

A46 Coventry Junctions (Walsgrave) Scheme Number: TR010066

3.2 Explanatory Memorandum

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Planning Act 2008

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**The Infrastructure
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A46 Coventry Junctions (Walsgrave)
Development Consent Order 202[x]

EXPLANATORY MEMORANDUM

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THE A46 COVENTRY JUNCTIONS (WALSgrave)

DEVELOPMENT CONSENT ORDER

EXPLANATORY MEMORANDUM

1 Summary

- 1.1 This memorandum explains the purpose and effect of each article of, and the schedules to, the draft A46 Coventry Junctions (Walsgrave) Development Consent Order (the Order), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹. Regulation 5(2)(c) requires explanatory memoranda to explain *'the purpose and effect of provisions in the draft order'*.

2 Purpose of the Order

- 2.1 National Highways Limited is applying to the Secretary of State for a development consent order to carry out the A46 Coventry Junctions (Walsgrave) scheme (the Scheme).
- 2.2 National Highways is the strategic highway company responsible for operating, maintaining and improving the Strategic Road Network (SRN) in England, appointed by the Secretary of State under section 1 of the Infrastructure Act 2015 by virtue of the Appointment of a Strategic Highways Company Order 2015.
- 2.3 The SRN is made up of the motorway and major A roads network. The A46 is part of the SRN.
- 2.4 National Highways is proposing to improve the A46 Walsgrave Junction by changing it from a roundabout to through running. The Scheme includes:
- (a) Realignment of the existing A46 dual carriageway through the existing at grade roundabout (which will be removed), for approximately 880m to improve the road geometry and allow for a 50mph speed limit.
 - (b) Earthworks on the eastern side of the existing A46 mainline to facilitate the realignment through the existing at grade roundabout.
 - (c) A new grade separated junction over the A46 mainline, approximately 800m north of the existing Walsgrave Junction to connect the B4082 with the A46.
 - (d) A new overbridge structure across the existing A46, between the dumbbell roundabouts forming the grade separated junction.
 - (e) New merge and diverge slip roads at the grade separated junction for both northbound and southbound movements.

¹ S.I. 2009/2264

- (f) Realignment of the B4082 to form a single carriageway link road, for approximately 900m, to connect the local road network to the new A46 grade separated junction with a proposed 40mph speed limit.
- (g) Road assets and street furniture such as traffic signs and lines, relocated variable message sign (VMS), street lighting columns, vehicle restraint systems (VRS), fences, retaining walls and kerbs.
- (h) Drainage systems including a dry detention basin and two ponds that will be designed to be permanently wet.
- (i) Proposed new maintenance accesses to the drainage basins features and VMS.
- (j) Retention of the Hungerley Hall Farm accommodation bridge (the existing bridge that provides farm vehicle access over the A46 mainline).
- (k) Farm access track to the north of Hungerley Hall Farm to provide gated access to the B4082 link road.
- (l) Improvements to facilities for walkers, cyclists and horse-riders (WCH) through provision of a signalised pedestrian crossing on the B4082; and providing enabling works, including the retention of Hungerley Hall Farm accommodation overbridge, for a potential future WCH route to be provided by others.
- (m) Replacement and installation of new highway boundary fencing.
- (n) Replacement vegetation planting to compensate for the vegetation that needs to be removed to facilitate the Scheme.

2.5 A detailed description of the Scheme is included in Chapter 2 of the Environmental Statement (ES) (the Scheme) ([TR010066/APP/6.1APP-024](#)) and the Introduction to the Application ([TR010066/APP/1.3APP-003](#)).

Nationally Significant Infrastructure Project

2.6 Section 22 of the Planning Act 2008² (the 2008 Act) makes a distinction between three different types of highway-related development capable of being a nationally significant infrastructure project (NSIP) within section 14(1)(h) of the 2008 Act. The three types of highway related development are set out in subsections (2), (3) and (5) of section 22. Under section 22(1) an NSIP must fall within one of the three categories specified, which are expressly stated to be alternatives. This Scheme is the “alteration” of a highway within the meaning of section 22(3).

2.7 The Scheme comprises the alteration of a highway, the A46. Sub-section 22(3) provides that the alteration of a highway is an NSIP if the three criteria set out in the sub-section are met. The three criteria are met for the proposed works to the A46 in

² c.29

that the highway is wholly in England (thereby meeting the requirement in sub-section 22(3)(a)); a strategic highways company, namely National Highways, is the highway authority for that highway (thereby meeting the requirement in sub-section 22(3)(b)); and the area of development comprising the alteration (the term “area of development” being defined in sub-section 22(9)) is greater than the limits prescribed in sub-section 22(4) (thereby meeting the requirement in sub-section 22(3)(c)).

2.8 The Scheme satisfies section 22(3) in that:

- (a) the highway is wholly in England;
- (b) National Highways as strategic highways company will be the highway authority for the highway; and
- (c) the area of development is greater than the relevant limit set out in subsection (4), which in this case is 12.5 hectares and the speed limit for any class of vehicle is expected to be 50mph or greater.

2.9 As the Scheme comprises an NSIP, development consent must be obtained from the Secretary of State to authorise it in accordance with section 31 of the 2008 Act. The Order authorises the NSIP, with the works involved being set out in Schedule 1 (authorised development) to the Order ([TR010066/APP/3-1APP-005](#)). Under section 37 of the 2008 Act an order granting development consent may only be made if an application for it is made (through the Planning Inspectorate) to the Secretary of State.

3 Associated Development

3.1 The Order also seeks consent for development which is associated with the NSIP, and which is included in the “authorised development” listed in Schedule 1. The Secretary of State may, under the provisions of section 115 of the 2008 Act, grant consent for development that is associated with an NSIP.

3.2 Guidance³ on associated development was issued by the Secretary of State for Communities and Local Government. In this guidance associated development is described as being “*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*” (paragraph 6) and “*requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development*” (paragraph 5).

3.3 Annex B of the above-mentioned guidance lists the following as examples of associated development for highway NSIP schemes:

- (a) replacement roadside facilities where this becomes necessary due to the elimination of an existing facility by highway improvement;

³ Guidance on associated development applications for major infrastructure projects; DCLG (2013) is still in force but is expected to be replaced in Autumn 2024.

- (b) infrastructure associated with cycle/pedestrian access;
- (c) offsite landscaping, habitat creation and other environmental works;
- (d) offsite drainage works;
- (e) alteration/diversion/stopping up of local roads, accesses and other rights of way; and
- (f) offsite diversion of statutory undertakers' equipment.

3.4 In some cases there may be some overlap or the absence of a clear boundary between associated development and works which form part of the NSIP. There is a danger that separating the two out in the Order could potentially lead to an error in defining them one way or another, given this potential for overlap between the two categories.

3.5 For this reason, and as there is no requirement for a development consent order (DCO) to distinguish between these two categories, National Highways has chosen not to differentiate the NSIP and the associated development works in Schedule 1 to the Order. Ultimately, all elements of the Scheme either constitute part of the NSIP or are "associated development" to the NSIP within the meaning of section 115(2) of the 2008 Act and so can properly be authorised by the Order.

3.6 For the avoidance of doubt, the diversions of statutory undertakers' equipment and apparatus required for the Scheme do not constitute NSIPs in their own right.

3.7 In order to ensure that the authorised development and the associated development are constructed efficiently and without impediment, the Order contains the powers to carry out the works listed in Schedule 1. The use of such measures was explicitly approved in the A19/A1058 Coast Road (Junction Improvement) Order 2016 (A19/A1058 Order) and extensive provisions were used in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (A14 Order), the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 (M4 Motorway (Junctions 3 to 12) Order), the A19/A184 Testo's Junction Alteration Development Consent Order 2018 (the Testo's Order), the Silvertown Tunnel Order 2018 (the Silvertown Order), the A63 (Castle Street Improvement, Hull) Development Consent Order 2020 (the A63 Order), the A585 Windy Harbour to Skippool Improvement Scheme Development Consent Order 2020, (the Windy Harbour Order) and in more recently granted orders such as the A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (A428 Black Cat Order).

4 Ancillary Matters

4.1 The Order also provides for several ancillary matters, i.e. provisions not consisting of development.

4.2 The main ancillary matter is a power to acquire land or rights over land compulsorily or by agreement, in accordance with section 120(4) of the 2008 Act, required for or to facilitate, the authorised development, or that are incidental to the authorised

development under section 122 of the 2008 Act. Justification for these powers is set out in the Statement of Reasons ([APP-008TR010066/APP/4.1](#)) that accompanies the application.

