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STATUTORY INSTRUMENTS

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**2016 No. 17**

**INFRASTRUCTURE PLANNING**

**The East Midlands Gateway Rail Freight  
Interchange and Highway Order 2016**

*Made* - - - - *12th January 2016*

*Coming into force* - - *2nd February 2016*

An application has been made to the Secretary of State under section 37 of the Planning Act 2008<sup>(1)</sup> (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(2)</sup> 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<sup>(3)</sup> by a 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The Panel, having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section 83 of the 2008 Act has reported to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn and the report of the Panel has decided to make an Order granting development consent for the development described in the application with modifications which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 in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 21, 23, 24, 33, 34, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

**PART 1**

**PRELIMINARY**

**Citation and Commencement**

**1.** This Order may be cited as the East Midlands Gateway Rail Freight Interchange and Highway Order 2016 and comes into force on 2nd February 2016.

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<sup>(1)</sup> 2008 c. 29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

<sup>(2)</sup> 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.

<sup>(3)</sup> S.I. 2010/103, amended by S.I. 2012/635.

## Interpretation

### 2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(4);
- “the 1965 Act” means the Compulsory Purchase Act 1965(5);
- “the 1980 Act” means the Highways Act 1980(6);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(7);
- “the 1988 Act” means the Road Traffic Act 1988(8);
- “the 1990 Act” means the Town and Country Planning Act 1990(9);
- “the 1991 Act” means the New Roads and Street Works Act 1991(10);
- “the 2008 Act” means the Planning Act 2008;
- “the 2009 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(11);
- “abnormal load vehicle” means an abnormal indivisible load vehicle, within the meaning given in paragraph 3 of Schedule 1 (abnormal indivisible load vehicles) to the Road Vehicles (Authorisation of Special Types) (General) Order 2003(12), whose use on roads is authorised by that Order;
- “access and rights of way plans” means the plans 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;
- “airport” means the airport known as East Midlands Airport;
- “airport operator” means East Midlands International Airport Limited or any successor operator of the airport;
- “apparatus” for the purposes of article 10 (highway works) and article 32 (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;
- “authorised activity” means for the purpose of article 26 (power to override easements and other rights)—
- (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;
- “authorised building” means any building erected as part of the authorised development;
- “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;
- “the book of reference” means the document certified by the Secretary of State as the book of reference for the purposes of this Order;

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(4) 1961 c. 33.

(5) 1965 c. 56.

(6) 1980 c. 66.

(7) 1984 c. 27.

(8) 1988 c. 52.

(9) 1990 c. 8.

(10) 1991 c. 22.

(11) S.I.2009/2263, as amended by S.I. 2011/98, 2011/1043, S.I. 2012/635 and S.I. 2012/787.

(12) S.I. 2003/1998.

- “bridleway” has the same meaning as in the 1980 Act;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “bus” has the same meaning as in regulation 22 of the Traffic Signs Regulations and General Directions 2002<sup>(13)</sup>;
- “carriageway” has the same meaning as in the 1980 Act;
- “construction management framework plan” means the document certified by the Secretary of State as the construction management framework plan for the purposes of this Order;
- “construction management strategy for safeguarding the Derwent Valley Aqueduct” means the document certified by the Secretary of State as the construction management strategy for safeguarding the Derwent Valley Aqueduct for the purposes of this Order;
- “cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act<sup>(14)</sup>;
- “the design and access statement” means the document certified by the Secretary of State as the design and access statement for the purposes of this Order;
- “development consent obligation” means the development consent obligation entered into by agreement under section 106 (planning obligations) of the 1990 Act<sup>(15)</sup> dated 19th June 2015 in respect of the authorised development and any subsequent amendment to the obligation;
- “the environmental statement” means the document submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(16)</sup> and certified by the Secretary of State as the environmental statement for the purposes of this Order;
- “footpath” and “footway” have the same meaning as in the 1980 Act;
- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “highway classifications plans” means the plans certified as the highway classifications plans by the Secretary of State for the purposes of this Order;
- “Highways England” means Highways England Company Limited (company number 9346363), 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<sup>(17)</sup>;
- “highway works” means the works comprised in Works Nos. 7, 8, 10, 11, 12 and 13;
- “the highway works components plans” means the document certified by the Secretary of State as the highway works components plans for the purposes of this Order;
- “illustrative rail interchange drawings” means the document certified by the Secretary of State as the illustrative rail interchange drawings for the purposes of this Order ;
- “the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;
- “lead local flood authority” means Leicestershire County Council;
- “local highway authority” means Leicestershire County Council;

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(13) [S.I. 2002/3113](#).

(14) 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).

(15) Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34) and was subsequently amended by section 33 of the Greater London Authority Act 2007 (c. 24) section 174 of the Planning Act 2008 (c.29) and paragraphs 1 and 3 of Schedule 2 to the Growth and Infrastructure Act 2013 (c. 27).

(16) [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](#), [S.I. 2013/522](#) and [S.I. 2013/755](#).

(17) [S.I. 2015/376](#).

“local planning authority” means the North West Leicestershire District Council;

“maintain” includes inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace or improve unless that activity would result in a significant environmental effect not assessed in the environmental statement and any derivative of “maintain” must be construed accordingly;

“main site” means that part of the land within the Order limits comprising the areas of land described on the works plans as Works Nos. 2 to 5;

“management strategy for the safeguarding of the East Midlands Airport” means the document certified by the Secretary of State as the management strategy for the safeguarding of the airport for the purposes of this Order;

“NSIP 1” means the nationally significant infrastructure project comprising a rail freight interchange being part of the authorised development;

“NSIP 2” means the nationally significant infrastructure project comprising the construction of a highway being part of the authorised development;

“NSIP 3” means the nationally significant infrastructure project comprising works of alteration to a highway being part of the authorised development;

“occupation” means occupation of the authorised buildings other than for the purpose of constructing, fitting out, commissioning or site security;

“the 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(18);

“the parameters plans” means the plans certified as the parameters plans by the Secretary of State for the purposes of this Order;

“phase” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the local planning authority under requirement 2 (phases of development);

“public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board or a lead local flood authority or a sewerage undertaker;

“rail served warehousing” means warehousing to which goods can be delivered by rail either directly or by means of another form of transport;

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

“regulation 6(2) plans” means the plans and drawings certified as the regulation 6(2) plans by the Secretary of State for the purposes of this Order;

“relevant body” means in respect of each of the highway works the body referred to in respect of each of those works in column (4) of the table in requirement 5 (design and planning of highway works);

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

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

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(18) 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.

“relocation works” means work executed, or apparatus provided, under paragraph (2) of article 32 (apparatus and rights of statutory undertakers in stopped up streets);

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

“schedule of archaeological works” means the document certified by the Secretary of State as the schedule of archaeological works for the purposes of this Order;

“site waste management framework plan” means the document certified by the Secretary of State as the site waste management framework plan for the purposes of this Order;

“site wide travel plan” means the document certified by the Secretary of State as the site wide travel plan for the purposes of this Order;

“statutory aerodrome safeguarding authority” means the aerodrome licence holder for the airport;

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

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(19);

“speed limit plans” means the document certified by the Secretary of State as the speed limit plans for the purposes of this Order;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, 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;

“sustainable transport working group” means the group of that name constituted under the provisions of the development consent obligation;

“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(20);

“traffic regulation plans” means the document certified by the Secretary of State as the traffic regulation plans for the purposes of this Order;

“the undertaker” means—

- (a) Roxhill Developments Group Limited (company number 07436264), Roxhill Developments Limited (company number 07070462) and Roxhill (Kegworth) Limited (company number 07567544), all registered at Lumonics House, Valley Drive, Swift Valley, Rugby, Warwickshire CV21 1TQ; and
- (b) subject to article 7 (benefit of order) 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;

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

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

“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; and

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(19) 2003 c. 21.

(20) 2004 c. 18.

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(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 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 Schedule 2 (requirements).

(5) All areas described in square metres in the book of reference are approximate.

## PART 2

### PRINCIPAL POWERS

#### **Development consent granted by the Order**

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

(2) Nothing in this Order prevents the carrying out of archaeological investigations (under requirement 13(1)), investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or erection of any temporary means of enclosure and the temporary display of site notices or advertisement immediately upon this Order coming into force.

#### **Parameters of authorised development**

4. The authorised development is to be carried out within the parameters shown and described on the parameters plans and in carrying out the authorised development the undertaker may—

- (a) 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 regulation 6(2) plans to any extent not exceeding 1.5 metres upwards or downwards;
- (c) in respect of the railway works comprised in Works Nos. 1 and 2 deviate vertically from the levels shown on the regulation 6(2) plans to any extent not exceeding 1.5 metres upwards or 2.5 metres downwards; and
- (d) in respect of any boundary between the areas of two numbered works deviate laterally by 20 metres either side of the boundary as shown on the works plans.

#### **Authorisation of use**

5.—(1) Subject to the provisions of this Order including 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 6 inclusive for the purposes of a rail freight terminal and warehousing and any purposes ancillary to those purposes.

(2) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits under planning permission granted under the 1990 Act.

## Maintenance of authorised development

6. 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.

## Benefit of Order

7.—(1) Roxhill Developments Group Limited, Roxhill Developments Limited and Roxhill (Kegworth) Limited have 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.

(2) Roxhill Developments Group Limited, Roxhill Developments Limited and Roxhill (Kegworth) Limited have the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Schedule 19 (for the protection of Highways England) and Schedule 20 (for the protection of Leicestershire County Council as highway authority) unless the Secretary of State consents to the transfer of the benefit of those provisions.

## Application and modification of legislative provisions

8.—(1) Where an application is made to the local planning authority, relevant highway authority, Environment Agency, lead local flood authority or the approving body under Schedule 3 (sustainable drainage) to the Flood and Water Management Act 2010(21) for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 (right of appeal in relation to planning decisions) and 79 (determination of appeals) of the 1990 Act(22); and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application, and any references to “local planning authority” for the purposes of this provision is replaced by “the local planning authority or other authority from whom a consent, agreement or approval is required”.

(3) Regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(23) does not apply to any advertisement erected in the location and in accordance with the parameters shown on the parameters plans as S1 and S2.

(4) Paragraphs (1) to (3) only apply in so far as those provisions are not inconsistent with the 2009 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

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(21) 2010 c. 29. Schedule 3 was amended by sections 21(3) and 88 of the Water Act 2014 (c. 21), S.I. 2012/1659 and S.I. 2013/755. Schedule 3 is to come into force on a date to be appointed.

(22) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34); section 43(2) of the Planning and Compulsory Act 2004 (c. 5); paragraphs 1 and 3 of Schedule 10, and paragraphs 1 and 2 of Schedule 11, to the Planning Act 2008 (c. 29); section 123(1) and (3) of, and paragraphs 1 and 11 of Schedule 12 to, the Localism Act 2011 (c. 20); and paragraphs 1 and 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27). Section 79 was amended by section 18 of, and paragraph 19 of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34); and paragraphs 1 and 4 of Schedule 10 to the Planning Act 2008 (c. 29).

(23) S1 2007/783, amended by S.I. 2007/1739, S.I. 2011/2057, S.I. 2011/3058, S.I. 2012/2372 and S.I. 2013/2114.

## PART 3

### STREETS

#### Power to alter layout, etc., of streets

9.—(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 having a 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 local highway authority but such consent must not be unreasonably withheld.

#### Highway works

10.—(1) The undertaker may for the purposes of the carrying out of the highway works, enter on so much of any of the streets specified in Schedule 3 (streets subject to highway works) as is 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;
- (f) 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;
- (g) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (h) reduce the width of the carriageway of the street;
- (i) make and maintain crossovers and passing places; and
- (j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (i).

(2) The highway works must be carried out in accordance with the relevant provisions of Schedules 19 and 20 (protection of interests).

#### 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 Parts 1 and 2 of Schedule 4 (streets to be permanently stopped up) to the extent specified, by reference to the letters shown on the access and rights of way plan, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—



- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the relevant street authority and is open for use; or
  - (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).
- (3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (streets for which no substitute is to be provided) may be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.
- (4) The condition referred to in paragraph (3) is that—
- (a) the undertaker is in possession of the land;
  - (b) there is no right of access to the land from the street concerned;
  - (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
  - (d) the owners and occupiers of the land have agreed to the stopping up.
- (5) 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 site of the street as is bounded on both sides by land owned by the undertaker.
- (6) 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 dispute, under Part 1 of the 1961 Act.
- (7) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).
- (8) Any stopping up carried out under this article must be carried out in accordance with any relevant provisions of Schedules 19 and 20 (protection of interests).

### **Public rights of way – creation, diversion and stopping up**

- 12.**—(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 and on a detailed alignment to be agreed with the relevant highway authority;
  - (c) temporarily stop up public rights of way to the extent agreed with the relevant highway authority and provide substitute temporary public rights of way between terminus points, on an alignment to be agreed with the relevant highway authority; 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 Parts 1 or 2 of Schedule 5 may be wholly or partly stopped up under this article unless the permanent or temporary diversion routes

agreed by the local highway authority have first been provided by the undertaker, to the reasonable satisfaction of the local highway authority.

(3) Any permanent diversion route provided under paragraph (2), or any temporary diversion route agreed by the local highway authority, must be maintained by the undertaker with appropriate clear signage of the permanently diverted or temporarily diverted route.

(4) Any temporary diversion route must be maintained by the undertaker until the completion and opening of the public rights of way within the Order limits specified in column (4) of Part 1 of Schedule 5.

(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 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.

### **Temporary stopping up of streets**

**13.**—(1) During and for the purposes of carrying out the authorised development, the undertaker may temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Unless approved under the provisions of Schedules 19 or 20 (protection of interests) the undertaker may not temporarily stop up, alter or divert any street without the consent of the relevant street authority which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld.

(4) 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.

(5) Any temporary stopping up of streets under this article must be carried out in accordance with the relevant provisions of Schedules 19 and 20.

### **Accesses**

**14.**—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the agreement of the relevant highway authority or street authority as appropriate (such agreement 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.

(2) The agreement of the relevant highway authority or street authority as appropriate is not required for the formulation, 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 Schedules 19 and 20 (protection of interests).

(3) 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.

(4) 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 without a substitute being provided.

(5) 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).

## **Maintenance of highway works**

**15.** Subject to article 16 (classification of roads), the streets authorised to be constructed, altered or diverted under this Order comprised in Works Nos. 7, 8, 10, 11 and 13 are to be public highways and following the completion of those works are to be maintained by and at the expense of the relevant highway authority referred to in column (5) of Part 1 of Schedule 7 (new and diverted roads) and in accordance with the provisions of Schedules 19 and 20 (protection of interests).

## **Classification of roads**

- 16.**—(1) The new roads described in Part 1 of Schedule 7 (new and diverted roads) 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 roads described in Part 1 of Schedule 7 have been completed and are open for through traffic—
- (a) the body set out in column (5) of Part 1 of Schedule 7 is the highway authority for those roads; and
  - (b) the new roads 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.
- (3) The existing roads described in Part 2 of Schedule 7 (existing roads) are to cease to have the classification and be the responsibility of the relevant highway authority set out in column (3) of Part 2 of Schedule 7 and from the occurrence of the event set out in column (4) are to be—
- (a) classified as set out in column (5) of Part 2 of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such;
  - (b) provided for the use of the classes of traffic defined in Schedule 4 to the 1980 Act as set out in column (6) of Part 2 of Schedule 7; and
  - (c) the responsibility of the relevant highway authority set out in column (7) of Part 2 of Schedule 7,

as if such classification had been made under sections 10(2) and 12(3) of the 1980 Act.

## **Speed limits**

**17.**—(1) Upon the opening of the length of highway specified in columns (1) and (2) of Part 2 of Schedule 8 (roads subject to 30mph speed limit) no person is to drive any motor vehicle at a speed exceeding 30 miles per hour in the lengths of road identified in column (2) of Part 2 of Schedule 8 (roads subject to 30mph speed limit).

(2) Upon the opening of the length of highway specified in columns (1) and (2) of Part 3 of Schedule 8 (roads subject to 50mph speed limit) no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of road identified in column (2) of Part 3 of Schedule 8 (roads subject to 50mph speed limit).

(3) The orders referred to in columns (1) and (2) of Part 1 of Schedule 8 (existing orders) are revoked or varied as set out in column (3) of Part 1 of Schedule 8 upon the event listed in column (4) occurring.

(4) 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.

(5) 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<sup>(24)</sup> when used in accordance with regulation 3(5) of those Regulations.

### **Amendments to traffic regulation orders**

**18.** The orders referred to in columns (1) and (2) of Schedule 9 (amendments to existing orders) are revoked or amended as set out in column (3) of Schedule 9 upon the event listed in column (4) of Schedule 9 occurring.

### **Clearways and no waiting**

**19.**—(1) Subject to paragraphs (4) and (5), following the event specified in column (4) of Part 1 of Schedule 10 (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 Part 1 of Schedule 10, other than a lay-by.

(2) Subject to paragraphs (4) and (6) following the event specified in column (4) of Part 1 of Schedule 10 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 verge adjacent to any part of a carriageway specified in columns (1) and (2) of Part 1 of Schedule 10 where such prohibition is indicated as applying in column (3) of Part 1 of Schedule 10.

