date of works) of that Act(a) is given in respect of the authorised development.

(11) No notice under paragraph 2(1)(d) of that Schedule (power by notice to require notification of works which an undertaker proposes to carry out in a part of a highway to which a proposed restriction applies) shall have effect to require the notification of works proposed to be carried out in the course of the authorised development.

(12) No directions under paragraph 3 of that Schedule (directions as to the date on which undertakers may begin to execute proposed works) may be issued to the undertaker.

(13) Paragraph 3(4) of that Schedule (under which it is an offence for an undertaker to execute street works before the completion of certain other street works) shall not apply in relation to the execution of works in the course of the authorised development.

(14) Paragraph 5(1) of that Schedule (effect of direction under paragraph 4 restricting further works) shall not apply in relation to the execution of works in the course of the authorised development.

Local Government (Miscellaneous Provisions) Act 1976

4. Section 42 of The Local Government (Miscellaneous Provisions) Act 1976(b) (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) shall not apply to the extent that it would make provisions of this Order authorising the authorised development subject to other provisions.

Environment Act 1995

5. 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.

SCHEDULE 15

Article 50

CERTIFICATION OF PLANS AND DOCUMENTS

1. Documents for certification that they are true copies of the documents referred to in this Order—

<i>Document/Plan</i>	<i>Document Number</i>	<i>Document date/Plan number with revision number</i>
A47 link road concept drainage strategy	6.3.14.6	ES Figure 14.6 V3
Access and rights of way plans		
Key Plan	2.3	HRF-BWB-LSI-XX-DR-CH-00170 Rev P02
Sheet 1	2.3A	HRF-BWB-LSI-D1-DR-CH-00170 Rev
Sheet 2	2.3B	P06 P07
Sheet 3	2.3C	HRF-BWB-LSI-D2-DR-CH-00170 Rev
Sheet 4	2.3D	P02 P03
		HRF-BWB-LSI-D3-DR-CH-00170 Rev P04
		HRF-BWB-LSI-D4-DR-CH-00170 Rev
		P04 P05

(a) 1991 c. 22. Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004 (c. 18). Section 54 was amended by section 40(1) and (2) and section 49(1) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18). Section 55 was amended by section 40(1) and (2), section 49(2) and section 51(1) and (9) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(b) 1976 c. 57. Section 42 was amended by section 6(2) of, and the Schedule to, the Ports (Finance) Act 1985 (c. 30), and section 15 of the Food and Environment Protection Act 1985 (c. 48).

Archaeological mitigation strategy	6.2.13.7	November 2022 Revision P01
Biodiversity impact assessment calculations	6.2.12.2C	27 February 2024 Revision 08
Book of reference	4.3D3E	27 February <u>March</u> 2024 Revision 1314
CEMP	17.1B	20 February 2024 V7
Construction traffic management plan	17.6C	February 2024 V5
Design code	13.4C1E	February <u>December</u> 2024 V4V5 Rev CE
Ecological mitigation and management plan	17.5	November 2022 Revision 03
Energy Strategy	6.2.18.1A	November 2023 Revision 03
Environmental statement	6.1 – 6.4 (inclusive)	March 2023 (subject to the substitutions and additions set out below)—

Appendix 3.1 (Rail Operations Report) – 9 January 2024;

Chapter 5 (Relevant legislation and policy) 9 January 2024;

Chapter 7 (Land Use and Socio-Economic Effects) – November 2023;

Appendix 7.1 (Health and Equality Briefing Note) – 9 January 2024;

Appendix 7.2 (Equalities Impact Assessment Statement) – ~~9 February~~ 10 December 2024;

Appendix 8.1 (Transport Assessment Part 1) – October 2023 (Revision 08);

Appendix 8.1 (Transport Assessment Part 9) – September 2023 (Revision 07);

Appendix 8.1 (Transport Assessment Part 12a) – November 2023 (Revision 09);

Appendix 8.1 (Transport Assessment Part 12b) – September 2023 (Revision 07);

Appendix 8.1 (Transport Assessment Part 14) – October 2023 (Revision 06);

Appendix 8.1 (Transport Assessment Parts 17 – 20 Tables 7.1 – 7.4) – September 2023;

~~Addendum~~ Addendums to Chapter 9 (Air Quality) – 11 September 2023 and 10 December 2024;

Appendix 9.2 (National Legislation and Policy) – October 2023 (Revision 06);

Chapter 10 (Noise and Vibration) – 9 January 2024; and Addendum to Chapter 10 (Noise and Vibration) – 10 December 2024;

Chapter 11 (Landscape and Visual Effects) – 9 January 2024;

Appendix 11.1 (Landscape and Visual Baseline Assessment) – 9 January 2024;

Appendix 11.5 – Schedule of Landscape and Visual Construction Effects – ~~9 January~~10 December 2024;

Appendix 11.6 – Schedule of Landscape and Visual Operational Effects – ~~9 January~~10 December 2024;

Chapter 12 (Ecology and Biodiversity) – 9 January 2024;

Appendix 12.1 (Ecology Baseline) – 9 January 2024;

Appendix 12.2 (Biodiversity Impact Assessment Calculations) – 9 January 2024;

Chapter 13 (Cultural Heritage) – 11 September 2023;

Appendix 13.1 (Archaeological Assessment) – 9 January 2024;

Chapter 18 Energy and Climate Change – 9 January 2024;

Appendix 21.1 (Register of Environmental Actions and Commitments) – 9 February 2024;

Chapter 21 (Conclusion) – 9 January 2024;

Figure 3.1 (Illustrative Masterplan) – ~~27 February~~28 October 2024 Rev D;

Figure 9.29 (Operational Phase Road Traffic Emissions – Main Site Annual Mean PM10 Concentrations Future Year) – November 2023 – V2;

Figure 10.10A (Acoustic Barrier Locations) – 10 December 2024;

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Sapcote enhanced s278 works general arrangement plan	2.33	HRF-BWB-HGN-HW18A-DR-CH-0101 Rev P01
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EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Tritax Symmetry (Hinckley) Limited (“the undertaker”) to construct, operate and maintain, the new Hinckley National Rail Freight Interchange together with associated development. The undertaker is authorised by the Order to acquire compulsorily land and rights over land. The Order also authorises the making of alterations to the highway network, stopping up and diversion of public rights of way and the discharge of water.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 50 (certification of plans and documents) of this Order may be inspected free of

charge at the offices of Blaby District Council at Council Offices, Desford Road, Narborough, Leicestershire, LE19 2EP.