- 4.3 Further to providing these powers, the Order seeks to apply and modify statutory provisions that relate to the compulsory acquisition of land. Under sections 117 and 120(5) of the 2008 Act, an order containing provisions of this nature must be made by statutory instrument. The Order is therefore presented in that form.
- 4.4 Other ancillary matters include the stopping up of lengths of existing highways and private means of access in the vicinity of the junction, the classification of highways, the application of speed limits, the creation of new private means of access, and the application and disapplication of legislative provisions.

5 Draft Order

- 5.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. Although the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) (the Model Provisions) have been repealed, the Order reflects much of the suggested drafting in the model provisions, as well as other development consent orders that have been made to date.

Part 1 – Preliminary

Article 1 – Citation and commencement

- 5.2 Article 1 sets out the name of the Order, establishing how it may be cited in subsequent legislation. It also states the date on which the Order comes into force.

Article 2 – Interpretation

- 5.3 The purpose of article 2(1) is to define terms used in the remainder of the Order.
- 5.4 The following definitions are used in articles in the remainder of the Order and are typical of highway schemes:
- (a) "the 1984 Act";
 - (b) "carriageway";
 - (c) "cycle track": this term is used interchangeably with "cycle way" in the application documents and both are intended to have the meaning set out in the Order;
 - (d) "footway" and "footpath";
 - (e) "street";
 - (f) "street authority";
 - (g) "traffic authority"; and

(h) "trunk road".

5.5 Other definitions to note include:

- (a) "commence" which makes it clear that the carrying out of a limited number of works as set out in the pre-commencement plan ([APP-112TR010066/APP/6.7](#)), that would constitute a "material operation" under the 2008 Act are not to be taken to mean that the development has "commenced". This enables National Highways to undertake certain preparatory works prior to the submission of relevant details for approval under the requirements in Schedule 2 of the Order. National Highways considers that this approach is reasonable and proportionate. The works that are excluded from the definition are either *de minimis* or have minimal potential for adverse effects, in line with the Planning Inspectorate's Advice Note 15⁴. National Highways should be permitted to carry out low impact preparatory works following the grant of the Order, while it is working to discharge the pre-commencement Requirements, thereby helping to minimise the construction timetable. The approach of including a pre-commencement plan follows the approach taken in the A428 Black Cat Order.
- (b) "maintain" which includes to inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the ES ([TR010066/APP/6.1](#)), and any derivative of maintain is to be construed accordingly (see paragraph 5.12 below). National Highways considers that this is an appropriate definition, given in particular the proviso that any works to maintain the authorised development must not give rise to any materially new or materially different environmental effects to those identified in the ES. This approach has been taken by National Highways on the M25 Junction 28 Development Consent Order 2022 (M25 Junction 28 Order).
- (c) "the Order land" means the land shown on the land plans ([APP-012TR010066/APP/2.2](#)) which is within the limits of land to be acquired or used permanently or temporarily and described in the Book of reference ([TR010066/APP/4.3APP-010](#));
- (d) "the Order limits" means the limits of the land that may be acquired permanently or used permanently or temporarily within which the authorised development may be carried out as shown on the land plans ([APP-012TR010066/APP/2.2](#)) and the works plans ([APP-013TR010066/APP/2.3](#)).

5.6 Articles 2(2) and 2(3) provides that a broad definition of 'rights over land' applies to the Order.

5.7 Article 2(4) provides that measurements are approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are

⁴ The Planning Inspectorate's Advice Note 15 is still in force, but is expected to be updated later in 2024.

marginally different to those mentioned in the Order, there is no issue over whether the works are permitted by the Order. Thus this provision allows for a small tolerance with respect to any distances and points, although works will take place within the limits of deviation. It is common practice to include such provision in legislation authorising linear infrastructure, see for example, the A47 Wansford to Sutton Development Consent Order 2023 (A47 Wansford Order) and the A428 Black Cat Order.

- 5.8 Article 2(5) provides that areas given in the Book of reference ([APP-010TR010066/APP/4.3](#)) are approximate as these are not covered by article 2(4). This is intended to clarify the position of the areas in the Book of reference, the purpose and effect is the same as set out in the previous paragraph.
- 5.9 Article 2(6) provides that references to any statutory body include that body's successor having jurisdiction over the authorised development.
- 5.10 Article 2(7) and 2(8) tie references to lettered / numbered points and numbered works in the Order to the rights of way and access plans ([APP-014TR010066/APP/2.4](#)) and Schedule 1 of the Order, respectively.
- 5.11 Article 2(9) confirms that the expression "includes", when used in the Order, is to be construed without limitation.

Part 2 – Principal Powers

Article 3 – Development consent etc. granted by the Order

- 5.12 Article 3(1) provides the principal power to construct and operate the authorised development within the Order limits. Schedule 1 (authorised development) describes the authorised development. This article makes the consent subject to the requirements that are listed in Schedule 2 (requirements).
- 5.13 Article 3(2) states that any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of the Order. This provision ensures that the modifications made in the Order apply to any enactments that may affect the authorised development and further ensures consistency with legislation more generally. There is precedent for such a provision, for example the Secretary of State approved the same wording in the A14 Order (see article 5(2)) and in the Testo's Order (see article 3(2)).

Article 4 – Maintenance of the authorised development

- 5.14 This article authorises National Highways to maintain the development. "Maintain" is defined in article 2(1) as including "inspect, repair, adjust, alter, improve, landscape, preserve, remove, decommission, reconstruct, refurbish or replace", with these terms bearing their common-sense meanings.
- 5.15 This definition is broader than the equivalent in section 329 of the Highways Act 1980, which simply states that maintenance "includes repair". Article 4 therefore supplements the maintenance powers under the Highways Act 1980 and ensures that National Highways has the necessary powers to maintain the Scheme. The proper maintenance of the highway is an essential part of ensuring the safety of road users. It is therefore

appropriate for 'maintain' to have a reasonably broad definition. Paragraph 5.5(b) above provides further justification for the use of this definition.

- 5.16 The powers of maintenance are subject to other provisions in the Order, in particular article 10 which makes provision in relation to maintenance by highway authorities.

Article 5 – Maintenance of drainage works

- 5.17 The purpose of this article is to make it clear that any realignment of drainage works or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for maintenance of those drainage works, unless this is agreed between National Highways and the responsible party. Responsibility for maintenance of drainage works may sit with the Environment Agency, an internal drainage board, a lead local flood authority or a landowner.
- 5.18 The provision is well precedented, see for example article 4 of the A14 Order, article 5 of the Testo's Order, article 4 of the A47 Wansford Order and article 23 of the A428 Black Cat Order and National Highways considers that it is a sensible inclusion to clarify who has responsibility for drainage works.

Article 6 – Planning Permission

- 5.1 Article 6(1) permits certain development authorised by a planning permission granted under the 1990 Act that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This provision is not a model provision, but ensures that National Highways does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission, provided that development is not of itself an NSIP or part of one, or required to complete or enable the use or operation of any part of the authorised development. These provisions have precedent in article 7 of A30 Chiverton Order and article 7 of the A428 Black Cat Order.
- 5.2 Article 6(2) provides that the land within the Order limits in which National Highways holds an interest shall be treated as “operational land of a statutory undertaker” for the purposes of the Town and Country Planning Act 1990. The effect of that Order land being treated as operational land is that the person responsible for operating and maintaining the Scheme (National Highways or any transferee of its powers) will benefit from certain permitted development rights on that land in connection with the operation of the road. A similar provision has been included in other made Orders for example article 37 of the Testo's Order, article 42 of the A30 Chiverton Order, article 37 of the Riverside Energy Park Order 2020 and article 42 of the Boston Alternative Energy Facility Order 2023 followed the same approach. Other DCOs often have this provision as a separate article. On this occasion, National Highways has included the provision in this article as it relates to “planning permissions” under the Town and Country Planning Act 1990.
- 5.3 Article 6(3) addresses the Supreme Court's ruling in *Hillside Parks Ltd v Snowdonia National Park Authority* 2022 UKSC [30]. That judgment relates to planning permissions

granted under the Town and Country Planning Act 1990. It holds that, unless there is an express provision otherwise, where development has taken place under one permission, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission in light of what has already been done under the first permission.