(3) Subject to paragraph (4) following the event specified in column (3) of Part 2 of Schedule 10 (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 on any day, on the sides of the carriageway specified in columns (1) and (2) of Part 2 of Schedule 10 or its adjacent verge at any time.

(4) Nothing in paragraphs (1), (2) or (3) 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 telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984<sup>(25)</sup>; 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, Highways England, a safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;

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<sup>(24)</sup> S.I. 2011/935.

<sup>(25)</sup> 1984 c. 12.

- (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991<sup>(26)</sup>; or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000<sup>(27)</sup>; 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.
- (5) 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.
- (6) 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 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; or
  - (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.
- (7) Paragraphs (1) to (6) 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.

### **Motor vehicle restrictions**

**20.**—(1) 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 proceed along any part of a road specified in Part 1 of Schedule 11 (motor vehicle access only restrictions) except for the purpose of access.

(2) 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 proceed along the parts of road specified in columns (1) and (2) of Part 2 of Schedule 11 (one way streets) in a direction other than that specified in relation to that road in column (3) of Part 2 of Schedule 11 (one way streets).

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<sup>(26)</sup> 1991 c. 56.  
<sup>(27)</sup> 2000 c. 26.

(3) Subject to paragraph (4) no person is to cause or permit any vehicle to enter the lay-by situated in the location described in column (1) of Part 3 of Schedule 11 (prohibition of entry to abnormal loads lay-by) at the point of entry described in column (2) of Part 3 of Schedule 11.

(4) Nothing in paragraph (3) above applies—

- (a) to an abnormal load vehicle;
- (b) in relation to a vehicle being used;
  - (i) to escort an abnormal load;
  - (ii) for the maintenance, improvement or reconstruction of the layby;
  - (iii) for the laying, erection, alteration or repair in or near the layby of any sewer or of any main pipe or apparatus for the supply of gas, water or electricity or of any telecommunications apparatus as defined in Schedule 2 of the Telecommunications Act 1984 on or near the layby referred to in column (2) of Part 3 of Schedule 11;
  - (iv) for police, ambulance or fire brigade purposes; or
  - (v) in the service of a local authority or of a water authority in pursuance of statutory powers or duties.

(5) Subject to paragraph (6) no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit the length of road identified in Part 4 of Schedule 11 (buses and cyclists only) to be used by any vehicles other than a bus or cycle except for the purpose of access.

(6) Nothing in paragraph (5) applies to a vehicle being used—

- (a) to allow people to board or alight;
- (b) in connection with—
  - (i) building, industrial or demolition operations;
  - (ii) the removal of any obstruction to traffic;
  - (iii) the maintenance, improvement or reconstruction of the road including the verge; or
  - (iv) the laying, erection, alteration or repair on, or in land adjacent to the road or verge of any sewer or of any main, pipe or apparatus for the supply of gas, water or electricity or of any telegraphic line as defined in the Telecommunications Act 1984;
- (c) in the service of a local authority, Highways England, or a statutory undertaker in pursuance of statutory powers or duties;
- (d) for the purpose of delivering or collecting postal packets as defined in the Postal Services Act 2000 by any universal service provider; or
- (e) for fire brigade, ambulance or police purposes.

(7) Paragraphs (1) to (6) 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**

**21.**—(1) A relevant highway authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new highway, including any structure carrying the highway over or under a 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 the structure of any bridge carrying a highway over or under a railway;
  - (d) the maintenance of landscaping within a highway constructed as part of the highway works;
  - (e) any stopping up, alteration or diversion of a highway as part of or to facilitate the authorised development; or
  - (f) the carrying out in the highway of any of the works referred to in article 10 (highway works).
- (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

**22.**—(1) 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(**28**) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, 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) 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.

(5) The undertaker must not, in carrying out or maintaining works under the powers conferred by this article damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) 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.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(**29**).

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(28) 1991 c.56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and, sections 36(2) and 99 of the Water Act 2003 (c. 37) (subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(29) S.I. 2010/675.

(8) References to expressions in this article, excluding watercourse, which are used both in this article and in the Water Resources Act 1991(30) have the same meaning as in that Act.

### **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 14 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).

## **PART 5**

### **POWERS OF ACQUISITION**

#### **Guarantees in respect of payment of compensation**

**24.**—(1) The undertaker must not begin to exercise the powers in articles 24 to 32 in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land approved by the local planning authority; or



(b) an alternative form of security for that purpose which has been approved by the local planning authority.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor 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.

(3) The guarantee or alternative form of security is to be in place for a maximum of 20 years from the date on which the relevant power is exercised.

### **Compulsory acquisition of land and rights**

**25.**—(1) The undertaker may acquire compulsorily the land and existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

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

(a) as from the date of the acquisition of the right 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<sup>(31)</sup> in pursuance of the right,

whichever is the earlier.

(3) The power to extinguish rights in paragraph (2) does not extend to the plots on the land plans referred to in Schedule 13 (land to which powers to extinguish rights do not apply).

(4) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as substituted by paragraph (5) of Schedule 14 (modifications of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 14 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article.

(6) Subject to section 8 of the 1965 Act, as substituted by paragraph (5) of Schedule 14, where the undertaker creates a new right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

### **Power to override easements and other rights**

**26.**—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) 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.

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<sup>(31)</sup> Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1).

(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, or a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

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

(8) 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.

(9) In this article—

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the Communications Act 2003<sup>(32)</sup>;

“electronic communications code network” means—

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

“operator” means the operator of an electronic communications code network.

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(32) 2003 c. 21. See section 106.

### **Compulsory acquisition of land – incorporation of the mineral code**

27. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981<sup>(33)</sup> (minerals) are incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

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

28.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(34)</sup> as applied by article 29 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 31 (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 this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period, subject always to the limitation in article 31(3) (temporary use of land for carrying out the authorised development).

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

29.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order was a compulsory purchase order.

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

(3) In section 3 (preliminary notices) for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is –

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration) —

- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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<sup>(33)</sup> 1981 c. 67.

<sup>(34)</sup> 1981 c. 66.

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 (application of compulsory acquisition provision) of the 2008 Act to the compulsory acquisition of land and rights under this Order.

### **Rights under or over streets**

**30.**—(1) The undertaker may with the agreement of the relevant street authority enter on 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 appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is 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 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.

### **Temporary use of land for carrying out the authorised development**

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

- (a) enter into and take temporary possession of the land specified in columns (1) and (2) of Schedule 12 (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;
- (b) remove any buildings and vegetation from that land; and
- (c) construct and use temporary works (including the provision of means of access) and buildings on that land.

(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 may not, without the agreement of the owners of the land, remain in possession of any land under this article 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 12.

(4) 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; but the undertaker is not required to replace a building removed under this article.

(5) 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.

(6) Any dispute to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(7) 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 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 (5).

(8) For the avoidance of doubt unless provided for in the book of reference and article 25 (compulsory acquisition of land and rights) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).

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

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

### **Apparatus and rights of statutory undertakers in stopped up streets**

**32.**—(1) Where a street is stopped up under article 11 (stopping up of streets) any statutory utility 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 utility 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 utility 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 utility an amount equal to the cost reasonably incurred by the statutory utility 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
- (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 laid at the same depth as the existing apparatus, then the amount payable to the statutory utility 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 utility 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 utility 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 utility in such proportions as may be prescribed by any such regulations.

## PART 6

### MISCELLANEOUS AND GENERAL

#### **Operation and use of railways**

**33.**—(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) 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<sup>(35)</sup>.

#### **Operational land for the purposes of the 1990 Act**

**34.** Development consent granted by this Order within that part of the Order limits upon which the highway works are to be carried out 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 operational land for the purposes of that Act).

#### **Charges**

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

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<sup>(35)</sup> 1993 c. 43. This Act has been amended by the Transport Act 2000 (c. 38), the Railways and Transport Safety Act 2003 (c. 20) and the Railways Act 2005 (c. 14). There are other amendments to this Act which are not relevant to this Order.

### **Defence to proceedings in respect of statutory nuisance**

**36.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(36)</sup> (summary proceedings by persons aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2)<sup>(37)</sup> 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<sup>(38)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(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**

**37.**—(1) Subject to sub-paragraph (4) the undertaker may fell or lop any tree, shrub or hedgerow near 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 for 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 this article do not apply without the agreement of the local planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved under requirement 8 (provision of landscaping and ecological mitigation).

(5) The provisions of this article do not apply without the agreement of the relevant highway authority to any tree within a highway.

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<sup>(36)</sup> 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

<sup>(37)</sup> Subsection 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection but none are relevant to this Order.

<sup>(38)</sup> 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 section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

### **Protection of interests**

**38.** Schedules 15 to 21 to this Order have effect.

### **Certification of plans etc.**

**39.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access and rights of way plans (Document 2.3A-F);
- (b) the book of reference (Document 4.3C);
- (c) the construction management framework plan (Document 6.10);
- (d) the construction management strategy for safeguarding the Derwent Valley Aqueduct (Document 6.14);
- (e) the design and access statement (Document 6.9);
- (f) drawing of Quarry Exit at J24 (NTH/209/SK137 P2) (Document 6.26);
- (g) the environmental statement (Document 5.2);
- (h) the highway classifications plans (Document 2.5A and B);
- (i) the highways works components plans (Document 2.13a-c);
- (j) the illustrative rail interchange drawings (Document 2.12A-B);
- (k) the land plans (Document 2.1A-F);
- (l) the management strategy for the safeguarding of East Midlands Airport (Document 6.12);
- (m) the parameters plans (Document 2.10);
- (n) the regulation 6(2) plans (Document 2.4A-N);
- (o) the schedule of archaeological works (Document 6.24);
- (p) site waste management framework plan (Document 6.11);
- (q) the speed limit plans (Document 2.7A and B);
- (r) site wide travel plan (Document 6.25);
- (s) the traffic regulation plans (Document 2.6A-D); and
- (t) the works plans (Document 2.2A-F),

for certification that they are true copies of the 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.

### **Service of notices**

**40.**—(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<sup>(39)</sup> 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) 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).

(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**

**41.** Any difference under any provision of this Order, unless otherwise provided for, 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) to the Lands Chamber of the Upper Tribunal.

## **Governance of requirements and protection of interests relating to highway works**

**42.—**(1) When in any requirement or in Schedule 19 (for the protection of Highways England) or Schedule 20 (for the protection of Leicestershire County Council as highway authority) approval or agreement is required of, or with, any body in relation to the content, carrying out or use of the authorised works (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 give rise to development outside the parameters of the authorised development referred to in article 4 (parameters of authorised development).

(2) When any details, plans or other matters have been agreed or approved by the local planning authority under a requirement or the relevant highway authority under a requirement or Schedule 19 or Schedule 20 then they may subsequently be amended by agreement with the local 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 scope of the authorised development or development which would give rise to any significant adverse environmental effects that have not been assessed in the environmental statement (Document 5.2) or any updated environmental information supplied under the 2009 EIA Regulations.

(3) Unless otherwise stated in a requirement the requirement is enforceable by the local planning authority.

Signed by the authority of the Secretary of State for Transport

*Martin Woods*  
Head of the Transport and Works Act Orders  
Unit  
Department for Transport

12th January 2016

## SCHEDULES

### SCHEDULE 1

Articles 2(1) and 3

#### AUTHORISED DEVELOPMENT

#### PART 1

#### NSIP 1: THE CONSTRUCTION OF A RAIL FREIGHT INTERCHANGE In the County of Leicestershire and the District of North West Leicestershire

##### **Works No. 1**

Within the area of land described on the works plans as Works No. 1—

The construction of a new railway line from the rail freight terminal (Works No. 2) to connect with the existing Castle Donington branch freight only railway line to the north of Lockington, the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4D), including—

- (a) construction of a new railway track and associated rail infrastructure;
- (b) formation of new railway embankments and all necessary earthworks;
- (c) the construction of a railway overbridge to cross Main Street, Lockington and all necessary superstructures and substructures including footings, abutments and wingwalls;
- (d) new arrival and departure rail tracks adjacent to the existing railway;
- (e) the alteration of the existing railway infrastructure including points and signals; and
- (f) diversion of public footpath L83 as shown on the access and rights of way plans (Document 2.3A).

##### **Works No. 2**

Within the area of land described on the works plans as Works No. 2—

The construction of a rail freight terminal and rail tracks to connect with the rail tracks described in Works No. 1, the general arrangement of which is shown on the Illustrative Rail Interchange Drawings (Document 2.12A), including—

- (a) the construction of an intermodal rail freight loading and unloading terminal including but not exclusively—
  - (i) rail sidings to load and unload freight;
  - (ii) freight storage areas; and
  - (iii) gantry cranes and reach stackers;
- (b) earthworks to achieve a terminal plateau;
- (c) rail tracks and associated rail infrastructure;
- (d) security fencing;
- (e) cripple sidings, rail freight terminal refuelling and maintenance areas;

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- (f) terminal entry and exit barriers, loading lanes, internal roads, gatehouses and parking areas;
- (g) rail freight terminal administrative building including staff and visitor welfare facilities;
- (h) storage and workshop buildings; and
- (i) fuelling facility.

### **Works No. 3**

Within the area of land described on the works plans as Works No. 3—

(1) The construction of rail served warehousing (including ancillary offices) and buildings within the area annotated as Zones A1 to A6 on the parameters plans (Document 2.10), including—

- (a) construction of development plateaus;
- (b) earthworks to provide development plateaus;
- (c) warehouses and ancillary buildings in accordance with the parameters specified on the parameters plans (Document 2.10);
- (d) service yards and vehicle parking;
- (e) vehicle and pedestrian access routes;
- (f) solar energy provision;
- (g) vehicle maintenance units;
- (h) container storage; and
- (i) ancillary buildings.

(2) The demolition of existing farmhouse and associated outbuildings.

### **Works No. 4**

Within the area of land described on the works plans as Works No. 4—

The construction of an intermodal plateau on the area annotated as Zone B on the parameters plans (Document 2.10), including—

- (a) earthworks to provide a plateau;
- (b) open-air hard paved storage area;
- (c) the construction of a vehicular access; and
- (d) ancillary buildings including staff welfare facilities.

### **Works No. 5**

Within the area of land described on the works plans as Works No. 5—

(1) The construction of on site infrastructure including—

- (a) principal on site private access roads;
- (b) roundabout junctions;
- (c) access to the site from the A453 connecting to Works No. 8;
- (d) footways; and
- (e) permissive cycle tracks.

(2) The construction of a bus interchange including—

- (a) bus stops and bus stands;

- (b) bus interchange buildings; and
  - (c) ancillary infrastructure to serve the bus interchange.
- (3) Advertisements located within the areas indicated and in accordance with the parameters and locations shown (as S1 and S2) on the parameters plans (Document 2.10B).

#### **Works No. 6**

Within the area of land described on the works plans as Works No. 6—

- (1) The provision of landscaping including—
  - (a) soft landscaping surrounding the development comprising Works No. 1 (part), 2, 3 and 4;
  - (b) earthworks (including retaining structures) to create screening bunds;
  - (c) basins for surface water attenuation (including flood alleviation related drainage infrastructure);
  - (d) physical works for the provision of new and diverted footpaths, bridleways, and permissive cycle tracks;
  - (e) boundary treatments (including fencing);
  - (f) habitat creation; and
  - (g) retention of existing woodland.
- (2) Alterations to emergency accesses to the airport.
- (3) Advertisements located within the areas indicated and in accordance with the parameters and locations shown (as S1 and S2), on the parameters plans (Document 2.10B).

## **PART 2**

### **NSIP 2: THE CONSTRUCTION OF A NEW HIGHWAY**

#### **In the County of Leicestershire and the District of North West Leicestershire**

#### **Works No. 7**

Within the area of land described on the works plans as Works No. 7—

- (1) The provision of the A50 (eastbound) to M1 (southbound) and Junction 24 interchange works, the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4A), including—
  - (a) construction of new A50 to M1 southbound/Junction 24 interchange link roads (part);
  - (b) a new private access and haul route from the existing quarry to Junction 24 and an adjacent cycle track;
  - (c) construction of new bridges and retaining walls; and
  - (d) construction of surface water attenuation basins.
- (2) The alteration of Warren Lane north of the A50 referred to in paragraph (1).
- (3) The siting of a stock piling area for topsoil and subsoil material.
- (4) The construction of temporary haul roads.

## PART 3

### NSIP 3: THE ALTERATION OF EXISTING HIGHWAYS

#### In the County of Leicestershire and the District of North West Leicestershire

##### Works No. 8

Within the area of land described on the works plans as Works No. 8—

(1) The carrying out of the M1 Junction 24A, A50, Warren Lane bridge works, the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4A), including:

- (a) removal of the existing roundabout on the A50;
- (b) site clearance and excavation works;
- (c) new highway to connect the existing highway A50 with—
  - (i) the new highway described in Works No. 7; and
  - (ii) the existing M1 southbound diverging at Junction 24A as described in Works No. 13(2); and
- (d) realignment of existing kerblines over the existing M1 Warren Lane overbridge.