- 5.4 Article 6(3) ensures that enforcement action is not taken in respect of planning permissions granted under the 1990 Act which are inconsistent with the works and exercise of powers under the Order. The provision is based on article 3(3) of the Lake Lothing (Lowestoft) Third Crossing Order 2020 (Lake Lothing Order). However, it differs from that precedent in that the provision which reflects the terminology used by their Lordships in *Hillside*, and confirms that planning permissions which conflict with the Scheme can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the Scheme and the development authorised under a planning permission. It is considered this is necessary to confirm that developments are not prevented.
- 5.5 Article 6(4) has been inserted to deal with the converse situation and confirms that development under a planning permission is not to prevent activity authorised under the Order. Without paragraphs (3) or (4) there is a significant risk of the Scheme or other permissions being undeliverable or subject to enforcement action.
- 5.6 Paragraph (5) treats works carried out under this Order as being immediately required for the purpose of carrying out development authorised by a planning permission for the purposes of a tree felling license. This provision is based on article 54(3)(c) of the Great Yarmouth Third River Crossing Development Consent Order 2020.
- 5.7 Article 6(6) has been inserted to define “enforcement action” to make clear that enforcing action under Part 7 of the 1990 is caught by subparagraph (3)(b).

Article 7 - Limits of deviation

- 5.8 Since the authorised development involves linear works, this article provides for limits of deviation to allow for a lateral deviation from the lines and situations of the authorised development within the limits of deviation shown on the works plans ([APP-013TR010066/APP/2.3](#)), and vertical deviation of the linear works subject to certain maximums.
- 5.9 The maximum limits of vertical deviation can be exceeded where it is demonstrated to the Secretary of State's satisfaction (and the Secretary of State has certified accordingly following consultation with the relevant planning authority) that such deviation would not give rise to any materially new or materially different environmental effects in comparison with those reported in the ES ([TR010066/APP/6.1](#)).
- 5.10 The purpose of this provision is to provide National Highways with a proportionate degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for unforeseen reasons but at the same time ensuring that any flexibility will not give rise to any materially new or materially different environmental effects.

- 5.11 The provision is well precedented in recent highways DCOs – see, for example, article 6 of the Testo's Order and article 8 of the A30 Chiverton Order.
- 5.12 Article 7(3) clarifies that the process set out in Part 2 of Schedule 2 to the Order, which applies in relation to applications to discharge any of the requirements in Part 1 of Schedule 2, will also apply to any application to the Secretary of State for certification under paragraph (1) of article 7, as though it were an application for approval under the requirements. This ensures there is a clear, defined process in place for applications to the Secretary of State under article 7(1).

Article 8 – Benefit of the Order

- 5.13 Article 8(1) of this article overrides section 156(1) of the 2008 Act (as permitted by section 156(2)) to give the benefit of the Order to National Highways rather than anyone with an interest in the land the subject of the Order. It would be impracticable and inappropriate for the authorised development to be carried out by all of those that have an interest in the land required for the Scheme.
- 5.14 The purpose of article 8(2) is to clarify the exceptions where the Order will self-evidently benefit others, e.g. rights for statutory undertakers. Absent this provision, there would be a contradiction since strictly speaking only National Highways could benefit from these works. The same wording was accepted and approved by the Secretary of State in the A14 Order (see article 8(2)), the M4 Motorway (Junctions 3 to 12) Order (see article 7(2)) and the Testo's Order (see article 7(2)).

Article 9 – Consent to transfer benefit of Order

- 5.15 This article allows the benefit of the Order to be transferred or leased to others by National Highways. The exercise of any transferred benefits or rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were executed by National Highways.
- 5.16 This article is based on article 5 of the Model Provisions.

Part 3 – Streets

Article 10 – Application of the 1991 Act

- 5.17 Article 10 modifies the application of the New Roads and Street Works Act 1991⁵ (the 1991 Act) to works carried out under the powers of the Order.
- 5.18 Article 10(1) provides that works carried out under the powers of the Order which match the description of "major highway works" in the 1991 Act will be treated as major highways works for the purposes of the 1991 Act. The effect of this is to clarify that the provisions for sharing the burden of dealing with apparatus in the street (under sections 84 and 85 of the 1991 Act), which would normally apply only to major works carried out

⁵ c.22

by the highway authority, will apply in respect of the works authorised by the Order irrespective of who in fact carries them out.

- 5.19 “Major Highways Works” are defined at section 86 of the 1991 Act. The definition includes, at sub-sections 86(3)(b) and (f), works undertaken under powers conferred by sections 64 and 184 the Highways Act 1980. As that would not be relevant in this context (where the works will be undertaken under the powers of the Order), these sub-sections are omitted from paragraph (1)(a). Works equivalent to works undertaken under those sections of the Highways Act 1980, but carried out under powers conferred by the Order, are included through paragraph 1(b). The effect is that any works which would be “major highway works” under the 1991 Act if carried out by a highway authority in relation to one of its streets are also “major highway works” if carried out under the powers of the Order regardless of who carries them out.
- 5.20 Article 10(3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order, and the provisions in the Order (including the requirements) which would regulate the carrying out of the Order works.
- 5.21 Articles 10(4) to 10(6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to any streets which are temporarily altered, diverted or restricted under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily altered, diverted or restricted street are “street works” for the purposes of the 1991 Act and, second, it simplifies the implementation of the works by providing for a single process in respect of streets which are temporarily altered, diverted or restricted and those which are not.
- 5.22 Article 10(7)(a) provides that nothing in article 13 shall affect the ability of the local highway authority (under section 87 of the 1991 Act) to declare a street in its area a maintainable highway, which would make maintenance of the street (once completed) the responsibility of the local highway authority, and would mean that the 1991 Act would apply to street works carried out in that street. Further, it provides that National Highways will not be under the duties that apply to a “street authority” for the purposes of the 1991 Act by virtue of being responsible for the maintenance of a street under article 12.
- 5.23 Article (7)(b) makes it clear that the maintenance obligations imposed by article 13 do not override the provisions of the 1991 Act that govern procedures for street works, i.e. works in streets involving the placing of or alteration to apparatus in the street. After the implementation of the Order it is appropriate that the 1991 Act should govern such works as it is specifically designed to ensure a fair and efficient procedure for the various parties affected by such works.
- 5.24 These modifications reflect those made in other highway DCOs, for example the M4 Motorway (Junctions 3 to 12) Order, the A19/A1058 Coast Road (Junction Improvement) Order 2016, the Testo’s Order and the Lake Lothing Order.

Article 11 – Street works

- 5.25 This article allows National Highways to break up or open, tunnel or bore under, remove or use earth and materials in or under, place and keep apparatus in or under the streets, demolish, remove, replace and relocate any street furniture, execute any works to improve sight lines, execute and maintain landscaping works, carry out re-lining and placement of road marking and remove and install temporary and permanent road signage in the Order limits for the purposes of the authorised development. The authority given by this article is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.
- 5.26 The article is based on article 8 of the model provisions and article 15 of the A428 Black Cat Order.

Article 12 – Power to alter layout etc. Of streets

- 5.27 Article 12 provides the undertaker the power to alter the layout of any street within the Order limits and layout of any street having a junction with such a street. Included in these powers are the ability to increase the width of a carriageway by reducing the width of a kerb, footpath, footway, cycle track or verge; alter the level or increase the width of any such kerb, footway, cycle track or verge; reduce the width of the carriageway; and make and maintain passing places.
- 5.28 The article provides that these works may be provided temporarily, but where that is the case the undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.
- 5.29 The power is subject to giving the local street authority not less than 42 days' notice to the street authority of any exercise of the power, and that the power may not be exercised without the consent of the street authority where that authority is a public authority. The same wording was accepted and approved by the Secretary of State in article 10 of the Southampton to London Pipeline Development Consent Order 2020, article 14 of the A47 Blofield to North Burlingham Development Consent Order 2022 (A47 Blofield Order) and article 11 of the M3 Junction 9 Order.

Article 13 – Construction and maintenance of new, altered or diverted streets and other structures

- 5.30 The standard position in respect of maintenance of streets is that National Highways is responsible for maintaining trunk roads. Highways other than trunk roads are to be maintained by the local highway authority in respect of highways maintainable at the public expense, or whichever body is responsible for the maintenance of the street in respect of streets which are not maintainable at the public expense. This is reflected in articles 13(1) to 13(3). These provisions are subject to any agreement to the contrary between National Highways and the relevant street or highway authority.
- 5.31 Article 13(4) makes specific maintenance provision in relation to any new bridges carrying public rights of way over a trunk road. For these, National Highways is

responsible for the maintenance of the bridge structure while the local highway authority is responsible for the maintenance of the highway surface.

- 5.32 The effect of Article 13(5) and (6) is that in any action for damages against National Highways alleging failure to maintain a street or other structure, National Highways will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street or structure was not dangerous for traffic. This extends the provision in section 58 of the Highways Act 1980 to National Highways and draws on the approach taken in the Testo's Order, the A47 Wansford Order, the M25 Junction 28 Order, M20 Junction 10a Order and the A47 Blofield Order and M3 Junction 9 Order.
- 5.33 While National Highways would benefit from the equivalent defence in the Highways Act 1980 in respect of trunk roads, for which it is the highway authority, the proposed development includes roads which are not trunk roads and so this article is needed to ensure National Highways is covered by this defence in respect of all the roads that comprise the authorised development.

Article 14 – Access to works

- 5.34 This article allows works accesses to public highways to be created within the Order limits. It provides National Highways with a general power to form means of access in addition to the accesses specifically provided for by the Order, to provide an appropriate degree of flexibility in case the need for an access only becomes apparent at a later stage in the implementation of the Scheme. These powers are equivalent to those available to National Highways when implementing schemes under the Highways Act 1980. The same wording was accepted and approved by the Secretary of State in article 18 of the A47 Wansford Order and article 18 of the M3 Junction 9 Order.

Article 15 – Temporary alteration, diversion and restriction of use of streets

- 5.35 This article allows for the temporary alteration, diversion or restriction of streets for the purposes of the Scheme, whilst ensuring that essential pedestrian access to and from premises along that street is maintained if necessary (article 15(3)).
- 5.36 Article 15(2) differs from the Model Provisions and confers a power on National Highways where the use of a street has been temporarily altered, diverted or restricted under this article to use it as a temporary working site. This provision has precedent in a number of DCOs including the Testo's Order and the A30 Chiverton Order.
- 5.37 Article 15(4) confirms that, save in respect of streets for which it is the street authority, National Highways must not alter or divert any street, without the consent of the street authority (such consent not to be unreasonably withheld or delayed). Under article 15(6), this consent is deemed given if the street authority does not respond to National Highways' consent request within 28 days.
- 5.38 Article 15(5) provides a right to compensation for any person suffering loss due to the suspension of a private rights of way under this article.
- 5.39 Article 15(6) states that a street authority which fails to notify National Highways of its decision in respect of an application for consent within 28 days of the application being

made is deemed to have given its consent. This time limit is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by National Highways in a timely fashion. As a nationally significant infrastructure project the Scheme should not be at risk of being help up due to a failure to respond to an application for consent.

- 5.40 This article has been included in previous development consent orders for highway schemes, for example article 12 of the Testo's Order, article 15 of the A30 Chiverton Order and article 16 of the A47 Wansford Order.

Article 16 – Use of private roads

- 5.41 This article authorises the temporary passage by National Highways (or other persons who are transferred this statutory right pursuant to article 12 (consent to transfer benefit of Order)) – in common with other authorised users – of private roads within the Order limits by persons or vehicles, for the purposes of, or in connection with, the construction of the authorised development, without the need for National Highways to take temporary possession of the land under article 39 (temporary use of land for carrying out the authorised development) of the Order.
- 5.42 This article therefore creates a power to “use” a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of a landowner (through the acquisition of a permanent right). This is akin to the powers for temporary use under article 39 of the Order; however, it is distinguished because National Highways does not require the exclusive use and possession of the private roads whilst exercising this power. The article is necessary because National Highways may need to use private roads inside the Order limits.
- 5.43 Article 16(2) provides that National Highways will be liable to compensate any person who has suffered loss or damage as a result of the exercise of this power.
- 5.44 Article 16(3) is included to clarify that any dispute as to a person's entitlement to compensation, or as to the amount of such compensation, is to be determined under Part 1 of the Land Compensation Act 1961.
- 5.45 There is precedent for this article, for example in article 14 of the M25 Junction 28 Order and article 56 of the A428 Black Cat Order.

Article 17 – Permanent stopping up of streets and private means of access

- 5.46 This article allows streets named in Parts 1 and 2 of Schedule 3 (permanent stopping up of streets) to be stopped up (i.e. the legal right of way along them to be extinguished) to the extent described. In each case, a new street is to be provided as a substitute for the street to be permanently stopped up, as set out in Parts 1 and 2 of Schedule 3. This power is necessary to facilitate the construction, operation and maintenance of the Scheme. It is precededented in many highways DCOs, such as the A14 Order the A30 Chiverton Order and M3 Junction 9 Order.

- 5.47 Article 17(2) confirms that the power in paragraph (1) is not to be exercised unless:
- (a) the new street to be substituted is open for use and has been completed to the reasonable satisfaction of the street authority; 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 National Highways, to the reasonable satisfaction of the street authority, between the commencement and termination points for the permanent stopping up, until the completion and opening of the new street.
- 5.48 Article 17(2) therefore ensures that access continues to be maintained for traffic along streets to be stopped up, before that permanent stopping up under paragraph (1) takes effect.
- 5.49 Article 17(3) provides that all rights of way over or along a street are extinguished where a street has been stopped up under this article.
- 5.50 Article 17(4) provides a right to compensation for any person who suffers loss due to the suspension or extinguishment of a private right of way under this article.

Article 18 – Classification of roads, etc.

- 5.51 The designation of highways, the specification of the classes of traffic authorised to use a highway and speed limits are ancillary matters which may be included in a DCO. These and other related matters are addressed by this article. These matters are integral to the implementation of the authorised development and it is therefore appropriate to include them in the Order as ancillary matters under section 120(3) of the 2008 Act.
- 5.52 Article 18(1) provides for the roads described in Part 1 of Schedule 4 (classifications of roads etc.) to become trunk roads from the date that they are complete and open to traffic.
- 5.53 Article 18(2) provides for the roads described in Parts 2 Schedule 4 to become classified roads from the date that they are complete and open to traffic.
- 5.54 Article 18(3) provides for the footways described in Part 3 of Schedule 4 footways.
- 5.55 Article 18(4) confirms that the private means of access in Part 4 of Schedule 4 will be provided.
- 5.56 Article 18(5) imposes speed limits on certain sections of the authorised development as described in Part 5 of Schedule 4.
- 5.57 The purpose of Article 18(7) is to confirm that the matters covered in paragraphs (1) to (6) may be varied or revoked in the future without the need to apply under the 2008 Act for an amendment to the Order, including where appropriate through the making of a Traffic Regulation Order.

Article 19 – Clearways

- 5.58 This article makes it unlawful for road users to stop on the roads specified in column (2) of Part 5 of Schedule 4 that are to become clearways except upon the direction of or with the permission of a constable or a traffic officer in uniform, or for emergency and other unavoidable reasons. The purpose of this provision is to ensure safe and proper operation of the authorised development. It is therefore appropriate to be included in the Order as an ancillary matter under section 120(3) of the 2008 Act.
- 5.59 Paragraph (2) sets out a list of circumstances in which it would be lawful for a vehicle to stop which would not contravene paragraph (1). Article 19(3) sets out the circumstances in which it would be lawful for a vehicle to wait, which would not contravene paragraph (1).
- 5.60 The wording in this article has been approved and the principle of inclusion of traffic regulation measures accepted in article 18 of the A30 Chiverton Order.