(2) The carrying out of works to the existing A50, the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4A), including—

- (a) removal of existing junctions and access on the A50 north / west bound carriageway, between the A50 and Church Street, Main Street, Hilton Hotel and private farm access;
- (b) alterations to the existing A50 east / southbound carriageway to form a two lane single carriageway local access road;
- (c) demolition of the existing A50 east / southbound bridge over the former Main Street / Rookery Lane carriageway;
- (d) demolition of former BT repeater station;
- (e) demolition of existing bridge taking the former Main Street / Rookery Lane carriageway north of Lockington over a tributary of the Lockington Brook;
- (f) demolition of a culvert where Main Street north of Lockington crosses a tributary of the Lockington Brook;
- (g) alterations to the access to the Hilton Hotel;
- (h) removal of abnormal load bay;
- (i) removal of the footway on the west side of the A50 between Church Street and Main Street; and
- (j) general improvements to the existing footway and cycle track on the east side of the A50 between M1 Junction 24 and Main Street / Rookery Lane.

(3) The carrying out of works to the existing A453, the general arrangement of which is shown on the regulation 6(2) plan (Documents 2.4A and 2.4B), including—

- (a) alterations to Junction 24 of the M1 motorway including the provision of a segregated left turn lane from the A453 northbound to A50 north / westbound;
- (b) widening and signalisation of the A453 south / westbound approach to Junction 24; and
- (c) alterations to the layout of the circulatory carriageway at Junction 24 of the M1 motorway.

(4) Works to the existing A453 / Ashby Road junction to create a signalised roundabout providing access to the main site and the proposed A6 Kegworth Bypass (Works No. 11) the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4B) including the removal of

the existing carriageway and construction of new carriageway and the stopping up of public footpath L45 as shown on the access and rights of way plan (Document 2.3E).

(5) Provision of access to the existing pylon and other utility assets as shown indicatively on regulation 6(2) plan (Document 2.4A).

## PART 4

### ASSOCIATED DEVELOPMENT

**Associated development within the meaning of section 115(2) (development for which consent may be granted) of the 2008 Act comprising—**

**In the County of Leicestershire and the District of North West Leicestershire**

#### **Works No. 9**

Within the area of land described on the works plans as Works No. 9—

The provision of landscaping including—

- (a) soft landscaping surrounding the development comprising part of Works No. 8 and 13;
- (b) earthworks including creation of screening bunds;
- (c) basins for surface water attenuation;
- (d) boundary treatments (including fencing); and
- (e) habitat creation.

#### **Works No. 10**

Within the area of land described on the works plans as Works No. 10—

(1) Alterations to Diseworth Lane the general arrangement of which is shown on regulation 6(2) plan (Document 2.4A).

(2) Alterations to Church Street the general arrangement of which is shown on regulation 6(2) plan (Document 2.4A) including the construction of a vehicle turning head.

(3) The carrying out of the Main Street realignment works underneath and to the south of the new railway line (Works No. 1) the general arrangement of which is shown on regulation 6(2) plan (Document 2.4A) including—

- (a) lowering of the existing former Main Street / Rookery Lane carriageway to provide a local highway to provide access to Lockington; and
- (b) the construction of footways and cycle track.

(4) The construction of a diversion to public footpath L73 as shown on the access and rights of way plans (Document 2.3A) to join the proposed footway / cycle track link to be constructed within Works No. 7.

#### **Works No. 11**

Within the area of land described on the works plans as Works No. 11—

(1) The construction of a new highway linking the A453 to the A6, bypassing the village of Kegworth, (to be known as the Kegworth Bypass), the general arrangement of which is shown on regulation 6(2) plan (Document 2.4C), including—

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- (a) the provision of a new roundabout on the existing A6 highway;
  - (b) new junction to connect with Whatton Road;
  - (c) drainage swales;
  - (d) a new bridge over the M1 motorway;
  - (e) a cattle creep;
  - (f) the alteration and diversion of existing public footpaths L45A, L54 and L64 as shown the access and rights of way plans (Document 2.3E and 2.3F); and
  - (g) the construction of a shared use footway and cycle track.
- (2) Realignment of Whatton Road to the north and south of the Kegworth Bypass.
- (3) The carrying out of the Kegworth Bypass (west) highway drainage works, the general arrangement of which is shown on regulation 6(2) plan (Document 2.4C), including—
- (a) construction of highway drainage conveyance systems connecting the western part of Kegworth Bypass (Works No. 11(1)) to a watercourse immediately south of Kegworth village; and
  - (b) the clearing of and making good to the existing watercourse.
- (4) The carrying out of the Kegworth Bypass (east) highway drainage works, the general arrangement of which is shown on regulation 6(2) plan (Document 2.4C), including construction of an attenuation basin and conveyance system to take highway drainage from the eastern part of the proposed Kegworth Bypass (Works No. 11(1)) to the River Soar.
- (5) The provision of the Kegworth Bypass accommodation works including—
- (a) removal of existing hedgerows and making good;
  - (b) minor regrading and adjustments to ground levels; and
  - (c) construction of new farm tracks.
- (6) The construction of a new bus and cycle only link road from the Kegworth Bypass to Ashby Road (to be known as the Ashby Road Bus Link), the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4C), including the formation of a new cycle track from the A453 to Ashby Road following the route of the original road and utilising the existing M1 Ashby Road overbridge.
- (7) The demolition of existing dwelling and outbuildings.

## **Works No. 12**

Within the area of land described on the works plan as Works No. 12—

The provision of flood alleviation and brook diversion works, the general arrangement of which is shown on regulation 6(2) plan (Document 2.4A and 2.4D), including—

- (a) earthworks to provide compensation flood plain;
- (b) watercourse diversion works, to take the form of earth open channels;
- (c) erosion control features at inlets and outlets;
- (d) works to facilitate extension of a railway overbridge over Main Street, Lockington (Works No. 1); and
- (e) upgrading existing watercourses.

## **Works No. 13**

Within the area of land described on the works plan as Works No. 13—



(1) Works to the M1 southbound carriageway, the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4A and 2.4B), including—

- (a) widening of the M1 southbound carriageway to four lanes between the new merge slip road (Works No. 6(1)) and the existing merge slip road at Junction 24;
- (b) construction of a new southbound diverge to Junction 24 and removal of the existing southbound diverge to Junction 24;
- (c) alteration to the layout of the southbound merge at Junction 24;
- (d) removal of existing gantries; and
- (e) erection of new gantries.

(2) Alterations to the M1 southbound to A50 westbound link road at M1 Junction 24A, the general arrangement of which is shown on regulation 6(2) plan (Document 2.4A).

(3) Alterations to the M1 northbound diverge slip road at Junction 24, the general arrangement of which is shown on regulation 6(2) plan (Document 2.4A).

### **Further works**

The following further works—

- (1) Within the area of land described on the works plans as Works Nos. 1 to 5 the provision of—
  - (a) weighbridges;
  - (b) internal estate roads, maintenance accesses and footways;
  - (c) cycle parking facilities; and
  - (d) such other minor works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.
- (2) Within the area of land described on the works plans as Works Nos. 1 to 6 and 9 the provision of—
  - (a) bunds, embankments, swales, landscaping and boundary treatments, earthworks and earthwork retaining structures;
  - (b) the provision of footways, cycle tracks, permissive cycle tracks, bridleways and footpath linkages;
  - (c) water supply works, foul drainage provision, foul pumping stations, surface water management systems, balancing ponds (surface and underground), attenuation and culverting;
  - (d) connections to mains services and provision of utilities infrastructure including primary and secondary substations and pressure reducing stations;
  - (e) diversion of pipelines and services;
  - (f) demolition of surface structures;
  - (g) fencing and boundary treatments;
  - (h) temporary concrete batching plants;
  - (i) temporary construction compounds and materials and aggregate store;
  - (j) lighting;
  - (k) CCTV; and
  - (l) such other minor works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.

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(3) Within the area of land described on the works plans as Works Nos. 7, 8 and 10 to 13 the provision of—

- (a) site clearance and excavation;
- (b) fencing for boundary treatment and noise attenuation;
- (c) safety barriers;
- (d) surface water drainage works including swales, attenuation and culverting;
- (e) ducting;
- (f) bunds, embankments, cuttings, landscaping and boundary treatments, earthworks and earthwork retaining structures;
- (g) pavements, surface treatments, kerbs and channels;
- (h) the provision of footways, cycle tracks, bridleways and footpath linkages;
- (i) traffic signs, traffic signals and road markings;
- (j) street lighting and electrical equipment;
- (k) motorway communications and control equipment;
- (l) retaining walls;
- (m) diversion of sewers, pipelines, utilities and services;
- (n) provision of utilities and services for NSIP 1;
- (o) temporary concrete batching plants;
- (p) temporary construction compounds and materials and aggregate store;
- (q) temporary earthworks material stockpiles; and
- (r) such other minor works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development,

all as approved under the provisions of Schedules 19 and 20 (protection of interests).

## SCHEDULE 2

Articles 2(1) and 3

### REQUIREMENTS

#### **Time limit**

1. The authorised development must not commence later than the expiration of 5 years beginning with the date that this Order comes into force.

#### **Phases of development**

2.—(1) No phase of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)) is to commence until a written scheme setting out all the phases of the authorised development which must be in accordance with the approach to phasing set out in the construction management framework plan (Document 6.10) and the schedule of archaeological works (Document 6.24), has been submitted to and approved in writing by the local planning authority. The written scheme must include phasing details of—

- (a) earthworks;
- (b) ecological mitigation;

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- (c) rail infrastructure;
- (d) roads within the main site;
- (e) surface water and foul drainage;
- (f) development plots;
- (g) landscaping; and
- (h) mains services.

(2) The authorised development must be carried out in accordance with the phasing as approved in writing by the local planning authority.

(3) The rail terminal constructed as part of Works No. 2 must be constructed and available for use prior to the occupation of more than 260,000square metres of the rail served warehousing.

### Sustainable transport

3. The provisions of the site wide travel plan (Document 6.25) or any variation of such plan agreed by the sustainable transport working group must be complied with at all times following the commencement of the authorised development.

### Design and phasing of highways works

4. The highway works must be carried out in accordance with details first submitted to and approved by the relevant body in accordance with the provisions of Schedules 19 and 20 (protection of interests).

5. The undertaker must use reasonable endeavours to complete the highway works identified in column (1) of the table below by no later than the stage of development set out in column (3) of the table below or such alternative later triggers as are agreed by the relevant body identified in column (4) and the local planning authority.

#### Highway Works

<i>(1)</i> <i>Item as identified on the highway works components plans (Document 2.13)</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Stage of Development</i>	<i>(4)</i> <i>Relevant Body</i>
(i)	A453 site access and Kegworth Bypass Junction (not including the bypass itself).	To be completed prior to the occupation of first warehouse to be occupied.	Highways England
(ii)	A50 eastbound to M1 southbound and Junction 24 interchange links; M1 southbound to A50 interchange link; improvements to M1 southbound from Junction 24A to Junction 24; and	To be completed prior to the occupation of first warehouse to be occupied.	Highways England

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(1) <i>Item as identified on the highway works components plans (Document 2.13)</i>	(2) <i>Description</i>	(3) <i>Stage of Development</i>	(4) <i>Relevant Body</i>
	alterations to Junction 24 roundabout east of M1.		
(iii)	Construction of local access road to Lockington.	To be completed prior to the occupation of first warehouse to be occupied.	Leicestershire County Council
(iv)	Diseworth Lane alterations.	To be completed prior to the occupation of the first warehouse to be occupied.	Leicestershire County Council
(v)	Church Street works.	To be completed prior to the occupation of the first warehouse to be occupied.	Leicestershire County Council
(vi)	Alterations to Junction 24 roundabout west of M1; improvements to A50 and A453 west of M1; and alterations to M1 northbound exit slip road.	To be completed prior to the occupation of the first warehouse to be occupied.	Highways England
(vii)	Kegworth Bypass including alterations to Ashby Road and Whatton Road.	To be completed prior to the occupation of more than 185,800 square metres (gross internal area) of warehouse floorspace.	Leicestershire County Council
(viii)	M1 overbridges from Ashby Road to A453 and from Kegworth Bypass to A453.	To be completed prior to the occupation of more than 185,800 square metres (gross internal area) of warehouse floorspace.	(1) Highways England (bridge structures) (2) Leicestershire County Council (highway)
(ix)	Warren Lane access and public footpath and cycle track adjacent	To be completed prior to the	Leicestershire County Council

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(1) <i>Item as identified on the highway works components plans (Document 2.13)</i>	(2) <i>Description</i>	(3) <i>Stage of Development</i>	(4) <i>Relevant Body</i>
	to A50 interchange links connecting Warren Lane and A453 eastbound.	occupation of the first warehouse to be occupied.	

### Detailed design approval

6.—(1) The details of each phase of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)) must be in accordance with the design and access statement (Document 6.9). The design and access statement can be reviewed and updated by the undertaker in agreement with the local planning authority.

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

- (a) rail infrastructure;
- (b) embankments and bunds;
- (c) vehicular circulation routes;
- (d) hard landscaping, cycle tracks, footpaths and bridleways;
- (e) surface and foul drainage;
- (f) bicycle, motorcycle and vehicle parking;
- (g) built development design (including external materials and sustainable energy measures) and layout;
- (h) site levels and finished floor levels;
- (i) roads within the main site;
- (j) intermodal area;
- (k) fuelling and maintenance areas;
- (l) freight storage area (including containers);
- (m) weighbridges;
- (n) gatehouses;
- (o) fencing walls and other means of enclosure (including acoustic fencing);
- (p) substations;
- (q) public transport infrastructure; and
- (r) footpath specification.

7. No phase of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)) is to commence until the details of that phase required under requirement 6(2) have been submitted to and approved in writing by the local planning authority (following consultation with the airport authority as the

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statutory aerodrome safeguarding authority when relevant). The authorised development must be carried out in accordance with the details as approved in writing by the local planning authority.

### **Provision of landscaping and ecological mitigation**

**8.** No phase of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)) is to commence until a written landscaping scheme for that phase (including the strategic landscaping included within that phase) has been submitted to and approved in writing by the local planning authority. The landscaping scheme must be in accordance with the Landscape Framework Plan contained in Chapter 5, Figure 5.12 and the Landscape Strategy contained in Chapter 5 of the environmental statement and must include details of all proposed soft landscaping works, including—

- (a) location, number, species, size, layout, method of large trees support, plant protection measures and planting density of any proposed planting;
- (b) cultivation, importation of materials and other operations to ensure plant establishment;
- (c) details of existing trees to be retained, with measures for their protection during the construction period in accordance with British Standard 5837:2012 “Trees in relation to Design, Demolition and Construction Recommendations”, and to include a schedule of remedial tree works to be carried out in accordance with British Standard 3998:2010 “Tree Works Recommendations” prior to construction commencing;
- (d) details of ecological mitigation;
- (e) implementation timetables; and
- (f) a landscape management plan setting out for a period of 20 years the arrangements for future maintenance including methods of funding and future monitoring, review and the maintenance of new trees, shrubs, hedgerows, woodlands and grassed areas and retained trees, shrubs, hedgerows, woodlands and grassed areas.

### **Implementation and maintenance of landscaping**

**9.—(1)** All landscaping works (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)) must be carried out and maintained in accordance with the landscaping scheme approved under requirement 8 (provision of landscaping and ecological mitigation) to a reasonable standard in accordance with the relevant recommendations of British Standard 4428:1989 “Code of Practice for general landscape operations (excluding hard surfaces)” and British Standard 8545:2014 “Trees: from nursery to independence in the landscape – Recommendations”.

(2) Any tree or shrub planted as part of an approved landscape scheme that, within a period of 10 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 the local planning authority gives consent to any variation.

### **Ecological Management Plan**

**10.—(1)** No phase of the authorised development is to commence until a written ecological management plan for that phase reflecting the survey results and any ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved in writing by the local planning authority. The management plan may be subject to alteration by prior approval in writing by the local planning authority.

(2) Details of the mitigation and compensation measures must be in accordance with the following principles—

- (a) provide continuity of habitat creation throughout the phases of development, habitat types that are lost as a result of a phase of the authorised development must be created as part of the landscape provisions associated with that phase;
  - (b) ensure that the areas set aside for species-rich grassland creation are in the best location having regard to soil types, aspect, drainage, public use and agricultural use to gain the best chance of successful outcomes;
  - (c) create at least double the area of each replaceable habitat lost (woodlands, hedges, pond or wetland and semi-improved species-rich grassland); and
  - (d) create alternative habitats to an agreed form to compensate for the loss of irreplaceable habitats such as veteran trees.
- (3) The ecological management plan approved under (1) must include an implementation timetable and must be carried out as approved in writing by the local planning authority.