Article 20 – Traffic regulation

- 5.61 This article would, at any time prior to 12 months following the opening of the authorised development for public use, allow National Highways, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the authorised development, to:
- (a) revoke, amend or suspend in whole or in part any order made under the 1984 Act;
 - (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
 - (c) authorise the use as a parking place of any road;
 - (d) make provision as to the direction or priority of vehicular traffic on any road; and
 - (e) permit or prohibit vehicular access to any road.
- 5.62 Under article 20(3) any restriction etc. made before the end of the 12 month period may continue to have effect after that period has expired.
- 5.63 Implementation of any of the measures is subject to the prior approval of the traffic authority in whose area the roads are situated. Requirement is made in articles 20(4) and (5) for the chief officer of police and the relevant traffic authority to be consulted and notified in advance. The notification period varies depending on what is being proposed.
- 5.64 Any restrictions etc. may be suspended, varied or revoked by National Highways within a period of 24 months from the opening of the authorised development (article 20(7)).
- 5.65 This article was not included in the model provisions but has been included in all previous National Highways orders (for example article 20 of the A47 Wansford Order

and article 51 of the A428 Black Cat Order). It is anticipated that this article will be used inter alia to allow National Highways to amend the speed limits on sections of the public highways adjacent to and connecting to the Order land for which the City Council is the Highway Authority and traffic authority. These amendments are required to align the existing speed limits with those to be imposed on the altered stretches of highway within the Scheme to which they connect.

Part 4 – Supplemental powers

Article 21 – Discharge of water

- 5.66 This article establishes statutory authority for National Highways to discharge water into a sewer, watercourse or drain in connection with the carrying out or maintenance of the authorised development.
- 5.67 This statutory authority is subject to National Highways obtaining the consent of the owner of the sewer, watercourse or drain, but that consent cannot be withheld unreasonably (article 21(3)).
- 5.68 Article 21(6) requires the undertaker to take reasonably practicable steps to ensure that any water that is discharged is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- 5.69 Article 21(7) provides that this article does not override the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) the Environmental Permitting (England and Wales) Regulations 2016.
- 5.70 Article 21(9) states that a person who fails to notify the undertaker of their decision in respect of an application for consent/approval within 28 days of the application being made is deemed to have granted consent/approval. This time limit is necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered in a timely fashion. This article has been included in previous National Highways orders (see for example article 20(7) of the A30 Chiverton Order and article 21(7) of the A47 Wansford Order.
- ~~5.71 Article 21(10) amends section 66 of the Land Drainage Act 1991 so that provisions requiring consent not to be unreasonably withheld and deemed consent for applications under Section 66 Byelaws apply. This mirrors the principle set out in section 23(3) of the Land Drainage Act 1991 but with timescales consistent to the deeming provisions throughout the DCO. This provision was included in article 19 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.~~

Article 22 – Powers in relation to watercourses

- ~~5.72~~5.71 This article permits National Highways to carry out specified activities relating to watercourses. It provides National Highways with a general power to carry out works in watercourses in addition to those works specifically provided for by the Order, to provide an appropriate degree of flexibility in case the need for works only becomes apparent at a later stage in the implementation of the Scheme.

5.735.72 This article is precededented (see article 16 of The M4 Motorway (Junctions 3 to 12) Order, article 20 of the M25 Junction 28 Order and article 23 of the A1 in Northumberland: Morpeth to Ellingham Development Consent Order 2024 (A1 Northumberland Order).

Article 23 – Protective work to buildings

5.745.73 The purpose of this article is to allow National Highways to undertake protective works to buildings affected by the authorised development, such as underpinning, and to set out the procedure that will apply in these circumstances.

5.755.74 Article 23(10) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.

5.765.75 The wording has broad precedent (see article 18 of the Testo's Order, article 21 of the M25 Junction 28 Order and article 25 of the A1 Northumberland Order). It was also included in the Model Provisions as article 15.

Article 24 – Authority to survey and investigate the land

5.775.76 This article gives National Highways the power to enter land shown within the Order limits or which may be affected by the authorised development for the purpose of surveying and investigating the land. The article provides that National Highways must give 14 days' notice before exercising the powers of entry, and that compensation is payable for any loss or damage.

5.785.77 Articles 24(1) to (5) are based on the Model Provisions and have precedent in a number of made DCOs to date.

5.795.78 The drafting in paragraph (1) departs from the Model Provisions by authorising surveys, where reasonably necessary, on land outside but adjacent to the Order limits. This extension beyond the Order limits has precedent ((see article 23 of the M42 Junction 6 Order, article 19 of the A19 Downhill Lane Development Consent Order 2020, and article 22 of the A30 Chiverton Order). Powers to make excavations and boreholes, to investigate groundwater and discharge water onto land are also included, to ensure that National Highways is able to undertake all necessary activities in connection with surveying the land.

5.805.79 The ability to survey land adjacent to the Order limits where reasonably necessary is required so that National Highways can be confident that the surveys can be conducted to assess the effects of the Scheme, or on the Scheme, from outside its limits. It imposes a lesser burden than seeking compulsory acquisition / temporary possession of such land.

5.815.80 Articles 24(6) and (8) are not in the model provisions but have precedent in article 23 of the M42 Junction 6 Order and article 23 M3 Junction 9 Order. Article 24(6) applies a deemed consent period to ensure the delivery of the authorised development is not unduly delayed. Article 24(7) applies section 13 of the Compulsory Purchase Act

1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.

~~5.82~~5.81 Articles 24(8) provides for deemed consent if a highway or street authority does not provide a decision on whether it consents to trial holes being made under Articles 24(4). This article has been included in numerous orders (see, for example, article 23 of the M3 Junction 9 Order and article 22 of the Chiverton Order).

Article 25 – Felling or lopping of trees and removal of hedgerows

~~5.83~~5.82 Article 25(1) allows any tree or shrub that is within or overhanging land within the Order limits to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone using it. Compensation is payable for any loss or damage caused.

~~5.84~~5.83 Article 25(4) and (5) allows for the removal of hedgerows as defined in the Hedgerow Regulations 1997, including important hedgerows.

~~5.85~~5.84 This article has been included in numerous orders (see, for example, article 36 of the A14 Order, article 34 of the Testo's Order and article 23 of the M25 Junction 28 Order).

Article 26 – Trees subject to tree preservation orders

~~5.86~~5.85 This allows National Highways to fell or lop any trees subject to tree preservation orders described in Schedule 5 (hedgerows and trees). This is based on a Model Provision which has been used in numerous DCOs (see for example, article 35 of the Testo's Order and article 24 of the M25 Junction 28 Order).

Part 5 – Powers of acquisition and possession of land

Article 27 – Compulsory acquisition of land

~~5.87~~5.86 This article authorises the acquisition of certain land by compulsory purchase. It grants the power to acquire such of that land as is required for the authorised development, or to facilitate it, or is incidental to it. The power of acquisition over the Order land is qualified and restricted by sub-paragraph (2) of this article, in the case of parcels of land specified in the Order where only rights and restrictive covenants can be acquired (article 30), or where possession of land parcels as specified in the Order may be taken temporarily only (article 39).

Article 28 – Compulsory acquisition of land – incorporation of the mineral code

5.87 This article incorporates Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (with the exception of paragraph 8(3)). This means that where National Highways acquires land under the powers of the Order, it will not acquire any mineral deposits present in the land (other than those necessarily extracted or used in constructing the authorised development) unless they are expressly included in the conveyance. The article is based on article 19 of the Model Provisions.

Article 29 – Time limit for exercise of authority to acquire land compulsorily

5.88 This article gives National Highways five years to issue notices to treat or to execute a general vesting declaration to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring land compulsorily may be undertaken should the Order be made.

5.89 The article also sets a five year time limit on National Highways' power to take temporary possession of land under article 39 of the Order, although it does not prevent National Highways from remaining in possession of land after that time if it took possession within the 5 year limit (this has consistently been approved by the Secretary of State, see for example article 22 of the A14 Order, article 22 of the Testo's Order and article 25 of the A30 Chiverton Order).

~~5.89~~5.90 This article differs from other DCOs as it sets out that the 5 year period starts to run from the expiry of the legal challenge period under section 118 of the Planning Act 2008, or the earlier of the final determination of any legal challenge under that provision or 1 year from date the Order comes into force. This is necessary following recent experience of recent legal challenges to made DCOs, which may delay the exercise of compulsory acquisition powers and in so doing reduce the length of time within which those powers may be exercised, if the period relates (as it does usually) to the date on which the Order is made. As a public body, National Highways must also seek to ensure value for public money. It is therefore considered appropriate that the time period for the exercise compulsory acquisition powers should begin once the legal challenge period has expired or a legal challenge has been determined. In the absence of this provision, National Highways may be placed in a position where it would not be able to further reduce the extent of acquisition of land. This is because National Highways practice to exercise the powers of temporary possession, and once works are complete, it would then acquire the "as built" designs allowing for further reductions in the extent of compulsory acquisition. If the period for compulsory acquisition started to run at a time when National Highways was not carrying out the works because of an ongoing challenge, it would contract the period in which it could follow that approach. The Applicant notes that the concept of a compulsory acquisition period running from the end of a legal challenge period is precedented (see Article 21 of the Manston Airport Development Consent Order 2022)

Article 30 – Compulsory acquisition of rights and imposition of restrictive covenants

~~5.90~~5.91 This article allows for existing rights in land to be acquired compulsorily, and also for the acquisition of new rights and the imposition of restrictive covenants over land.

~~5.91~~5.92 This article provides for such rights and restrictive covenants as may be required to be acquired or imposed by National Highways over land which it is authorised to acquire under article 27. The public benefit of this is that it would allow National Highways, where circumstances allow, to reduce the area of outright acquisition and rely on rights or restrictive covenants instead. A provision of this kind is usual in Transport and Works Act orders and hybrid bills, and has been followed in a

number of DCOs (for example article 23 of the A14 Order and article 23 of the Testo's Order).

5.925.93 Paragraph (2) provides that for the land described in Schedule 6 (land in which new rights only, etc. may be acquired), National Highways' powers of compulsory acquisition are limited to the acquisition of such rights or the imposition of such restrictive covenants as may be required for the purposes set out in the Schedule (to the extent that the purpose relates specifically to such part of the Scheme as is specified in column (2) of Schedule 6).

5.935.94 Paragraph (3) provides that where powers under paragraph (1) to acquire the rights and to impose the restrictive covenants for the benefit of statutory undertakers or for the benefit of any other person does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land required for the benefit of any other statutory undertaker or any other person.

5.945.95 Paragraph (4) provides that where National Highways needs only to acquire rights or impose restrictive covenants over land, it shall not be obliged to acquire any greater interest in that land.

5.955.96 Paragraph (5) applies Schedule 7 (modifications of compensation and compulsory purchase enactments for creation of new rights) which imposes modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order, in particular the creation of new rights and the imposition of restrictive covenants. This is a consequence of the extension of land acquisition powers to these categories (which have been included to allow lesser land interests to be acquired).

5.965.97 For the purpose of section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled. Furthermore, the provisions have been amended so that the time limits are consistent with the Order (five years as opposed to three years) and the appropriate references to the 2008 Act.

5.975.98 Paragraphs (2) to (5) ensure that the relevant compulsory purchase and compensation provisions apply to acquisition of rights/restrictive covenants (and not just land).

Article 31 – Private rights over land

5.985.99 In order for it to be possible to implement the Scheme, provision is needed for the extinguishment of private rights in the Order land that would be incompatible with that implementation. Article 31 supplies that provision. The drafting is based on article 22 of the Model Provisions and has been consistently approved in highways DCOs (see for a recent example article 28 of the A30 Chiverton Order).

~~5.99~~5.100 Paragraph (1) provides for the extinguishment of private rights over Order land subject to compulsory acquisition under the Order, from the moment of acquisition or occupation of that land.

~~5.100~~5.101 Paragraph (2) provides for the extinguishment of existing private rights over land that is subject to the compulsory acquisition of new rights or imposition of restrictive covenants (but where the underlying land is not subject to powers of compulsory acquisition), if the exercise of those existing rights is inconsistent with the implementation of the Scheme, from the date of acquisition of the right, imposition of the restrictive covenant or occupation of the underlying land.

~~5.101~~5.102 Paragraph (3) provides that rights over Order land that is already owned by National Highways are also extinguished, at the point that any activity authorised by the Order interferes with or breaches those rights.

~~5.102~~5.103 Paragraph (4) provides for the temporary suspension of private rights over Order land that is not acquired but is occupied temporarily by National Highways in order to construct the proposed development. The suspension is for the duration of the occupation.

~~5.103~~5.104 Paragraphs (5) to (8) of article 31 make provision for compensation and for circumstances where rights are preserved.

~~5.104~~5.105 Paragraph (9) sets out a list of matters deemed to be private rights to provide certainty as to the scope of the article. The list of deemed private rights is broad in order to ensure that any right which could potentially interfere with the implementation of the proposed development can be extinguished. A similar list appears in article 25 of the A14 Order and article 24 of the Testo's Order.

Article 32 – Power to override easements and other rights

~~5.105~~5.106 This article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 to the 2008 Act. This article has precedent in, for example, article 32 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. It provides statutory authority for carrying out any authorised activity that interferes with any of the interests listed in paragraph (2) including restrictions on user of land arising by the virtue of a contract. Paragraph (3) provides for compensation to be payable where the interests listed in paragraph (2) are overridden.

~~5.106~~5.107 Notwithstanding the coming into force of section 203 of the Housing and Planning Act 2016, the power to override easements and other rights is required in respect of the exercise of article 23 (protective work to buildings), and articles 24 (authority to survey and investigate land) and 25 (felling or lopping of trees and removal of hedgerows) in circumstances where National Highways has not acquired the land. It may also apply where National Highways already holds an interest in the Order land

but an existing easement or other right would be incompatible with the Scheme and must be overridden. The payment of compensation is provided for in paragraph (3).

Article 33 – Disregard of certain improvements etc.

~~5.107~~5.108 This article provides for the Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

~~5.108~~5.109 It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the A47 Wansford Order and the A428 Black Cat Order.

~~5.109~~5.110 The wording of this article mirrors section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act"). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 34 – Set off for enhancements in value of retained land

~~5.110~~5.111 This article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Lands Tribunal shall set off against the value of the claim any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.

~~5.111~~5.112 This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation.

~~5.112~~5.113 The principle in this article is established in section 6B of the Land Compensation Act 1961 (lower compensation if other land gains value), which needs to be applied. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3)) to the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 35 – Modification of Part 1 of the 1965 Act

~~5.113~~5.114 The purpose of this article is to ensure consistency between the standard terms of highways DCOs and the Compulsory Purchase Act 1965 (as more recently amended by the Housing and Planning Act 2016) as applied by section 125 of the 2008 Act. These modifications have broad precedent, see for example, article 25 of the Testo's Order, article 29 of the A30 Chiverton Order and article 30 of the A47 Wansford Order.

Article 36 – Application of the 1981 Act

~~5.114~~5.115 This article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a DCO) the provisions of the Compulsory Purchase (Vesting Declarations) 1981 Act to compulsory acquisition under the Order so that National Highways has the option of acquiring Order land that is subject to the powers of compulsory acquisition by vesting declaration.

~~5.115~~5.116 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase. The other method involves serving a notice to treat on the land owner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.

~~5.116~~5.117 A vesting declaration, in contrast, sets the date on which title in the land is transferred to the acquiring authority. Compensation is negotiated or determined and paid later. Vesting declarations, therefore, allow title in the land to pass to the acquiring authority more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. Their use is subject to serving notices and observing time limits as required by the 1981 Act.

~~5.117~~5.118 Paragraph (5) modifies the provisions of the Compulsory Purchase (Vesting Declarations) 1981 Act to enable National Highways to acquire rights on behalf of another statutory undertaker.

~~5.118~~5.119 The modifications ensure consistency with the standard five year period sought under the Order for acquisition rights. It further ensures that the appropriate references are made to the 2008 Act. The article is based on article 23 of the model provisions, and previous National Highways orders such as article 31 of the M25 Junction 28 Order.

Article 37 - Acquisition of subsoil or airspace only

~~5.119~~5.120 This article allows National Highways to acquire the subsoil or airspace below or above land, rather than having to acquire all of the land.

~~5.120~~5.121 The purpose of this article is to give National Highways the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners, and lower payments of compensation, both of which are in the public interest. Any subsoil or airspace acquired under this provision can only be used for the same purposes for which National Highways could have acquired all of the land. This provision allows acquisition of the minimum interest needed to deliver the Scheme.

~~5.121~~5.122 This article is based on article 24 of the model provisions, which related to subsoil only, and previous National Highways orders such as article 27 of the Testo's Order, article 31 of the A30 Chiverton Order and article 32 of the A47 Wansford Order.

Article 38 - Rights under or over streets

~~5.122~~5.123 The purpose of this article is to allow National Highways to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without full acquisition, is prohibited in the circumstances set out in article 38(3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place (articles 38(4) and (5)).

~~5.123~~5.124 This article was in the Model Provisions and has been included in the majority of DCOs made to date (see for example, article 32 of the A30 Chiverton Order).