### **Construction Environmental Management Plan**

**11.**—(1) No phase of the authorised development is to commence, including any preparatory earthworks or site levelling but excluding archaeological soil movement and ecological mitigation works, until a Construction Environmental Management Plan (“CEMP”) for that phase of development, drafted in accordance with the principles set out in the construction management framework plan (Document 6.10), has been submitted to and approved in writing by the local planning authority or in the case of the highway works by the relevant highway authority and also having regard to any relevant provisions in Schedules 19 and 20 (protection of interests). The CEMP for each phase must include—

- (a) details of the methods to control noise arising from construction activities including—
  - (i) proposals for monitoring of construction noise;
  - (ii) proposals for the introduction of mitigation measures or alternative working practices where the measurements exceed acceptable limits; and
  - (iii) proposals for hours of construction and deliveries to and from the site.
- (b) details of a dust management plan setting out the methods to be used to control dust and other emissions including smoke from the site;
- (c) details of all temporary fencing, temporary buildings, compound areas and parking areas including arrangements for their removal following completion of construction;
- (d) details of areas to be used for the storage of plant and construction materials;
- (e) details of construction waste management including controlled wastes in accordance with the Site Waste Management Framework Plan (Document 6.11);
- (f) details of the facilities to be provided for the storage of fuel, oil and other chemicals, including measures to prevent pollution;
- (g) when a phase of the authorised development directly affects a watercourse or flood plain a construction working method statement for such element to cover all works in, over under or within 8 metres of the top of the bank of either watercourse or their floodplains;
- (h) details of lighting arrangements for construction purposes;
- (i) measures to ensure that construction vehicles do not deposit mud and any other deleterious material on the public highway;
- (j) a scheme for the routing of construction heavy goods vehicles accessing the site;
- (k) details of temporary mitigation measures to protect biodiversity interests within the site during the construction phases;

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- (l) advisory signage at public access points advising of possible hazards including the potential for sudden noise;
- (m) details of any temporary surface water management system;
- (n) details of temporary stopping up of public rights of way and streets;
- (o) a traffic management plan; and
- (p) details of existing and proposed landscaping which need to be protected during construction.

(2) The CEMP for each phase of development is to be reviewed and updated if necessary to address unacceptable impacts arising from construction works. Each CEMP must be submitted by the undertaker for approval in writing by the local planning authority or in the case of the highway works the relevant highway authority. All construction works must be carried out in accordance with the CEMP as approved.

### **Earthworks**

**12.** No phase of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedule 19 (for the protection of Highways England) and 20 (for protection of Leicestershire County Council as highway authority)) is to commence until details of—

- (a) the earthworks strategy relating to that phase of development including the management and protection of soils;
- (b) an Earthworks Specification for each phase of the development;
- (c) cutting slopes and embankment design that would accord with the approved Earthworks Specification;
- (d) the extent of any material to be temporarily stored within the site; and
- (e) any surplus material to be removed from the site for disposal or material to be imported to the site,

have been approved in advance and in writing by the local planning authority. All earthworks must be carried out in accordance with the details as approved.

### **Archaeology**

**13.—(1)** No phase of the authorised development is to commence until the undertaker has commissioned a programme of further exploratory investigation in respect of that phase in accordance with section 2 of the schedule of archaeological works (Document 6.24) which has been submitted to and approved in writing by the local planning authority, or in the case of the highway works, the relevant highway authority. The exploratory investigation must be carried out in accordance with the approved programme and must be timed so that the results can inform the scope of the further archaeological mitigation measures, referred to in sub-paragraph (2).

(2) No phase of the authorised development is to commence until a programme of archaeological mitigation measures informed by the exploratory investigation referred to in sub-paragraph (1) has been implemented in accordance with a written scheme of mitigation measures in accordance with section 3 of the schedule of archaeological works (Document 6.24) which has been approved in writing by the local planning authority, or in the case of the highway works, the relevant highway authority. The written scheme of mitigation measures must include and make provision for the following elements—

- (a) mitigation fieldwork;
- (b) post-mitigation fieldwork and analysis;



- (c) reporting and dissemination of findings; and
  - (d) preparation of site archive, arrangements for deposition and sustainable management at a store approved in writing by the relevant planning authority.
- (3) The approved mitigation measures must be carried out in accordance with the relevant written scheme of mitigation measures for that phase of the authorised development.

### **Lighting details**

**14.**—(1) Prior to the commencement of each phase of the authorised development, details of the proposed permanent external lighting in that phase must be submitted to and approved in writing by the local planning authority or in the case of the highway works the relevant highway authority. The lighting details must accord with the principles established in the lighting proposal set out in Chapter 12 of the environmental statement.

(2) The approved lighting scheme must be implemented and maintained as approved in writing by the local planning authority or in the case of the highway works the relevant highway authority during operation of the authorised development and no external lighting other than that approved under this requirement may be installed.

(3) The details submitted under this requirement must include details of any lighting on any gantry cranes included in the phase concerned.

### **Building sustainability**

**15.**—(1) No development of a warehouse may take place until a BREEAM Pre-Assessment Report based upon the BREEAM 2011 method (or equivalent) has been submitted to and approved in writing by the local planning authority demonstrating that the unit is expected to achieve at least a BREEAM 2011 “Very Good” rating (BREEAM Industrial 2008 “Excellent”).

(2) The development of each of the warehouses must be carried out in accordance with the details in the BREEAM Pre-Assessment Report (or equivalent) for that unit and a certificate must be provided within three months of completion or occupation (whichever is the sooner) of each warehouse confirming that the measures in respect of that warehouse committed to within the Pre-Assessment Report have been implemented.

### **Flood risk and surface water drainage**

**16.** The authorised development must be carried out in accordance with the mitigation measures detailed within sections 3.0 and 4.0 of the Flood Risk Assessment and section 5.0 of the Water Framework Direction Assessment submitted with the application as part of the environmental statement (Document 5.2) or be carried out in accordance with any variation to these measures agreed in writing with the Environment Agency, the lead local flood authority or the approving body under Schedule 3 (sustainable drainage) to the Flood and Water Management Act 2010<sup>(40)</sup>, whichever of these is the body having jurisdiction over the watercourse in question.

**17.**—(1) No phase of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)) may commence until a surface water drainage scheme for that phase based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development in accordance with the Surface Water Drainage Strategy in Chapter 8 of the environmental statement (Document 5.2) has been submitted to and approved in writing by the local planning authority or

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<sup>(40)</sup> 2010 c. 29. Schedule 3 was amended by sections 21(3) and 88 of the Water Act 2014 (c. 21), S.I. 2012/1659 and S.I. 2013/755. Schedule 3 is to come into force on a date to be appointed.

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such other approval process that is put in place under the Flood and Water Management Act 2010. The scheme must include—

- (a) limiting the surface water run-off generated by all rainfall events up to the 1:100 year plus 20% (for climate change) critical rain storm so that it will not exceed the peak run-off rate from the undeveloped site and not increase the risk of flooding off-site;
- (b) provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate and all rainfall events up to the 1:100 year plus 20% (for climate change) critical rain storm;
- (c) 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; and
- (d) details of how the scheme must be monitored, maintained and managed after completion.

(2) The surface water drainage scheme must be implemented in accordance with the details approved by the local planning authority or in accordance with any variations to the details agreed in writing by the local planning authority prior to the completion of the authorised development.

**18.** Any element of the authorised development which directly affects any floodplain must not be commenced until such time as the floodplain compensation scheme has been submitted to and approved in writing by the local planning authority. The scheme must accord with the principles established in the flood compensation measures set out in Chapter 8 of the environmental statement (Document 5.2). Except for the floodplain compensation scheme itself, no above ground part of the authorised development in any floodplain may be commenced until the relevant compensation scheme has been implemented in full. The scheme must be fully implemented and subsequently maintained in accordance with the timing and phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed in writing by the local planning authority.

### **Foul water drainage**

**19.** Prior to the commencement of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)), excluding earthworks, archaeology works or ecological mitigation works, a foul water drainage strategy must be submitted to and approved in writing by the local planning authority. Except where it is constructed in accordance with the approved foul water drainage strategy, no phase of the authorised development is to commence until written details of the foul water drainage system for that phase have been submitted to and approved in writing by the local planning authority. Such details must be implemented as approved by the local planning authority.

### **Construction hours**

**20.—**(1) Subject to sub-paragraph (2) construction and demolition works (which for the purposes of this requirement excludes archaeological investigations, landscaping works and any non-intrusive internal fit-out works but must include start up and shut down and deliveries) must not take place other than between 07:30 and 19:00 hours on weekdays and 08:00 and 13:00 hours on Saturdays, excluding public holidays, unless otherwise agreed in writing by the local planning authority. Outside the above periods the following working is permitted:

- (a) pre-planned construction works to highway or rail infrastructure requiring possessions where first notified to the local planning authority and local residents;
- (b) emergency works; and
- (c) works which do not cause noise that is audible at the boundary of the Order Limits.

(2) Regardless of sub-paragraph (1) no piling operations are to take place after 18:00 hours unless otherwise agreed in writing by the local planning authority.

(3) Any emergency works carried out under sub-paragraph (1)(b) must be notified to the local planning authority within 72 hours of their commencement.

### **Construction noise**

**21.**—(1) For normal daytime construction and demolition works carried out on weekdays between 07:30 and 19:00 and on Saturdays between 08:00 and 13:00, the noise level measured at a noise sensitive receptor (as defined in Table 9.24 and Figure B1 of Chapter 9 of the environmental statement (Document 5.2)) must not exceed  $L_{eq, 12hour}$  65 dB(A) wherever practicable. Where this is not practicable prior approval under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(41) must be obtained.

(2) An assessment of construction and demolition noise must be undertaken in accordance with British Standard 5228:2009 – “Code of Practice for Noise and vibration control on construction and open sites” (Part 1 – Noise) at a noise sensitive receptor. Noise levels must be measured weekly during the stages of construction including ground works, piling and road and rail construction stages unless complaints are received in which case the procedures in requirement 23 (monitoring of complaints) must be followed.

(3) Subject to health and safety requirements, broadband reversing alarms must be employed on mobile plant.

### **Noise during the operational phase**

**22.**—(1) No part of the authorised development may be brought into use until a written scheme has been submitted to and approved in writing by the local planning authority, for the monitoring of noise generated during the operational phases of the development to establish baseline noise conditions and maximum noise levels to be observed. The scheme must specify the locations from where noise must be monitored, the method of noise measurement (which must be in accordance with British Standard 4142:2014 “Methods for rating and assessing industrial and commercial sound” for fixed plant noise and Calculation of Railway Noise 1995, equivalent successor standards or other agreed measurement methodologies appropriate to the circumstances). The written scheme must also specify the periods within which monitoring of operational noise must take place. The written scheme must be implemented and the maximum noise levels identified afterwards be complied with. This monitoring must be subject to annual reviews to establish the frequency of noise monitoring and the need for continued monitoring.

(2) Prior to installation, details of all mechanical and ventilation plant must be submitted to and approved by the local planning authority. Any fixed plant or ventilation equipment must be installed and operated in accordance with manufacturers’ instructions at all times.

(3) Subject to health and safety requirements, broadband reversing alarms must be employed on mobile plant.

### **Monitoring of complaints**

**23.** In the event that justified complaints for noise nuisance are received by the local planning authority, the undertaker must, unless otherwise agreed in writing with the local planning authority, at its own expense, employ a consultant approved by the local planning authority to carry out an assessment of noise from the authorised development, whether relating to noise from construction or operation of the site. The assessment must be carried out to an appropriate methodology agreed with the local planning authority and the results of the assessment must be submitted to the local planning authority within 28 days of the assessment along with suggested remedial measures if considered necessary. The assessment must include a comparison of measured data with the maximum noise

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(41) 1974 c. 40.

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levels specified in the scheme approved under requirement 22 (noise during the operational phase) and also include all data which was collected for the purposes of the assessment and certificates of the measuring instrument's calibration. Any remedial measures considered necessary to comply with the maximum noise levels must be implemented in accordance with a programme agreed in writing by the local planning authority.

### **Contamination risk**

**24.**—(1) No phase of the authorised development is to commence until a localised contamination report for that phase has been submitted to and approved in writing by the local planning authority.

(2) No development is to commence on any specifically identified localised areas of the site potentially affected by contamination (as detailed in the Preliminary Sources Study Reports (“PSSR”) documents contained within the environmental statement (Document 5.2)) until further investigations and a Risk Based Land Contamination Assessment has been undertaken in line with the recommendations made within the PSSR for that localised area of the site and this has been submitted to and approved in writing by the local planning authority. The Risk Based Land Contamination Assessment must be carried out in accordance with—

- (a) British Standard 10175:2011+A1:2013 “Investigation Of Potentially Contaminated Sites Code of Practice”;
- (b) British Standard 8576:2013 “Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs)”;
- (c) British Standard 8485:2007 “Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments”;
- (d) CLR 11 “Model Procedures for the Management of Land Contamination”, published by The Environment Agency 2004 (“CLR 11”).

(3) Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the local planning authority. The Remedial Scheme must be prepared in accordance with the requirements of CLR 11. The Verification Plan must be prepared in accordance with the requirements of—

- (a) Evidence Report on the Verification of Remediation of Land Contamination Report SC030114/R1, published by the Environment Agency 2010; and
- (b) CLR 11.

(4) If, during the course of development, previously unidentified contamination is discovered, development must cease on that localised area of the site and the contamination must be reported in writing to the local planning authority within 10 working days. Prior to the recommencement of development on that localised area of the site, suitable investigation and Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the local planning authority. The development must then be implemented in accordance with the details approved by the local planning authority and, unless otherwise agreed in writing by the local planning authority, retained as such in perpetuity.

**25.**—(1) Prior to the commencement of use of any part of the completed development either—

- (a) if no remediation scheme or verification was required under requirement 24 (contamination risk) a statement from the undertaker, or their approved agent, must be provided to the local planning authority, stating that no previously unidentified contamination was discovered during the course of development; or

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- (b) if a remediation scheme and verification plan were agreed under requirement 24, a Verification Investigation must be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to either the whole development or that part of the development must be submitted to and approved in writing by the local planning authority.
- (2) The Verification Investigation Report must—
- (a) contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
  - (b) contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
  - (c) contain Movement Permits for all materials taken to and from the site and a copy of the completed site waste management plan if one was required;
  - (d) contain Test Certificates of imported material to show that it is suitable for its proposed use;
  - (e) demonstrate the effectiveness of the approved Remedial Scheme; and
  - (f) include a statement signed by the undertaker, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

**Waste management during the operational phase**

26. No part of the authorised development may be brought into use until a scheme for waste management has been submitted to and approved in writing by the local planning authority. Thereafter the approved scheme must be implemented and maintained for the duration of the operation of the development.

SCHEDULE 3

Article 10

STREETS SUBJECT TO HIGHWAY WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to highway works</i>
District of North West Leicestershire	M1 motorway – length within the Order limits.
	A50 – length within the Order limits.
	A453 – length within the Order limits.
	A6 – length within the Order limits.
	Diseworth Lane – length within the Order limits.
	Main Street – length within the Order limits.
	C8211 Ashby Road – length within the Order limits.
	East Midlands Airport Access Road – length within the Order limits.
	C8206 Whatton Road – length within the Order limits.

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<i>(1)</i>  <i>Area</i>	<i>(2)</i>  <i>Street subject to highway works</i>
	Church Street – length within the Order limits.

SCHEDULE 4

Article 11

STREETS TO BE PERMANENTLY STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<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>New street to be substituted</i>
District of North West Leicestershire	A50 highway.	The existing highway within the area marked i on the access and rights of way plans (Document 2.3B) shown by red and white hatching.	(i) Proposed new highway A50 within the area marked vii on the access and rights of way plans (Document 2.3A) shown by blue hatching;  (ii) Proposed new highway A50 within the areas marked iii, v and vi on the access and rights of way plans (Documents 2.3A and C) shown by green hatching;  (iii) Proposed new highway M1 within the area marked vii on the access and rights of way plans (Documents 2.3A and C) shown by blue hatching.
	M1 Motorway.	The existing highway within the area marked viii on the access and rights of way plans (Document 2.3C)	(i) Proposed new highway M1 within the area marked ix on the access and rights of way plans

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<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>New street to be substituted</i>
		shown by red and white hatching.	(Documents 2.3A and C) shown by blue hatching; and  (ii) Proposed new highway A50 within the area marked vi on the access and rights of way plans (Document 2.3C) shown by green hatching.
District of North West Leicestershire	Warren Lane.	The existing highway within the area marked x on the access and rights of way plans (Document 2.3B) shown by red and white hatching.	(i) Proposed new highway A50 within the area marked iii on the access and rights of way plans (Document 2.3A) shown by green hatching;  (ii) Proposed local highway within the area marked iv on the access and rights of way plans (Document 2.3A) shown by orange hatching; and  (iii) Proposed cycle track between the points marked 8-9 on the access and rights of way plan (Document 2.3A) shown by a dashed pink line on a detailed alignment to be agreed by the relevant highway authority.
	Main Street.	The existing highway within the area marked xi on the access and rights of way plans (Document 2.3B) shown by red and white hatching.	Proposed local highway within the areas marked xii and xiii on the access and rights of way plans (Document 2.3A)

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(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New street to be substituted</i>
			shown by orange hatching.
	Rookery Lane.	The existing highway within the area marked xiv on the access and rights of way plans (Document 2.3B) shown by red and white hatching.	Proposed local highway within the area marked xii on the access and rights of way plans (Document 2.3A) shown by orange hatching.
	A50 cycle track.	The existing highway within the area marked xv and xvi on the access and rights of way plans (Document 2.3B) shown by red and white hatching.	Proposed cycle track between the points marked 40-39 on the access and rights of way plans (Document 2.3A) shown by a dashed pink line on a detailed alignment to be agreed by the relevant highway authority.
District of North West Leicestershire	A453.	The existing highway within the area marked xix on the access and rights of way plans (Document 2.3E) shown by red and white hatching.	Proposed new highway A453 within the area marked xx on the access and rights of way plans (Document 2.3E) shown by green hatching.
	C8211 Ashby Road.	The existing highway within the area marked xxi on the access and rights of way plans (Document 2.3E) shown by red and white hatching.	(i) Proposed new highway A6 within the area marked xxii on the access and rights of way plans (Document 2.3E) shown by orange hatching;  (ii) Proposed new highway C8211 within the area marked xxiii on the access and rights of way plans (Document 2.3E) shown by orange hatching; and  (iii) Proposed cycle track between the



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<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>New street to be substituted</i>
			points marked 54-55 on the access and rights of way plans (Document 2.3E) shown by a dashed pink line.
District of North West Leicestershire	C8206 Whatton Road.	The existing highway within the areas marked xxiv and xxv on the access and rights of way plans (Document 2.3F) shown by red and white hatching.	<p>(i) Proposed new highway C8206 within the areas marked xxvi and xxviii on the access and rights of way plans (Document 2.3F) shown by orange hatching;</p> <p>(ii) Proposed new highway A6 within the area marked xxvii on the access and rights of way plans (Document 2.3F) shown by orange hatching; and</p> <p>(iii) Proposed local highway within the area marked xxix on the access and rights of way plans (Document 2.3F) shown by orange hatching.</p>

## PART 2

### STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<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>
District of North West Leicestershire	M1 southbound Junction 24A earthworks to exit slip road.	The length of street shown hatched red and white and numbered xvii on the access and rights of way plans (Document 2.3B).

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<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>
	Church Street.	The length of street shown hatched red and white and numbered xviii on the access and rights of way plans (Document 2.3C).

SCHEDULE 5

Article 12

PUBLIC RIGHTS OF WAY TO BE STOPPED UP

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>New public right of way or permissive path to be substituted</i>
Parish of Lockington cum Hemington	Public footpath L83 (part).	The existing footpath between the points marked 1-2 on the access and rights of way plans (Document 2.3A) shown with a dashed red line.	Proposed public footpath L83 (part) between the points marked 1-3 on the access and rights of way plans (Document 2.3A) shown indicatively with a dashed brown line on a detailed alignment to be agreed with the relevant highway authority.
	Public footpath L73 (part).	The existing footpath between the points marked 4-5-6 on the access and rights of way plans (Document 2.3A) shown with a dashed red line.	(i) Proposed public footpath L73 (part) between the points 6-7 marked on the access and rights of way plans (Document 2.3A) shown indicatively with a dashed brown line on a detailed alignment to be agreed with the relevant highway authority;

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(1) Area	(2) Public right of way to be stopped up	(3) Extent of stopping up	(4) New public right of way or permissive path to be substituted
			and (ii) proposed cycle track between the points marked 7-11 on the access and rights of way plans (Document 2.3A) shown indicatively with a dashed pink line on a detailed alignment to be agreed with the relevant highway authority.
Parish of Kegworth	Public footpath L58 (part).	The existing footpath between the points marked 15-16 on the access and rights of way plans (Document 2.3C) shown with a dashed red line.	Proposed public footpath L58 (part) between the points marked 15-18 on the access and rights of way plans (Document 2.3C) shown indicatively with a dashed brown line on a detailed alignment to be agreed with the relevant highway authority.
Parish of Lockington cum Hemington	Public bridleway L103 (part).	The existing bridleway between the points marked 22-23-24-25 on the access and rights of way plans (Document 2.3D) shown with a dashed red line.	(i) Proposed public bridleway L103 (part) between the points marked 22-26 on the access and rights of way plans (Document 2.3D) shown indicatively with an unbroken yellow line on a detailed alignment to be agreed with the relevant highway authority; and  (ii) Proposed public bridleway L110 between the points marked 22-27-28-29 on the access and rights of way plans (Documents 2.3C

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(1) <i>Area</i>	(2) <i>Public right of way to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New public right of way or permissive path to be substituted</i>
			and 2.3D) shown indicatively with an unbroken yellow line on a detailed alignment to be agreed with the relevant highway authority.
Parish of Lockington cum Hemington	Public footpath L57 (part).	The existing footpath between the points marked 24-30; 23-31; 32-33 on the access and rights of way plans (Documents 2.3D and 2.3E) shown with a dashed red line.	Proposed permissive cycle track between the points marked 34-35-36-21-37 on the access and rights of way plans (Documents 2.3D and 2.3E) shown indicatively with a dotted pink line on a detailed alignment to be agreed with the relevant highway authority.
Parish of Kegworth	Public footpath L45A (part).	The existing footpath between the points marked 43-44-45 on the access and rights of way plans (Document 2.3E) shown with a dashed red line.	Proposed public footpath L45A (part) between the points marked 45-53 on the access and rights of way plans (Document 2.3E) shown indicatively with a dashed brown line on a detailed alignment to be agreed with the relevant highway authority.
	Public footpath L54 (part).	The existing footpath between the points marked 48-49 on the access and rights of way plans (Document 2.3F) shown with a dashed red line.	Proposed public footpath L54 (part) between the points marked 48-50; 49-51; 49-52 on the access and rights of way plans (Document 2.3F) shown indicatively with a dashed brown line on a detailed alignment to be agreed with the relevant highway authority.

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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>
Parish of Kegworth	Public footpath L45 (part).	The existing footpath between the points marked 41-42 on the access and rights of way plans (Document 2.3E) shown with a dashed red line.
	Public footpath L64 (part).	The existing footpath between the points marked 46-47 on the access and rights of way plans (Document 2.3F) shown with a dashed red line.

## PART 3

### NEW PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way or permissive way to be created</i>	<i>(3)</i> <i>Extent of new public right of way or permissive way to be created</i>
Parish of Lockington cum Hemington	Cycle track.	The proposed cycle track between the points marked 7-12 on the access and rights of way plans (Documents 2.3A and 2.3C) shown indicatively with a dashed pink line on a detailed alignment to be agreed with the relevant highway authority.
Parish of Kegworth	Permissive cycle track.	The proposed permissive cycle track between the points marked 17-18-19-20-21 on the access and rights of way plans (Documents 2.3C and 2.3E) shown indicatively with a dashed pink line on a detailed alignment to be agreed with the relevant highway authority.
Parishes of Lockington cum Hemington and Kegworth	Public footpath.	The proposed public footpath between the points marked 20-38-28 and 27-38 on the

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(1) <i>Area</i>	(2) <i>Public right of way or permissive way to be created</i>	(3) <i>Extent of new public right of way or permissive way to be created</i>
		access and rights of way plans (Document 2.3C) shown indicatively with a dashed brown line on a detailed alignment to be agreed with the relevant highway authority.

SCHEDULE 6

Article 14

PRIVATE MEANS OF ACCESS

PART 1

PRIVATE MEANS OF ACCESS TO BE REPLACED

(1) <i>Area</i>	(2) <i>Extent</i>	(3) <i>Replacement</i>
District of North West Leicestershire	The existing private means of access between the points marked A-B on the access and rights of way plans (Document 2.3A) shown shaded purple.	Replacement private means of access between the points marked A-C on the access and rights of way plans (Document 2.3B) shown hatched turquoise.
	The existing private means of access between the points marked E-F on the access and rights of way plans (Document 2.3B) shown shaded purple.	Replacement private means of access between the points marked E-G on the access and rights of way plans (Document 2.3B) shown hatched turquoise.
	The existing private means of access marked H on the access and rights of way plans (Document 2.3A) shown shaded purple.	Replacement private means of access marked J on the access and rights of way plans (Document 2.3B) shown hatched turquoise.
	The existing private means of access marked K on the access and rights of way plans (Document 2.3B) shown shaded purple.	Replacement private means of accesses between the points marked L-M; L-N; L-O; L-BB and L-BC on the access and rights of way plans (Documents 2.3B and 2.3C) shown hatched turquoise.
District of North West Leicestershire	The existing private means of access Q on the access and	Replacement private means of access between the points

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Replacement</i>
	rights of way plans (Document 2.3C) shown shaded purple.	marked R-S on the access and rights of way plans (Document 2.3C) shown hatched turquoise.
	The existing private means of access between the points marked X-Y on the access and rights of way plans (Document 2.3E) shown shaded purple.	Replacement private means of access between the points marked AA-Y on the access and rights of way plans (Document 2.3E) shown hatched turquoise.
	The existing private means of access between the points marked AF-AG on the access and rights of way plans (Document 2.3E) shown shaded purple.	Replacement private means of access between the points marked AH-AG on the access and rights of way plans (Document 2.3E) shown hatched turquoise.
	The existing private means of access between the points marked AJ-AK on the access and rights of way plans (Document 2.3E) shown shaded purple.	Replacement private means of access between the points marked AM-AK on the access and rights of way plans (Document 2.3E) shown hatched turquoise.
	The existing private means of access between the points marked AJ-AL on the access and rights of way plans (Document 2.3E) shown shaded purple.	Replacement private means of access between the points marked AO-AL on the access and rights of way plans (Document 2.3E) shown hatched turquoise.
	The existing private means of access marked AR on the access and rights of way plans (Document 2.3F) shown shaded purple.	Replacement private means of access marked AU on the access and rights of way plans (Document 2.3F) shown hatched turquoise.
	The existing private means of access marked AZ on the access and rights of way plans (Document 2.3F) shown shaded purple.	Replacement private means of access marked BA on the access and rights of way plans (Document 2.3F) shown hatched turquoise.

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## PART 2

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private Means of Access</i>
District of North West Leicestershire	The private means of access shaded purple and marked D on the access and rights of way plans (Document 2.3B).
District of North West Leicestershire	The private means of access shaded purple and marked P on the access and rights of way plans (Document 2.3C).
	The private means of access shaded purple and marked T on the access and rights of way plans (Document 2.3D).
	The private means of access shaded purple and marked U on the access and rights of way plans (Document 2.3D).
	The private means of access shaded purple and marked V on the access and rights of way plans (Document 2.3D).
	The private means of access shaded purple and marked W on the access and rights of way plans (Document 2.3D).
	The private means of access shaded purple and marked X-Z on the access and rights of way plans (Document 2.3E).
	The private means of access shaded purple and marked BE on the access and rights of way plans (Document 2.3A).
	The private means of access shaded purple and marked BF on the access and rights of way plans (Document 2.3D).

## PART 3

### NEW PRIVATE MEANS OF ACCESS CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private Means of Access</i>
District of North West Leicestershire	The private means of access hatched turquoise and marked AA-AB on the access and rights of way plans (Document 2.3E).



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(1) Area	(2) <i>Private Means of Access</i>
	<p>The private means of access hatched turquoise and marked AA-AC on the access and rights of way plans (Document 2.3E).</p> <p>The private means of access hatched turquoise and marked AD on the access and rights of way plans (Document 2.3E).</p> <p>The private means of access hatched turquoise and marked AE on the access and rights of way plans (Document 2.3E).</p> <p>The private means of access hatched turquoise and marked AN on the access and rights of way plans (Document 2.3E).</p> <p>The private means of access hatched turquoise and marked AP on the access and rights of way plans (Document 2.3E).</p> <p>The private means of access hatched turquoise and marked AQ on the access and rights of way plans (Document 2.3E).</p>
District of North West Leicestershire	<p>The private means of access hatched turquoise and marked AS on the access and rights of way plans (Document 2.3F).</p> <p>The private means of access hatched turquoise and marked AT on the access and rights of way plans (Document 2.3F).</p> <p>The private means of access hatched turquoise and marked AV on the access and rights of way plans (Document 2.3F).</p> <p>The private means of access hatched turquoise and marked AW on the access and rights of way plans (Document 2.3F).</p> <p>The private means of access hatched turquoise and marked AX on the access and rights of way plans (Document 2.3F).</p> <p>The private means of access hatched turquoise and marked AY on the access and rights of way plans (Document 2.3F).</p> <p>The private means of access hatched turquoise and marked BD on the access and rights of way plans (Document 2.3B).</p>

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## SCHEDULE 7

Articles 15 and 16

## CLASSIFICATION OF ROADS

## PART 1

## NEW AND DIVERTED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of Street</i>	<i>(3)</i> <i>Classification</i>	<i>(4)</i> <i>Classes of Traffic</i>	<i>(5)</i> <i>Relevant Highway Authority</i>
In the District of North West Leicestershire	The length of road shown coloured light blue and between the points 2 and 3 on the highway classifications plans (Document 2.5A).	Special Road	Class I and Class II	Highways England
	The length of road shown coloured light blue and between the points 4 and 5 on the highway classifications plans (Document 2.5A).	Special Road	Class I and Class II	Highways England
	The length of road shown coloured light blue and between the points 6 and 7 on the highway classifications plans (Document 2.5A).	Special Road	Class I and Class II	Highways England
	The length of road shown coloured green and between the points 8 and 9 on the highway classifications plans (Document 2.5A).	Trunk Road	All purpose	Highways England
	The length of road shown coloured green and between the points 10 and 11 on the highway classifications plans (Document 2.5A).	Trunk Road	All purpose	Highways England

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(1) <i>Area</i>	(2) <i>Extent of Street</i>	(3) <i>Classification</i>	(4) <i>Classes of Traffic</i>	(5) <i>Relevant Highway Authority</i>
	The length of road shown coloured green and between the points 12 and 13 on the highway classifications plans (Document 2.5A).	Trunk Road	All purpose	Highways England
In the District of North West Leicestershire	The length of road shown coloured green and between the points 14, 15, 16 and 17 on the highway classifications plans (Document 2.5B).	Trunk Road	All purpose	Highways England
	The length of road shown coloured green and between the points 16 and 19 on the highway classifications plans (Document 2.5B).	Trunk Road	All purpose	Highways England
	The length of road shown coloured green and between the points 15 and 18 on the highway classifications plans (Document 2.3B).	Trunk Road	All purpose	Highways England
	The length of road shown coloured green and between the points 30, 18, 19 and 29 on the highway classifications plans (Document 2.5B).	Trunk Road	All purpose	Highways England
	The length of road shown coloured green and between the points 18, 37 and 19 on the highway classifications plans (Document 2.5B).	Trunk Road	All purpose	Highways England
	The length of road shown coloured green	Principal	All purpose	Leicestershire County Council

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(1) <i>Area</i>	(2) <i>Extent of Street</i>	(3) <i>Classification</i>	(4) <i>Classes of Traffic</i>	(5) <i>Relevant Highway Authority</i>
	and between the points 37 and 38 on the highway classifications plans (Document 2.5B).			
	The length of road shown coloured green and following a circular route around points 38 to 39 and returning to 38 on the highway classifications plans (Document 2.5B).	Principal	All purpose	Leicestershire County Council
In the District of North West Leicestershire	The length of road shown coloured pink and between the points 33 and 34 on the highway classifications plans (Document 2.3B).	Classified	All purpose	Leicestershire County Council
	The length of road shown coloured pink and between the points 35 and 36 on the highway classifications plans (Document 2.5B).	Classified	All purpose	Leicestershire County Council
	The length of road shown coloured pink and between the points 43 and 44 on the highway classifications plans (Document 2.3B).	Classified	All purpose	Leicestershire County Council
	The length of road shown coloured brown and between the points 23 and 24 on the highway classifications plans (Document 2.5A).	Unclassified	All purpose	Leicestershire County Council
	The length of road shown coloured brown and between the	Unclassified	All purpose	Leicestershire County Council

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(1) <i>Area</i>	(2) <i>Extent of Street</i>	(3) <i>Classification</i>	(4) <i>Classes of Traffic</i>	(5) <i>Relevant Highway Authority</i>
	points 25 and 26 on the highway classifications plans (Document 2.5A).			
	The length of road shown coloured brown and between the points 27 and 28 on the highway classifications plans (Document 2.5B).	Unclassified	All purpose	Leicestershire County Council
	The length of road shown coloured brown and between points 41 and 42 on the highway classifications plans (Document 2.5A).	Unclassified	All purpose	Leicestershire County Council

## PART 2

### EXISTING ROADS

(1) <i>Area</i>	(2) <i>Extent of Street</i>	(3) <i>(i) Current Classification</i>  <i>(ii) Highway Authority</i>	(4) <i>Event determining change of classification</i>	(5) <i>Proposed Classification</i>	(6) <i>Class of Traffic</i>	(7) <i>Highway Authority</i>
In the District of North West Leicestershire	The length of street shown coloured dark blue and between the points 1 and 2 on the highway classifications plans (Document 2.5A).	(i) All Purpose Trunk Road  (ii) The Secretary of State for Transport	Opening of new road shown coloured light blue between points 2 and 3 as shown on the highway classifications plans (Document 2.5A).	Special Road	Class I and Class II	Highways England
	The length of street shown coloured red and between the points 20 and 21 on	(i) Special Road	Stopping up of M1 southbound slip road within area viii shown by red and	Trunk Road	All Purpose	Highways England

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(1) Area	(2) Extent of Street	(3) (i) Current Classification  (ii) Highway Authority	(4) Event determining change of classification	(5) Proposed Classification	(6) Classified Traffic	(7) Highway Authority
	the highway classifications plans (Document 2.5A).	(ii) The Secretary of State for Transport	white hatching on the access and rights of way plans (Document 2.3C).			
	The length of street shown coloured orange and between the points 22 and 23 on the highway classifications plans (Document 2.5A).	(i) All Purpose Trunk Road  (ii) The Secretary of State for Transport	Opening of new roads shown coloured green between points 8-9, 10-11 and 12-13 as shown on the highway classifications plans (Document 2.5A).	Unclassified Road Purpose	Classified	Leicestershire County Council
	The length of street shown coloured orange and between points 25 and 40 on the highway classifications plans (Document 2.5A).	(i) All purpose Trunk Road  (ii) The Secretary of State for Transport	Opening of new roads shown coloured green between points 8-9, 10-11 and 12-13 as shown on the highway classifications plans (Document 2.5A).	Unclassified Road Purpose	Classified	Leicestershire County Council
	The length of street shown coloured dark green and between the points 31 and 32 on the highway classifications plans (Document 2.5B).	(i) Classified All Purpose Road  (ii) Leicestershire County Council	Opening of new road shown coloured pink between points 35-36 as shown on the highway classifications plans (Document 2.5B).	Unclassified Road Purpose	Classified	Leicestershire County Council

SCHEDULE 8

Article 17

SPEED LIMITS

PART 1

EXISTING ORDERS

(1) <i>Statutory Instrument Title</i>	(2) <i>S.I. Number</i>	(3) <i>Changes</i>	(4) <i>Event</i>
The A50 Trunk Road (Derby Southern Bypass) (Derestriction) Order 1998	1998 No. 358	In the Schedule omit paragraph (a) and substitute— “(a) eastbound carriageway of the A50 from a point 600 metres west of the A6/A50 Aston Interchange overbridge to a point 138 metres west of the centre point of the M1 Junction 24A underbridge, and the westbound carriageway of the A50	Opening of the new road shown coloured green between points 8-9, 10-11 and 12-13 as shown on the highway classifications plans (Document 2.5A).