Article 39– Temporary use of land for carrying out the authorised development

~~5.124~~5.125 The purpose of this article is to allow the land set out in Schedule 8 (land of which temporary possession may be taken) to be occupied temporarily while the works are carried out. This is land which is required during construction of the Scheme but is not required permanently. The authorisation of temporary possession prevents National Highways having to permanently acquire land which is required to construct the Scheme but which is not needed permanently and therefore assists in minimising the interference with landowners' rights. The article is based on recent highways DCOs, such as article 29 of the Testo's Order.

~~5.125~~5.126 The land in respect of which National Highways may take temporary possession falls into two categories, as follows:

- (a) Article 39(1)(a)(i) allows the land set out in column 1 of the table in Schedule 8 to be occupied temporarily for the purpose specified in column 2 of the table in Schedule 8. This is land which is required during construction of the Scheme but which is not required permanently. Some land taken temporarily will have permanent works undertaken to it, e.g. accommodation works (see further article 39(5)(b), and Schedule 8; and
- (b) Article 39(1)(a)(ii) allows for the temporary occupation of any of the land that is subject to the powers of permanent acquisition, but in respect of which no process for acquisition has yet been commenced. The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. Thus article 24 with article 39(1)(a)(ii) makes it possible for National Highways to occupy land temporarily initially and only proceed to acquire permanently that part which is necessary for the Scheme as constructed. The benefits of this are lesser impacts on landowners and lower costs to National Highways, which is in the public interest. In line with this, paragraph (1)(d) confirms that works comprised within the Scheme can be undertaken on land that has been temporarily occupied.
- (c) Article 39(5) provides that, prior to giving up possession of land taken temporarily, National Highways will remove all temporary works and restore the land to the original surveyed condition at the time of entry (unless otherwise agreed with the owner of the land) so as to provide certainty as to the extent and standard of restoration required. The same approach has been adopted in article 40(6) where possession of land has been taken temporarily for maintaining the authorised development.

~~5.126~~5.127 The inclusion of this article is important to ensure that the authorised development can be carried out efficiently and expeditiously following the making of the Order. National Highways is entitled to either occupy and use land pending its permanent acquisition, or to temporarily occupy and use land that is not to be permanently acquired, with provision made for the restoration of the land and the payment of compensation to the affected landowners and occupiers for any loss or damage arising.

Article 40 – Temporary use of land for maintaining the authorised development

~~5.127~~5.128 This article provides that National Highways may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied. This article was included in the model provisions and article 29 of the M4 Order and article 30 of the Testo's Order.

Article 41 – Crown rights

~~5.128~~5.129 This article makes clear the position regarding the acquisition of interests in Crown land. No interest in Crown land may be acquired pursuant to the Order without the appropriate Crown authority consenting to any such acquisition. The drafting is based on recent highway DCO precedent – see for example article 57 of the Lake Lothing Order and article 36 of the M25 Junction 28 Order.

Article 42 – Statutory undertakers

~~5.129~~5.130 This article provides National Highways with statutory authority to acquire rights over land owned by statutory undertakers (i.e. utilities such as electricity and gas companies).

~~5.130~~5.131 It also allows National Highways to extinguish rights that statutory undertakers have over the Order land and to remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans ([APP-012TR010066/APP/2.2](#)) and described in the Book of reference ([APP-010TR010066/APP/4.3](#)). In practice, it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order land is required.

~~5.131~~5.132 As the land over which this power may be exercised is shown on the land plans ([APP-012TR010066/APP/2.2](#)) for the purpose specified in column 2 of the table in Schedule 6 (land in which new rights only etc. may be acquired), and the beneficiaries of such rights are described in the Book of reference ([APP-010TR010066/APP/4.3](#)), the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.

~~5.1325.133~~ Article 42(2) restricts National Highways' power to extinguish rights or move apparatus by excluding apparatus in streets. It applies alternative provisions more appropriate to balancing the interests of the various affected parties where the apparatus in question is in a street.

~~5.1335.134~~ This article is subject to Schedule 9 (protective provisions) which contains provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions despite the interference with their rights / apparatus required to facilitate the Scheme.

~~5.1345.135~~ This is an article with broad precedent (see for example, article 34 of the A14 Order, article 31 of the Testo's Order and article 35 of the A30 Chiverton Order).

Article 43 – Apparatus and rights of statutory undertakers in stopped-up streets

~~5.1355.136~~ This article concerns statutory undertakers' apparatus (pipes, cables etc.) under streets that are stopped up by the Order. Without the article, the statutory undertaker would not have access to the apparatus, since there will no longer be a right of way along the street. The statutory undertaker may remove, relocate or replace any affected apparatus of its own volition, or must do so if it is reasonably requested by National Highways.

~~5.1365.137~~ The statutory undertaker would receive compensation from National Highways for any relocation works and associated costs (article 43(3)). Article 43(4)-(5) discount from this compensation the cost associated with a higher specification in the replacement apparatus. Article 43(6) discounts from this compensation the increase in value to the statutory undertaker for having new rather than old (i.e. older than 7 years and 6 months) apparatus.

~~5.1375.138~~ Article 43(7) provides that where statutory undertakers are affected by a stopping up in relation to those parts of the project that constitute "major bridge works", "major transport works" or "major highway works", as defined in the New Roads and Street Works Act 1991, the cost sharing provisions under that Act will apply instead of the compensation provision in this article.

~~5.1385.139~~ Article 43 was included in the model provisions as article 32. This article is also standard for highways development consent orders (see, for example, article 32 of the Testo's Order and article 36 of the A30 Chiverton Order).

Article 44 – Recovery of costs of new connections

~~5.1395.140~~ This article provides that if any statutory undertaker's apparatus is removed and this cuts a service to anyone such that they have to seek a connection to other apparatus, then the reasonable cost of establishing a new service can be claimed from National Highways.

Article 45 – Special category land

~~5.1405.141~~ Under sections 131 and 132 of the 2008 Act, an order granting development consent is subject to special parliamentary procedure where it authorises the compulsory acquisition or compulsory acquisition of a right over land to which sections

131 or 132 applies (i.e. a common, open space). There is an exception to this position if the Secretary of State is satisfied that certain conditions under either section 131(3) or section 132(2) are met, including where the Secretary of State is satisfied that, when burdened with the Order rights, the land will be no less advantageous to the persons in whom it is vested, other persons (if any) entitled to exercise rights of common over it and the public.

~~5.141~~5.142 However, this Order does not seek to compulsorily acquire or compulsorily acquire a right over any special category land, instead it seeks to authorise the temporary possession of two plots of special category land in order to construct the Scheme as set out in the Statement of reasons ([APP-008TR010066/APP/4.1](#)). Therefore sections 131 and 132 of the 2008 Act are not engaged. Article 45 still applies to suspend existing rights while the land is temporarily occupied.

Part 6 – Miscellaneous and General

Article 46 – Application of landlord and tenant law

~~5.142~~5.143 This article governs the leasing of the Scheme or any part of it by National Highways to any other person. Essentially it allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.

Article 47 - Operational land for purposes of the Town and Country Planning Act 1990

~~5.143~~5.144 This article means that the land within the Order limits in which National Highways holds an interest shall be treated as “operational land of a statutory undertaker” for the purposes of the Town and Country Planning Act 1990.

~~5.144~~5.145 The effect of the Order land being treated as operational land is that the person responsible for operating and maintaining the proposed development (National Highways or any transferee of its powers) will benefit from certain permitted development rights as regards that land.

~~5.145~~5.146 This article was included in the model provisions as article 36 and this provision has been approved in made highways DCOs (see for example, article 42 of the A30 Chiverton Order).

Article 48 – Defence to proceedings in respect of statutory nuisance

~~5.146~~5.147 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in statutory nuisance generally, subject to any contrary provision made by a particular DCO. This article is such a contrary provision, amending the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by section 158).

~~5.147~~5.148 The defence is available if the noise relates to:

- (a) the construction or maintenance of the Scheme, and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974, or cannot reasonably be avoided; or
- (b) the use of the Scheme and cannot reasonably be avoided.

~~5.148~~5.149 Section 61(9) of the Control of Pollution Act 1974 does not apply if the consent relates to the use of premises by National Highways for the purposes of or in connection with the construction or maintenance of the authorised development.