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(1) <i>Statutory Instrument Title</i>	(2) <i>S.I. Number</i>	(3) <i>Changes</i>	(4) <i>Event</i>
		<p>from a point 410 metres north of its roundabout junction with the A453 (M1 Junction 24) to a point 600 metres west of the A6/A50 Aston Interchange overbridge”.</p>	
<p>The A453 and A50 Trunk Roads (M1 Junction 24, Kegworth, Leicestershire) (40 and 50 Miles Per Hour Speed Limit and Derestriction) Order 2015</p>	<p>2015 No. 1772</p>	<p>In article 2, omit the definition of “the link road”.</p> <p>Omit article 3.</p> <p>In article 4(b), omit “120 metres north of its junction with Church Street”.</p>	<p>Opening of the new road shown coloured green between points 8-9, 10-11 and 12-13 as shown on the highway classifications plans (Document 2.5A).</p>



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<i>(1)</i> <i>Statutory Instrument Title</i>	<i>(2)</i> <i>S.I. Number</i>	<i>(3)</i> <i>Changes</i>	<i>(4)</i> <i>Event</i>
		and substitute "410 metres north of its junction with the roundabout".  Omit articles 4(c),  5 and 7(a).	

## PART 2

### ROADS SUBJECT TO 30MPH SPEED LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>
Main Street, Lockington	Shown coloured brown between points marked H and J as shown on the speed limit plans (Document 2.7A).

## PART 3

### ROADS SUBJECT TO 50MPH SPEED LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>
A50 eastbound	From a point 138 metres west of the centre point of the M1 underbridge at Junction 24A to its roundabout junction with the A453 (M1 Junction 24) as shown coloured green between points marked B and C as shown on the speed limit plans (Document 2.7A).
Lockington local access road	Shown coloured orange between points F and G as shown on the speed limit plans (Document 2.7A).
A453 southbound	From a point 190 metres south of the circulatory carriageway at M1 Junction 24 to a point 43 metres south of the circulatory

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(1) <i>Location</i>	(2) <i>Description</i>
	carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange access road; shown coloured green between points K, L, N and O as shown on the speed limit plans (Document 2.7B).
A453 northbound	From a point 122 metres south of the circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange access road to a point 345m south of the circulatory carriageway at M1 Junction 24; shown coloured green between points P, Q, R and S as shown on the speed limit plans (Document 2.7B).
A453 signalised roundabout	The circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange to a point 25 metres east of that junction; shown coloured green between points N and Q and R and L as shown on the speed limit plans (Document 2.7B).
A6 Kegworth Bypass	From the circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange to a point 25 metres east of that junction; shown coloured green between points N and M, and L and M as shown on the speed limit plans (Document 2.7B).
A6 Kegworth Bypass	Shown coloured orange between points M, T and U as shown on the speed limit plans (Document 2.7B).
C8211 Ashby Road	Shown coloured orange between points T and V as shown on the speed limit plans (Document 2.7B).
A6 London Road	Shown coloured orange forming a circular route between points W, X and returning to W as shown on the speed limit plans (Document 2.7B).
A6 London Road	Shown coloured orange between points X and Y as shown on the speed limit plans (Document 2.7B).
M1 motorway southbound diverge slip road at Junction 24	Between the M1 motorway merge slip road overbridge and its junction with the A50; shown coloured light blue between points Z and AA as shown on the speed limit plans (Document 2.7A).

## SCHEDULE 9

Article 18

## AMENDMENTS TO EXISTING ORDERS

(1) <i>Statutory Instrument/ Order Title</i>	(2) <i>Statutory Instrument Number if applicable</i>	(3) <i>Changes</i>	(4) <i>Event</i>
The Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963	1963 No. 1172	(77) is to read “Between a point 60 metres north west of its junction with C8207 Side Ley to a point where it meets with the roundabout at M1 Junction 24”.	Opening of the new road shown coloured green between points 37 and 38 as shown on the highway classifications plans (Document 2.5B).
The North East of Birmingham-Nottingham A453 Trunk Road (Prohibition of Waiting) (Clearways) Order 1974	1974 No. 1663	To be revoked in its entirety.	Opening of the A453 signalised roundabout shown coloured green between the points marked 15-16-19-18 and returning to 15 as shown on the highway classifications plans (Document 2.5B).
The A50 Trunk Road (Derby Southern Bypass) (Prohibition of Right Turns and U-Turns) Order 1998	1998 No. 377	To be revoked in its entirety.	Stopping up of Church Street as shown marked xvii on the access and rights of way plans (Document 2.3C) shown by red and white hatching.
The A50 Trunk Road (Southbound carriageway between M1 Junctions 24 and 24A, Leicestershire) (Prohibition of Entry in Layby) Order 2005	2005 No. 3067	To be revoked in its entirety.	Removal of the lay-by referred to in the Order.
The A50 Trunk Road (Church Street, Lockington, Leicestershire) (Prohibition of Traffic Movements) Order 2006	2006 No. 1144	To be revoked in its entirety.	Stopping up of Church Street as shown marked xviii on the access and rights of way

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<i>(1)</i> <i>Statutory Instrument/ Order Title</i>	<i>(2)</i> <i>Statutory Instrument Number if applicable</i>	<i>(3)</i> <i>Changes</i>	<i>(4)</i> <i>Event</i>
			plans (Document 2.3C) shown by red and white hatching.
The Leicestershire County Council (Prohibition of Commercial Vehicles Over 7.5 Tonnes) (Various Parishes) (Western Division) Order 1990 (Amendment No.6) (Parishes of Castle Donington, Isley Cum Langley, Breedon on the Hill, Swannington, Long Whatton, Belton, Osgathorpe, Worthington, Coleorton, Lockington and Hemington and Hathern) Order 1994		In Schedule 2 after “the A6 Parishes of Hathern, Long Whatton and Kegworth (from its junction with the B5234, Parish of Hathern, to its junction with the A453” insert “east of the M1 motorway, between M1 Junction 23A and M1 Junction 24”.  In Schedule 3 replace all references to “A6” with “A50”.	(i) Opening of the new road shown coloured green between points 37-38 as shown on the highway classifications plans (Document 2.5B).  (ii) Opening of the new roads shown coloured green between points 8-9, 10-11 and 12-13 as shown on the highway classifications plans (Document 2.5A).

SCHEDULE 10

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>Prohibition of waiting on verges</i>	<i>(4)</i> <i>Event</i>
The roundabout at M1 Junction 24	The circulatory carriageway at the roundabout junction of the A453, A50, A6 and the slip roads leading to and from the M1 Motorway at	No	Opening of the A453 signalised roundabout shown coloured green between

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(1) <i>Location</i>	(2) <i>Description</i>	(3) <i>Prohibition of waiting on verges</i>	(4) <i>Event</i>
	Junction 24, including all the dedicated filter lanes and segregated left turn lanes at that roundabout; as shown between points i and ii, and from point iii returning to point iii, along the centrelines shown red on the traffic regulation plans (Document 2.6A).		points 15-16-19-18 and returning to 15 as shown on the highway classifications plans (Document 2.5B).
A453	From the circulatory carriageway at roundabout at M1 Junction 24 to the circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange; as shown between points iv and v along the centreline shown red on the traffic regulation plans (Document 2.6A and 2.6B).	No	Opening of the A453 signalised roundabout shown coloured green between points 15-16-19-18 and returning to 15 as shown on the highway classifications plans (Document 2.5B).
The roundabout junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange	The circulatory carriageway at the roundabout junction of the A453 and the East Midlands Gateway Strategic Rail Freight Interchange; as shown from point vi returning to point vi along the centreline shown green on the traffic regulation plans (Document 2.6B).	Yes	Opening to traffic of the length of road described in columns (1) and (2).
A453	From the circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange, to a point 492 metres south of that junction; as shown between points vii and viii along the centreline shown green on the traffic regulation plans (Document 2.6B).	Yes	Opening of the A453 signalised roundabout shown coloured green between points 15-16-19-18 and returning to 15 as shown on the highway classifications plans (Document 2.5B).

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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Prohibition of waiting on verges</i>	<i>(4)</i> <i>Event</i>
A6 Kegworth Bypass	Between points ix and x along the centreline shown light blue on the traffic regulation plans (Document 2.6B).	No	Opening to traffic of the length of road described in columns (1) and (2).
The roundabout between the A6 London Road and A6 Kegworth Bypass	From point xii returning to point xii along the centreline shown light blue on the traffic regulation plans (Document 2.6B).	No	Opening to traffic of the length of road described in columns (1) and (2).

## PART 2

### NO WAITING AT ANY TIME

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>	<i>(3)</i> <i>Event</i>
Lockington local access road	Between points xiii and xiv along the centreline shown orange on the traffic regulation plans (Document 2.6A).	Opening to traffic of the length of road described in columns (1) and (2).
Church Street	(i) Between points xv, xvi and xvii along the centreline shown orange on the traffic regulation plans (Document 2.6A); and  (ii) Between points xvi and xvii along the centreline shown orange on the traffic regulation plans (Document 2.6A).	Opening to traffic of the length of road described in columns (1) and (2).
C8211	(i) Between points xix, xx and xxi along the centreline shown orange on the traffic regulation plans (Document 2.6B).  (ii) Between points xx and xxii along the centreline shown orange on the traffic regulation plans (Document 2.6B).	Opening of the new road shown coloured green between points 37-38 as shown on the highway classifications plans (Document 2.5B).

SCHEDULE 11

Article 20

MOTOR VEHICLE RESTRICTIONS

PART 1

MOTOR VEHICLE ACCESS ONLY RESTRICTIONS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>
Warren Lane	Between points 13 and 14 along the centreline shown coloured red on the traffic regulation plans (Document 2.6C).

PART 2

ONE WAY STREETS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>	<i>(3)</i> <i>Direction</i>
Warren Lane	From point 15 to point 16 along the centreline shown coloured green on the traffic regulation plans (Document 2.6C).	South to North

PART 3

PROHIBITION OF ENTRY TO ABNORMAL LOADS LAYBY

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Point of Entry</i>
Lay-by within the roundabout at M1 Junction 24 defined with a blue line on the traffic regulation plans (Document 2.6C)	The junctions between the lay-by and the circulatory carriageway at M1 Junction 24; as shown at points 17 or 18 along the centreline shown coloured dark blue on the traffic regulation plans (Document 2.6C).

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## PART 4 BUSES AND CYCLISTS ONLY

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>
C8211 Ashby Road	Between points 19 and 20 along the centreline shown coloured light blue on the traffic regulation plans (Document 2.6D).

### SCHEDULE 12

Article 31

#### 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 North West Leicestershire	1/1, 1/7, 1/8	Alteration to existing railway line to facilitate connection to the rail freight interchange.	Works No. 1
	1/2, 1/3	Diversion of footpath L83	Works No. 1
	1/6, 3/3, 3/8, 3/9, 3/10, 3/14	Alterations to existing highway	Works No. 8
	2/15, 2/16, 2/22	Temporary construction access	Works No. 7
	2/21	Diversion of footpath L73	Works No. 10
	3/6	Temporary stock piling area for topsoil and subsoil material	Works No. 7
	4/4, 5/1, 5/2	Alteration to emergency access to East Midlands Airport	Works No. 6
	5/7	Stopping up of footpath L45	Works No. 8
	5/11, 6/7	Temporary construction compounds	Works No. 11
	5/12, 5/16, 5/18, 5/20, 5/21 and 6/5	Removal of existing hedgerows and amending ground levels	Works No. 11



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(1) <i>Area</i>	(2) <i>Number of land shown on land plan</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised development</i>
	5/13, 5/14, 5/15, 5/17	Stopping up of footpath L45A	Works No. 11
	6/4	Stopping up of footpath L64	Works No. 11
	6/6, 6/8	Construction of a farm track	Works No. 11

## SCHEDULE 13

Article 25

## LAND TO WHICH POWERS TO EXTINGUISH RIGHTS DO NOT APPLY

(1) <i>Area</i>	(2) <i>Plot of land shown on Land Plan</i>	(3) <i>Relevant part of Authorised Development</i>
District of North West Leicestershire	2/8	Works No. 12
	2/9	Works No. 8
	2/20	Works No. 10
	2/25	Works No. 8
	2/38	Works No. 8

## SCHEDULE 14

Article 25

## MODIFICATIONS OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

*Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation 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 the scope of paragraph 1, the Land Compensation Act 1973<sup>(42)</sup> has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

<sup>(42)</sup> 1973 c. 26.

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- (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”.

(3) In section 58(1)(43) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right proposed to be acquired, and, in a case where 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 to be made of the other land.”.

#### *Application of the 1965 Act*

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that 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.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) 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 other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5.—(1) For section 8 of the 1965 Act (provisions as to divided land) substitute—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and

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(43) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
- (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>(44)</sup>, in relation to that person, ceases to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. 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 (owners under incapacity);
- (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.

7. Section 11 (powers of entry) of the 1965 Act<sup>(45)</sup> is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12<sup>(46)</sup> (penalty for unauthorised entry) and 13<sup>(47)</sup> (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act<sup>(48)</sup> (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that

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<sup>(44)</sup> S.I. 2016/17.

<sup>(45)</sup> Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

<sup>(46)</sup> Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

<sup>(47)</sup> 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).

<sup>(48)</sup> Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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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.

9. Section 22 of the 1965 Act (interests omitted from purchase) 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.

## SCHEDULE 15

Article 38

### FOR THE PROTECTION OF NATIONAL GRID

#### Application

1. For the protection of National Grid the following provisions, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

#### Interpretation

2. In this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of electricity, electric lines or electrical plant as defined in the Electricity Act 1989<sup>(49)</sup>, belonging to or maintained by National Grid Electricity Plc for the purposes of electricity supply; and
- (b) in the case of a gas, any mains, pipes or other apparatus belonging to or maintained by a National Grid Gas Plc for the purposes of gas supply;

“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, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Gas Plc (company number 2006000) and National Grid Electricity Transmission Plc (company number 2366977), both registered at 1-3 Strand, London WC2N 5EH); and

“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.

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

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(49) 1989 c. 29.

### **Apparatus of National Grid in stopped up streets**

4.—(1) Where any street is stopped up under article 11 (stopping up of streets), and any apparatus is in the street or accessed via that street, National Grid is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street.

(2) Regardless of the temporary stopping up or diversion of any street under the powers of article 13 (temporary stopping up of streets), National Grid is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street 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 street.

### **Acquisition of land**

5. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any land interest or apparatus, or override any easement or other interest, of National Grid otherwise than by agreement.

### **Removal of apparatus**

6.—(1) If, in the exercise of the agreement reached in accordance with sub-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 removed, and any right of National Grid 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 National Grid in accordance with sub-paragraphs (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 National Grid 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 National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 7(1)) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of 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 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, National Grid, on receipt of a written notice to that effect from the undertaker, must 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 must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the undertaker 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

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the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) For the avoidance of doubt this Schedule applies to apparatus the removal of which is covered by article 32 (apparatus and rights of statutory undertakers in stopped up streets).

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to National Grid 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 National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) 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 National Grid 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 then the matter must be determined by arbitration in accordance with article 41 (arbitration) and, the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection for gas undertakers**

8.—(1) In this paragraph only, apparatus means apparatus belonging to or maintained by National Grid Gas Plc for the purpose of gas supply and National Grid means National Grid Gas Plc.

(2) Not less than 56 days before the commencement of any authorised works authorised by 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 6(2) or otherwise, the undertaker must submit to National Grid a plan of such works.

(3) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (2) must be detailed including a method statement and describing—

- (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) intended maintenance regimes.

(4) The undertaker must not commence any works to which sub-paragraph (3) applies until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraph (3) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which sub-paragraph (3) applies must be executed only in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (10), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid is entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any relevant part of the authorised development and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (2) or (10) (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (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, sub-paragraphs (2) to (4) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 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.

(11) The undertaker is not required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (3) and (4) in so far as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HSG47 Avoiding Danger from underground services".

### **Retained apparatus: protection for electricity undertakers**

9.—(1) In this paragraph only, "apparatus" means apparatus belonging to or maintained by National Grid Electricity Transmission Plc for the purpose of electricity supply and "National Grid" means National Grid Electricity Transmission Plc.

(2) Not less than 56 days before the commencement of any authorised works authorised by 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 6(2) or otherwise, the undertaker must submit to National Grid a plan of such works and seek from National Grid details of the underground extent of its electricity tower foundations.

(3) In relation to works which will or may be situated on, over, under or within—

- (a) 15 metres measured in any direction of any apparatus; or
- (b) involve embankment works within 15 metres of any apparatus,

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the plan to be submitted to National Grid under sub-paragraph (2) must be detailed including a method statement and describing—

- (i) the exact position of the works;
- (ii) the level at which these are proposed to be constructed or renewed;
- (iii) the manner of their construction or renewal including details of excavation, positioning of plant;
- (iv) the position of all apparatus;
- (v) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (vi) details of a scheme for monitoring ground subsidence if required by National Grid.

(4) 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 to National Grid under sub-paragraph (2) must be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (3)—

- (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 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 the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead lines (OHL) construction traffic.

(5) The undertaker must not commence any works to which sub-paragraph (3) or (4) apply until National Grid has given written approval of the plan so submitted.

(6) Any approval of the undertaker required under sub-paragraph (3) or (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (7) or 9); and
- (b) must not be unreasonably withheld.

(7) In relation to a work to which sub-paragraphs (3) or (4) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(8) Works to which sub-paragraphs (3) and (4) apply must be executed only in accordance with the plan submitted under sub-paragraph (2) or as relevant sub-paragraph (11), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (7) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid is entitled to watch and inspect the execution of those works.



(9) Where National Grid require any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any relevant part of the authorised development and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (2) or (11) (except in an emergency).

(10) If National Grid in accordance with sub-paragraphs (7) or (9) 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 (2) to (4) and (7) to (9) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(11) 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 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.

(12) The undertaker is not be required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (3), (4) and (5) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably incurred by it in, or in connection with, the inspection, removal, relaying or replacing, 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 this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory powers to acquire any necessary rights under paragraph 6(3) all costs incurred as a result of such action;
- (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 Schedule.

(2) The value of any apparatus removed under the provisions of this Schedule or article 32 (apparatus and rights of statutory undertakers in stopped up streets), and which is not re-used as part of the alternative apparatus, must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

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- (3) If in accordance with the provisions 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 settled by arbitration in accordance with article 41 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under 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 National Grid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must 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 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 National Grid 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 National Grid 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.

## **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 Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development 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 the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under 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 those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by an undertaker or in accordance with any requirement of an

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 neglect or default of National Grid, its officers, servants, contractors or agents.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without first consulting the undertaker and considering their representations.

### **Ground subsidence monitoring scheme in respect of National Grid's apparatus**

**12.**—(1) No works within the distances set out in National Grid's specification for 'Safe Working in the Vicinity of National Grid High Pressure Gas Pipelines and Associated Installations – Requirements for Third Parties' (SSW22) which are capable of interfering with or risking damage to National Grid's apparatus or alternative apparatus are to commence until a scheme for monitoring ground subsidence (referred to in this paragraph as "the monitoring scheme") has been submitted to and approved by National Grid, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) must set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, would require the undertaker to submit for National Grid's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub-paragraphs (1) and (2) must be submitted at least 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of National Grid must be notified within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") must be submitted to National Grid for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid except that National Grid 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 10 (expenses).

### **Enactments and agreements**

**13.** Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to National Grid on the date on which this Order is made.

### **Co-operation**

**14.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraphs 8 or 9 the

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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 National Grid's undertaking and National Grid must use its reasonable endeavours to co-operate with the undertaker for that purpose.

### **Access**

**15.** If in consequence of the agreement reached in accordance with paragraph 5 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 would enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**16.** Any difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 41 (arbitration).

## SCHEDULE 16

Article 38

### FOR THE PROTECTION OF THE AIRPORT OPERATOR

**1.** The undertaker must carry out the authorised development in accordance with the management strategy for the safeguarding of East Midlands Airport.

**2.** The undertaker must produce a Bird Management Plan to minimise any bird hazard impact (as envisaged in section 4 of the management strategy for the safeguarding of East Midlands Airport) covering the design, construction and operation of the main site and obtain approval to the Bird Management Plan from the airport operator prior to the submission of any details for approval under requirement 7 (detailed design approval). The approval of the Bird Management Plan must not be unreasonably withheld or delayed. The approved Bird Management Plan must then be complied with at all times.

**3.** The prior approval of the airport operator must be obtained by the undertaker for the installation and operation of any radio communication or radio survey equipment (including any such temporary equipment) within the authorised development, such approval not to be unreasonably withheld or delayed.

**4.** The undertaker must not obstruct or in any way interfere with the existing access (including all emergency access routes) to the airport, other than in accordance with the carrying out of the authorised development, without the prior consent of the airport operator such consent not to be unreasonably withheld or delayed. Any existing access route which is to be diverted as part of the authorised development must not be closed until the replacement route is constructed and available for use.

**5.** The prior approval of the airport operator (acting as the statutory aerodrome safeguarding authority) must be obtained by the undertaker for the installation of any solar photovoltaic panels or apparatus within the authorised development, such approval not to be unreasonably withheld or delayed. Any request for such approval must be accompanied by a full solar glare assessment and detailed risk assessment.

**6.** Any difference or dispute arising between the undertaker and the airport operator under this Schedule must, unless otherwise agreed between the undertaker and the airport operator, be determined by arbitration in accordance with article 41 (arbitration).

SCHEDULE 17

Article 38

FOR THE PROTECTION OF SEVERN TRENT WATER LIMITED

The undertaker must carry out the authorised development in accordance with the Construction Management Strategy for Safeguarding the Derwent Valley Aqueduct (Document 6.14).

SCHEDULE 18

Article 38

FOR THE PROTECTION OF NETWORK RAIL

1. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 10, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

“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 his powers under section 8 (licences) of the Railways Act 1993<sup>(50)</sup>;

“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 (meaning of “subsidiary” etc.) of the Companies Act 2006<sup>(51)</sup>) 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;

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

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

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

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<sup>(50)</sup> 1993 c. 43. Section 8 was amended by paragraph 3 of Schedule 20 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 1 of Schedule 13(1) to the Railways Act 2005 (c. 14) and paragraph 4 of Schedule 17 to the Transport Act 2000 (c. 38). There are other amendments not relevant to this Order.

<sup>(51)</sup> 2006 c. 46.

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3.—(1) Where under 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 works under this Order.

4.—(1) The undertaker must not exercise the powers conferred by article 14 (accesses), article 23 (authority to survey and investigate the land), article 25 (compulsory acquisition of land and rights), article 26 (power to override easements and other rights), article 27 (compulsory acquisition of land – incorporation of the mineral code), article 31 (temporary use of land for carrying out the authorised development), article 33 (operation and use of railways) and article 37 (felling or lopping of trees) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act 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 exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, 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.

(4) The undertaker must not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

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 disapproval of those plans and the grounds of 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 is to 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 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 are to 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 the engineer's 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 on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, regardless of 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 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 the engineer 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 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 of a specified work, or during a period of 24 months after the completion of that 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

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Network Rail and if Network Rail gives to the undertaker reasonable notice 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 is to 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 him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is 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 works 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 works) 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 works 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 works 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 under sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified under 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 8 has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised works and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised works 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) 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; and
- (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.

(8) Where Network Rail approved modifications to Network Rail's apparatus under 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; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 9.

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(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 is to be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the wording in article 41 (arbitration) “the Lands Chamber of the Upper Tribunal” is to be substituted with “the Institution of Electrical Engineers”.

**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 Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure of such a work; or
- (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,

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 does 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 give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) 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 is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any 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 (licences) 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 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 under this Schedule (including any claim relating to those relevant costs).

**17.** In the assessment of any sums payable to Network Rail under this Schedule no account is to be taken of 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 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.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**20.** 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) 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.** 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 39 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

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SCHEDULE 19

Article 38

FOR THE PROTECTION OF HIGHWAYS ENGLAND

**Application**

1. The provisions of this Schedule have effect.

**Interpretation**

2. In this Schedule—

“as built information” means one digital copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of supplies and materials, test results and CCTV drawings;
- (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) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records; and
- (j) other such information as may be reasonably required by Highways England to be used to update any relevant databases;

“the bond sum” means the sum equal to 110% of the cost of the carrying out of the phase of highway works concerned or such other sum agreed between the undertaker and Highways England;

“the cash surety” means the sum of £200,000.00 or such other sum agreed between the undertaker and Highways England;

“the commuted sums” means the commuted sums calculated in accordance with paragraph 10;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the highway works or any phase of the highway works and approved by Highways England under paragraph 3(2);

“detailed design information” means the following drawings, specifications and other information which must be in accordance with the general arrangements shown on the relevant regulation 6(2) plans—

- (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; and
- (o) utilities diversions,

where relevant to the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed under paragraph 5(1) and (5);

“the excess” means the amount by which Highways England estimates that the costs referred to in paragraph 5(1) will exceed the estimated costs under paragraph 5(5)(b);

“highway works” means that part of the authorised development to be carried out in the areas identified as i, ii, vi and ix on the highway works components plans the general arrangement of which is shown on the relevant regulation 6(2) plan and any works ancillary to that part of the authorised development;

“nominated persons” means the undertaker’s representatives or the contractors’ representatives on site during the carrying out of the highway works;

“phase” means that part of the highway works which is to be carried out in separate phases in the areas identified as i, ii, vi and ix on the highway works components plan except that components ii and ix is a single phase, or such other phasing arrangements as are agreed with Highways England;

“programme of works” means a document setting out the sequence and timetabling of works for the phase in question;

“relevant regulation 6(2) plans” means Documents 2.4A, 2.4B, 2.4E, 2.4H, 2.4J, 2.4M and 2.4N certified under article 39 (certification of plans etc.);

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard HD 19/15 or any replacement or modification of that part of the Manual; and

“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 is to commence on any phase of the highway works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by Highways England and, in the case of phase ix identified on the highway works component plans, also submitted to and approved by Leicestershire County Council, such approvals not to be unreasonably withheld or delayed.

(2) No works are to commence on any phase of the highway works other than by a contractor employed by the undertaker but first approved by Highways England, such approval in respect of each phase not to be unreasonably withheld or delayed.

(3) No work is to commence on any phase of the highway works until the undertaker has provided security for the carrying out of those works as provided for in paragraph 8 or some other form of security acceptable to Highways England.

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(4) No work is to commence on any phase of the highway works until Highways England have considered whether a temporary traffic regulation order is necessary for that phase and if necessary Highways England have approved and made the necessary temporary traffic regulation order.

(5) No work is to commence on any phase of the highway works until a Stage 2 Road Safety Audit has been carried out in respect of that phase in accordance with the Road Safety Audit Standard and if necessary all issues raised incorporated into an amended design approved by Highways England or any relevant exceptions approved by Highways England.

(6) No work is to commence on any phase of the highway works until traffic management provisions have been agreed with Highways England, such agreement not to be unreasonably withheld or delayed.

(7) No work is to commence on any phase of the highway works until stakeholder liaison has taken place in accordance with a scheme for such liaison agreed between the undertaker and Highways England.

### **Carrying out of works**

4.—(1) If the undertaker commences the authorised development the undertaker must design construct, test and commission the highway works.

(2) The undertaker must prior to commencement of each phase of the highway works give Highways England 28 days' notice in writing of the proposed date on which that phase will start.

(3) The undertaker must comply with Highways England's usual road space booking procedures prior to and during the carrying out of each phase of the highway works and no highway works for which a road space booking is required can commence without a road space booking having first been secured.

(4) Each phase of the highways works must be carried out to the satisfaction of Highways England in accordance with—

- (a) the relevant detailed design information;
- (b) a programme of works approved under paragraph 3(1) or as subsequently varied by agreement between the undertaker and Highways England;
- (c) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) and any amendment to or replacement of those documents for the time being in force except to the extent that they are a departure from such standards and have been approved by Highways England and such approvals or requirements of Highways England in paragraph 3 that need to be in place prior to the 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 must ensure that all client duties (as defined in the said Regulations) are satisfied and must indemnify Highways England against all claims, damages, costs, losses, liabilities and actions arising out of a failure to do so.

(5) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker) to gain access to the highway works for the purposes of inspection and supervision and the undertaker must provide to Highways England contact details of the nominated persons with whom Highways England should liaise during the carrying out of the highway works.

(6) At any time during the carrying out of the highway works the nominated persons must act upon any request made by Highways England in relation to the carrying out of the highway works as soon as practicable following such request being made to the nominated persons except to the extent

that the contents of such request are inconsistent with or fall outside the contractor's obligations under its contract with the undertaker or the undertakers obligations in this Order.

(7) 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 an adequate opportunity to remedy it by Highways England then Highways England is on giving to the undertaker 14 days' notice in writing to that effect entitled to carry out and complete that phase of the highway works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf and the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(8) Nothing in this Schedule prevents Highways England from carrying out any work or taking such action as deemed appropriate straight away without prior notice to the undertaker in the event of an emergency or danger to the public, the cost to Highways England 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 highway works.

(9) For the avoidance of doubt it is confirmed that the undertaker in carrying out each phase of the highway works must at its own expense divert or protect all utilities as may be necessary to enable the highway works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of Highways England.

## **Payments**

**5.—(1)** The undertaker must fund the whole of the highway works costs and all costs incidental to the highway works and must also pay to Highways England in respect of each phase of the highway works a sum equal to the whole of any costs and expenses which Highways England incur, (the estimated costs), 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 highway works and arising out of it and its implementation including without limitation on the scope—

- (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 supervision of that phase of the highway works;
- (d) all legal and administrative costs in relation to paragraphs (a) and (b); and
- (e) all costs in relation to the transfer of any land required for the highway works.

(2) The sums referred to in subparagraph (1) do not include any sums payable from the undertaker to the contractor but do include any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(3) The undertaker must pay to Highways England upon demand the total costs properly and reasonably incurred by Highways England 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 highways 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 orders contained in this Order.

(4) The undertaker and Highways England must agree a schedule of the estimated costs to be incurred under sub-paragraph (1) in respect of each phase prior to the commencement of that phase.

(5) 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 in respect of a phase prior to commencing that phase; and

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- (b) if at any time or times after the payment in respect of a phase referred to in paragraph (5) (a) has become payable the Highways England estimates that the costs in respect of that phase referred to in sub-paragraph (1) will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to Highways England within 28 days of the date of that notice a sum equal to the excess.

(6) If Highways England have received the as built information within 91 days of the issue of the final certificate for each phase of the highway works under paragraph 7, Highways England 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—

- (i) if the account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it in that final account; and
- (ii) if the account shows that the payment or payments previously made have exceeded those costs Highways England must refund the difference to the undertaker.

(7) If any payment due under any of the provisions 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 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the Land Compensation Act 1961<sup>(52)</sup> 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 period**

6.—(1) As soon as each phase of the highway works has been completed and a Stage 3 Road Safety Audit for that phase has been carried out in accordance with the Road Safety Audit Standard and any resulting recommendations complied with Highways England must issue a provisional certificate of completion in respect of that phase such certificate not to be unreasonably withheld or delayed.

(2) Highways England must also issue a defects list to the undertaker together with timescales within which defects are to be resolved. The undertaker must at its own expense remedy any defects in that phase of the highway works as reasonably required to be remedied by Highways England and identified by Highways England 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(a) and Stage 4(b) Road Safety Audits 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(a) and 4(b) Road Safety Audit reports inclusive of conducting any works that are required.

(4) Highways England must approve the audit brief and curriculum vitae for all Road Safety Audits and exceptions to items raised, if appropriate, in accordance with the Road Safety Standard.

### **Final certificate**

7.—(1) The undertaker must apply to Highways England 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) or on a date on which any defects or damage arising from defects during that period has been made good to the reasonable satisfaction of Highways England (not to be unreasonably withheld or delayed) and when making such application the undertaker must—

- (a) submit to Highways England the health and safety file and as built information of the relevant phase; and

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(52) 1961 c. 33.



- (b) provide a plan clearly identifying the extent of any land which is to be highway maintainable at public expense by Highways England.
- (2) If the provisions of sub-paragraph (1) are satisfied Highways England must as soon as reasonably practicable issue a final certificate for the phase concerned.

### **Surety**

**8.—**(1) Subject to paragraph 3(3) the undertaker must provide security for the carrying out of the highway works as follows—

- (a) prior to the commencement of each phase the highway works within that phase must be secured by a bond first approved by Highways England, drafted substantially as detailed in Form 1 contained in paragraph 9 or in such other form that may be agreed between the undertaker and Highways England to indemnify Highways England 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 under the provisions of this Schedule provided that the maximum liability of the bond must not exceed the bond sum relating to that Phase; and
  - (b) prior to the commencement of the highway works the undertaker must provide the cash surety which may be utilised by Highways England in the event of the undertaker failing to meet its obligations to make payments under paragraph 5 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which must for the avoidance of doubt be a single cash surety for the entirety of the highway works).
- (2) Each bond sum and the cash surety (the latter in respect of the final phase only) must 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, Highways England must in writing authorise the reduction of the bond sum and (in respect of the final phase only) the cash surety by such proportion of the surety sum and cash deposit as amounts to 80% of those payments;
  - (b) within 20 working days of completion of each phase of the highway works (as evidenced by the issuing of the provisional certificate in respect of that phase under paragraph 6(1)) Highways England must in writing release the bond provider from its obligations by 80% of the bond sum in respect of that phase except in so far as any claim or claims have been made against the bond or liability on its part has arisen prior to that date and (in respect of the final Phase only) return 80% of the cash surety to the undertaker; and
  - (c) within 20 working days of the issue of the final certificate for each phase of the highway works referred to in paragraph 7 Highways England must in writing release the bond provider from all its obligations in respect of that phase subject to Highways England having received the documents referred to in paragraph 7(1)(a) and (b) and except in so far as any claim or claims have been made against the bond or liability on its part has arisen prior to that date and (in respect of the final phase only) must release the remainder of the cash surety to the undertaker.

**9.** Form 1 as referred to in paragraph 8(1)(a) is—

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## Form 1

### Bond—Highways England

**BY THIS BOND** [ ] [(Company Regn No)] whose registered office is situate at [ ] (“**the undertaker**”) and [ ] [(Company Regn No )] whose registered office is situate at [ ] (“**the Surety**”) are jointly and severally bound to [ ] of [ ] (“**the [ ]**”) this [ ] day of [ ] 201[ ] 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 East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned the DCO 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 Highways England such sums as are provided in the DCO **NOW THE CONDITIONS** of this Bond are such that if the undertaker duly observes and performs all the terms provisions covenants conditions and stipulations of Schedule 19 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 must satisfy and discharge the damages sustained by Highways England up to the amount of this Bond then this obligation is null and void but otherwise must 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 Highways England under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of Highways England must in any way release the Surety from any liability under this Bond  
It is hereby agreed that this Bond is to be reduced and released in accordance with paragraph 8 of Schedule 19 to the DCO.

[Attestation]

#### Commuted sums

**10.—(1)** Prior to the commencement of each phase of the highway works the undertaker is to be provided with an estimate of the amount of the commuted sum in respect of the maintenance costs of that phase of the highway works to be incurred following the issue of the final certificate, if any and following completion of that phase of the highway works the undertaker must pay to Highways England the commuted sum within 28 days of the date of the final certificate. The commuted sum must be calculated in line with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18th January 2010, except that—

- (a) the agreed commuted sum in respect of the highway bridge structures within Phase ii identified on the highway works component plans is £931,197.57; and
- (b) the agreed commuted sum in respect of the highway bridge structure within Phase viii identified on the highway works component plans is £1,046,151.18.

(2) If the form of any structures referred to in sub-paragraph (1)(a) and (b) changes significantly from that contained in the approval in principle already submitted to and approved by Highways England then the calculation of the figure in sub-paragraph (1)(a) or (b) as the case may be must, if requested by either the undertaker or Highways England, be recalculated in accordance with the FS Guidance S278 Commuted Lump Sum Calculation Method dated 18th January 2010.

## **Insurance**

11. 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 against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the Highway Works or any part of them by the undertaker.

## **Indemnification**

12. The undertaker must, in relation to the carrying out of the highway works, take such precautions for the protection of public and private interests as would be incumbent upon it if it were the highway authority and must indemnify Highways England 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, carrying out or maintenance of the highway works, including but without limitation on the scope of this paragraph any claim against Highways England under the Land Compensation Act 1973(53) or by virtue of the application of the provisions of the Noise Insulation Regulations 1975(54), including any liability falling upon Highways England by virtue of its exercising its discretionary powers under the said Regulations.

## **Warranties**

13. The undertaker must procure warranties from the contractor and designer of each phase of the highway works to the effect that all reasonable skill care and due diligence must be exercised in designing and constructing that phase of the highway works including the selection of materials, goods, equipment and plant; such warranties to be provided to Highways England before that phase of the highway works commences.

## SCHEDULE 20

Article 38

### FOR THE PROTECTION OF LEICESTERSHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY

## **Application**

1. The provisions of this Schedule have effect.

## **Interpretation**

2. In this Schedule—  
“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 works and in relation to the over bridge;
  - (e) method statements for works to be carried out;
  - (f) road lighting, signs and traffic signals;

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(53) 1973 c. 26.

(54) S.I. 1975/1763, amended by S.I. 1988/2000.

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- (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; and
- (m) plans identifying land which is highway maintainable at public expense;

“detailed design information” means the following drawings, specifications and other information which must be in accordance with the general arrangements shown on the relevant regulation 6(2) plans—

- (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; and
- (o) utility diversions;

“director” means a director of Environment and Transportation 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 works” means that part of the authorised development to be carried out in the areas identified as iii, iv, v, vii, viii on the highway works component plans the general arrangement of which is shown on the relevant regulation 6(2) plans;

“highway authority” means Leicestershire County Council;

“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 that part of the highway works which is to be carried out as separate phases in the areas identified as iii, iv, v, vii and viii on the highways works components plans except that components vii and viii is a single phase or such other phasing arrangement as must be agreed with the highway authority;

“provisional certificate” means the provisional certificate of completion issued by the director for each phase of the highway works in accordance with paragraph 4;

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“relevant regulation 6(2) plans” means Documents 2.4A, 2.4B, 2.4C, 2.4E, 2.4F, 2.4H, 2.4K, 2.4M and 2.4N;

“specification” means—

- (a) in relation to design—
  - (i) the 6C’s 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 2002 and any modifications of them;
  - (ii) the Traffic Signs Manual (DOT); and
  - (iii) Leicestershire County Council’s Traffic Signs and Road Markings Specification;

“supervising officer” means the officer of the highway authority appointed by it to supervise the highway works on its behalf; and

“works fees” means the actual costs incurred by the highway authority (utilising its standard charge out rates) in relation to—

- (a) considering and approving the detailed design information;
- (b) the work carried out by the Supervising Officer including travel expenses to and from the highway works and all other expenses properly incurred by the Supervising Officer in connection with his duties; and
- (c) administration in relation to paragraphs (a) and (b) above.

### **Highway works**

- 3. The undertaker must carry out and complete the highway works in accordance with—
  - (a) the detailed design information approved under paragraph 14; and
  - (b) the programme of works approved under paragraph 22 or as subsequently varied by agreement between the undertaker and the highway authority.

### **Provisional certificate and maintenance period**

4. When and so soon as each phase of the highway works has been completed including such road safety audits as required in accordance with paragraph 27 to the reasonable satisfaction of the director, the director must issue a provisional certificate, such certificate not to be unreasonably withheld or delayed, and the undertaker at its own expense must maintain that phase of the highway works 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

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damage until issue of the final certificate in respect of that phase under paragraph 5 and that phase of the highway works 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 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 27.

(2) Upon receipt of the as built information in respect of a phase and approval of the same, the director must issue a final certificate in respect of that phase and as from the date of such final certificate the highway works become highways maintainable at the public expense.

(3) If the undertaker does not apply for and receive 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).

### **Payment for supplemental maintenance**

6.—(1) Where the period from commencement of a phase of the highway works to the issue of the final certificate in respect of that phase exceeds a period of two years the undertaker must pay to the highway authority the cost of carrying out a bulk clean and lamp change for all the street lighting provided as part of that phase of the highway works.

(2) Prior to the issue of the final certificate of completion in respect of a phase the undertaker must pay to the highway authority the cost of a bulk clean and lamp change of all illuminated signs and bollards erected as part of that phase of the highway works.

### **Indemnity**

7. 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<sup>(55)</sup> or by virtue of the application of the provisions of the Noise Insulation Regulations 1975<sup>(56)</sup>, 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

<sup>(55)</sup> 1973 c. 26.

<sup>(56)</sup> S.I. 1975/1763, amended by S.I. 1988/2000.

of such notification pay to the highway authority the amount specified as the quantum of such claim;

- (f) the undertaker must notify the highway authority of the intended date of 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**

**8.** The undertaker must comply with all aspects of the Construction (Design and Management) Regulations 2015<sup>(57)</sup> 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**

**9.** 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 10, in a sum equivalent to the director's reasonable estimate of the cost of that phase of the highway works (including any statutory undertakers works) or must provide some alternative form of security acceptable to the highway authority.

**10.** Form 2 as referred to in paragraph 9—

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(57) S.I. 2015/ 51.

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## Form 2

### Bond – Leicestershire County Council

**BY THIS BOND WE** [ the undertaker ] whose registered office is situate at [ ] (hereinafter called “the Undertaker”) and [ the Surety] (Company Registration Number [ ]) 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 these presents

**WHEREAS** the Developer intends to carry out Phase [ ] of the highway works referred to in Schedule 20 in the East Midlands Gateway Rail Freight and Highway Order 2016 (“the DCO”)

**NOW THE CONDITION** of the above written bond is such that if the Undertaker well and truly performs and fulfils its obligations in Schedule 20 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 20 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 20 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 20 to the DCO the liability of the Undertaker 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 for that phase as calculated in accordance with paragraph 21(2) of Schedule 20 to the DCO upon the issue of the provisional certificate in respect of that phase or a minimum 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.

**11.** 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 is to be deemed to have not been given or expressed unless given or expressed in writing (and must not be unreasonably withheld or delayed) and the highway authority agrees to use its best endeavours to ensure that any agreement or approval which is required is given or refused (along with reasons for such refusal) within 20 working days.

#### Dispute resolution

**12.** Regardless of article 41 (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<sup>(58)</sup>.

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(58) 1996 c. 23.



### **Privately and publicly owned apparatus**

13. 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**

14.—(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 has been submitted to and approved by the director and in the case of that part of component viii as shown on the highway works components plans comprising the bridge over the motorway, approval of the detailed design information is also required from Highways England prior to that phase of the highway works commencing.

### **Workmanship**

15. All the highway work is to be carried out to the reasonable satisfaction of the director.

### **Traffic and safety control**

16. 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.

### **Site safety**

17. 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**

18. 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 by the highway authority as suitable to carry out such works.

### **Inspection of the highway works**

19. 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**

20.—(1) The undertaker must pay the highway authority works fees in response to monthly invoices issued by the highway authority to the undertaker itemising the works fees payable (including time records), the first of such invoices to be issued following the first submission of detailed design information for approval.

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- (2) The undertaker must provide the following for the supervising officer—
- (a) workplace on site including welfare facilities;
  - (b) communication equipment;
  - (c) suitable transport at the site; and
  - (d) parking provisions.

### **Commuted sum**

**21.**—(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 (2).

(2) The rates to be applied in calculating the commuted sums payable must be based on those contained with the 6C's 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**

**22.** The undertaker must, prior to the commencement of each phase of the highway works, submit to the director for his 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 but which must not be unreasonably withheld or delayed) 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**

**23.**—(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 fourteen 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**

**24.** 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**

**25.** The undertaker must, prior to the commencement of each phase of the highway works, give the highway authority at least five weeks' notice 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**

**26.** 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 Highways Agency Standard HD 19/15 or any replacement or modification of that Standard.

### **Road Safety Audits**

**27.—(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 Highways Agency Standard HD 19/15 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 Highways Agency Standard HD 19/15 or any replacement or modification of that Standard 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 Highways Agency Standard HD 19/15 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 Highways Agency Standard HD 19/15 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 from the date when a complete year of accident data is available 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.

(5) Following receipt of the 12-month report in respect of a phase the director may require that a Stage 4 36-month monitoring report ("the 36-month report") be submitted for that phase in accordance with the Highways Agency Standard HD 19/15 no sooner than 8 weeks and no later than 12 weeks from the date when three complete years of accident data is available following the third anniversary of the opening of that phase of the highway works for public use and if so required by the director any recommendations in the 36-month report must be implemented to the satisfaction of the director and the undertaker must 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 undertaker in respect of works arising from the 36-month report prior to the issue of the final certificate.

### **Traffic signal equipment**

**28.** 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**

**29.** 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.

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## Statutory procedures and orders

**30.** 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.

## SCHEDULE 21

Article 38

### FOR THE PROTECTION OF TARMAC

**1.** The following provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Lafarge.

**2.** In this Schedule—

“bagging plant” means the area subject to the GRS underlease;

“GRS underlease” means the lease dated 21st November 2012 between Lafarge Aggregates Limited (1) (now Tarmac) and GRS (Bagging) Limited (2) relating to Land at Lockington Quarry;

“Tarmac” means Tarmac Aggregates Limited (company number 00297905) as operator of the quarry and landfill;

“Tarmac access” means the private access track to be constructed for the benefit of the Tarmac land between Warren Lane and M1 Junction 24 as shown on the regulation 6(2) plan;

“Tarmac land” means the area subject to the Tarmac leases;

“Tarmac leases” means the leases dated 14th February 2000 and 24th February 2009 made between Charles Henry Curzon Coaker and Lafarge Aggregates Limited (now Tarmac);

“maintenance sum” means the sum of £100,000.00;

“quarry and landfill” means the quarry and landfill operations carried out on the Tarmac land; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of the Tarmac quarry and landfill.

**3.** The undertaker must before commencing construction of any specified work supply to Tarmac copies of the detailed design information in relation to that work approved by the relevant highway authority under the provisions of Schedules 19 and 20 (protection of interests).

**4.** The undertaker must give Tarmac no less than 28 days’ notice of the commencement of any of the specified works and must include with the notice a programme of those works. Once the specified works which are the subject of the notice have commenced they must be completed without delay in accordance with the programme.

**5.** The undertaker must not in the exercise of the powers conferred by this Order during all periods and times when the quarry and landfill is operational do anything which obstructs either the access to the Tarmac land and the bagging plant from the A50 and Warren Lane or the egress from the Tarmac land and bagging plant via Warren Lane and the A50 or onto M1 Junction 24.

**6.** The undertaker must give Tarmac a minimum of 28 days’ notice of any requirement to alter the position of any of its haul roads within the Tarmac land in order to facilitate the carrying out of the specified works in the circumstances where the undertaker is constructing the altered haul road

or 3 months' notice in the event of the altered haul road being constructed by Tarmac. In the event of the altered haul road being constructed by Tarmac the undertaker must recompense Tarmac for the reasonable costs incurred in connection with the construction.

7. The undertaker must construct the Tarmac access in accordance with a specification and to standards agreed with Tarmac (such agreement not to be unreasonably withheld or delayed) and the Tarmac access must be in place (having been constructed to the agreed standards) prior to the existing access to or egress from the Tarmac land being closed or obstructed.

8. Subject to the approval of Highways England the undertaker must incorporate a yellow box junction on the egress from the Tarmac access onto M1 Junction 24, the preferred design being that set out on the drawing entitled Quarry Exit at J24 (NTH/209/SK137 Revision P2).

9. The Tarmac access must be gated or include barriers at each end in order for security to be maintained by Tarmac, such gates to be in a position agreed between the undertaker and Tarmac but set back no less than 15 metres from the public highway.

10. A scheme for the signage along the Tarmac access must be agreed between the undertaker and Tarmac (with both parties acting reasonably) and implemented by the undertaker as agreed.

11. The undertaker must permit Tarmac to utilise the Tarmac access for egress from and access to the Tarmac land at all times with the exception of periods when such access would interfere with the specified works or the maintenance of the Tarmac access at which times the undertaker must provide a satisfactory alternative temporary access which must be no less convenient, such access being agreed in advance by Tarmac.

12. The undertaker must pay the maintenance sum to Tarmac at the end of the contractors' maintenance period in respect of the Tarmac access to fund the maintenance of the access track during the remainder period of the Tarmac lease.

13. The undertaker must, prior to undertaking any works on the Tarmac land, agree with Tarmac a protocol or other terms to ensure adequate demarcation between the landfill part of the Tarmac land and the works required to construct the Tarmac access (such agreement not to be unreasonably withheld or delayed).

14. The undertaker must reinstate any environmental barrier disturbed by, or construct any environmental barrier required as a result of, the specified works in the location and to a specification agreed with the Environment Agency and Tarmac.

15. Any difference or dispute arising between the undertaker and Tarmac under this Schedule must, unless otherwise agreed between the undertaker and Tarmac, be determined by arbitration in accordance with article 41 (arbitration).

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order grants development consent for, and authorises Roxhill Developments Group Limited, Roxhill Developments Limited and Roxhill (Kegworth) Limited ("the undertaker") to construct, operate and maintain, the new East Midlands Gateway Rail Freight Interchange together with the construction and alteration of highways and associated development. The undertaker is authorised

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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 39 (certification of plans etc.) of this Order may be inspected free of charge at the offices of North West Leicestershire District Council at Whitwick Road, Coalville, Leicestershire, LE67 3FJ.