~~5.149~~5.150 This article has precedent in recent highway DCOs made, for example article 43 of the A30 Chiverton Order and article 43 of the A47 Wansford Order.

Article 49 – Protection of interests

~~5.150~~5.151 This article gives effect to Schedule 9 (protective provisions), which contains provisions protecting the interests of third parties. Schedule 9 contains protective provisions for the benefit of electricity, gas, water and sewerage undertakers; electronic communications code network operators and drainage authorities.

~~5.151~~5.152 These provisions are based on the standard protective provisions approved by the Secretary of State on other schemes including the A14 Order, the M4 Motorway (Junctions 3 to 12) Order and the Testo's Order.

~~5.152~~5.153 National Highways has sought the views of the undertakers who have interests which may be affected by the Scheme and continues to negotiate with the undertakers to ensure any concerns are dealt with appropriately.

Article 50 – Certification of documents, etc.

~~5.153~~5.154 This article provides for various plans and other documents (being those listed in Schedule 10 (Documents to be Certified)) to be certified by the Secretary of State. This was included in the model provisions as article 41.

Article 51 – Service of notices

~~5.154~~5.155 This article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.

~~5.155~~5.156 It is common to have such an article in an order authorising development such as this. The article has precedent in a number of DCOs including article 42 of the A14 Order and article 41 of the Testo's Order.

~~5.156~~5.157 The provision is useful because it provides clarity on the issue. It is noted that the service of notice provisions under sections 229 and 230 of the 2008 Act apply to notices served under that Act rather than notices served under a DCO made under that Act.

Article 52 – Disapplication of legislative provisions

~~5.157~~5.158 This article provides (in reliance on section 120(5)(a) of the 2008 Act) for the disapplication in relation to the construction of the authorised development of certain requirements which would otherwise apply under general legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.

~~5.158~~5.159 National Highways considers that, in the context of the Scheme being of national significance, the Order should be the predominant authorising instrument for the works. The purpose of the regime created by the 2008 Act is to ensure that DCOs provide a unified consent for nationally significant infrastructure projects and the undertaker considers that disapplying and modifying certain legislative provisions, as set out in the Order, is proportionate in this context.

~~5.159~~5.160 A disapplication is sought in respect of the temporary possession provisions of the Neighbourhood Planning Act 2017. This is required as the relevant sections of the Neighbourhood Planning Act 2017 have not been brought into force and subsidiary regulations to that Act have not yet been made, and there is therefore no certainty as to the requirements of the new temporary possession regime. As such, this enables the temporary possession regime created by this Order to be applied. This approach has been expressly approved by the Secretary of State in the Silvertown Order.

~~5.160~~5.161 The Applicant has produced a Consents and Agreements Position Statement ([APP-007TR010066/APP/3.3](#)) as part of this application. This sets out in greater detail the Applicant's proposed approach to obtaining the other consents required for the Scheme.

Article 53 – Amendment of local legislation

~~5.161~~5.162 This article provides (in reliance on section 120(5)(a) of the 2008 Act) (what may be included in order granting development consent)) for the disapplication of certain requirements which would otherwise apply under local legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.

~~5.162~~5.163 The Order should provide a unified consent for construction of the Scheme and the undertaker considers that disapplying and amending certain legislative provisions, as set out in the Order, is proportionate in this context.

Article 54 – No double recovery

~~5.163~~5.164 This article makes it clear that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows the well-established principle of equivalence that a claimant is compensated for no more and no less than their loss. It has been included in numerous made Orders, including article 38 of the Silvertown Order.

Article 55 – Appeals relating to the Control of Pollution Act 1974

~~5.164~~5.165 This article establishes an appeal process in circumstances where a local authority issues a notice under section 60, or does not grant consent or grants conditional consent under section 61, of the Control of Pollution Act 1974. Its aim is to streamline the appeal process, thereby minimising the potential for unnecessary delay to the scheme.

~~5.165~~5.166 This was not included in the model provisions but was included in article 44 of the A14 Order. It has also been included in various made orders (see for example paragraph 4 of Schedule 17 to the Thames Tideway Tunnel Order and article 52 of the M25 Junction 28 Order).

Article 56 – Arbitration

~~5.166~~5.167 This article governs what happens when two or more parties disagree in the implementation of any provision of the Order. The matter is to be settled by arbitration and if the parties cannot agree on who the arbitrator should be, this is decided by the President of the Institution of Civil Engineers.

6 Schedule 1: Authorised Development – Article 3

- 6.1 Schedule 1 sets out the authorised development, which is described in detail in Chapter 2 of the Introduction to the Application ([APP-003TR010066/APP/1.3](#)) and the ES ([TR010066/APP/6.1](#)).

7 Schedule 2: Requirements – Article 3

- 7.1 The requirements in Schedule 2 are the equivalents of planning conditions. They reflect the processes and procedures usually employed by National Highways when implementing a scheme such as this. Approvals are to be sought from the Secretary of State, following consultation in some cases with the local planning authority and / or other relevant third party. Again, this is consistent with the processes and procedures employed by National Highways when implementing a scheme such as this.
- 7.2 The requirements in Schedule 2 provide that the various schemes, details and plans to be approved must reflect the mitigation measures set out in the Register of Environmental Actions and Commitments (REAC), which forms part of the First Iteration Environmental Management Plan ([APP-009TR010066/APP/6.5](#)) and contains all of the mitigation commitments made in the ES. This is the mechanism to ensure that environmental mitigation is secured by the Order, and the approach here is consistent with other DCOs which have been made. Further, the requirements provide that the approved schemes, details and plans must be implemented as approved, unless the Secretary of State approves further amendments to them.
- 7.3 Requirement 1 (*Interpretation*) contains a number of definitions used in Schedule 2.
- 7.4 Requirement 2 (*Time limits*) provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.
- 7.5 Requirement 3 (*Detailed Design*) provides that the authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections ([APP-015 and APP-016TR010066/APP/2.5](#)) unless otherwise agreed in writing by the Secretary of State, following consultation with the relevant planning authority.
- 7.6 Requirement 4 (*Second Iteration Environmental Management Plan*) requires the preparation of the Second Iteration Environmental Management Plan in consultation with the relevant planning authority and for its approval by the Secretary of State. It will be based substantially on the First Iteration Environmental Management Plan submitted as part of the application ([APP-009TR010066/APP/6.5](#)). The authorised development must be constructed in accordance with the Second Iteration Environmental Management Plan.
- 7.7 Requirement 5 (*Third Iteration Environmental Management Plan*) requires the submission of the Third Iteration Environmental Management Plan to the Secretary of State for written approval, following consultation with the relevant planning authority following the completion of construction. The Third Iteration EMP will govern maintenance of the Scheme during its operation.

- 7.8 Requirement 6 (*Landscaping*) prevents any part of the authorised development commencing until a landscaping scheme, which may be submitted in parts, covering all hard and soft landscaping works has been approved by the Secretary of State in consultation with the relevant planning authority. The proposed landscaping scheme must reflect the relevant mitigation measures in the First Iteration Environmental Management Plan ([APP-009TR010066/APP/6.5](#)) and must be based on the illustrative Environmental Masterplan (ES Figure 2.4 of [APP-043TR010066/APP/6.2](#)).
- 7.9 Requirement 7 (*Contaminated land and groundwater*) provides that no part of the authorised development is to commence until for that part a contamination risk assessment has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency and the relevant planning authority. The assessment must include a number of measures as set out in sub-paragraph (2). The requirement also makes provision for dealing with any contaminated land discovered during construction of the works, in consultation with the relevant planning authority and the Environment Agency.
- 7.10 Requirement 8 (*Protected species*) provides that where any previously unidentified protected species are found during construction, construction works near their location are to cease and National Highways must immediately report it to the Ecological Clerk of Works. National Highways must then prepare a written protection and mitigation scheme.
- 7.11 Under sub-paragraph (2) National Highways must implement the written scheme immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.
- 7.12 This requirement is based on recent National Highways orders such as requirement 10 of the A428 Black Cat Order.
- 7.13 Requirement 9 (*Surface water drainage*) provides that no part of the authorised development is to commence until written details of a surface and foul water drainage system, reflecting the mitigation measures in the REAC, which forms part of the First Iteration Environmental Management Plan ([APP-109TR010066/APP/6.5](#)) and including means of pollution control, have been prepared in consultation with the relevant planning authority and approved in writing by the Secretary of State.
- 7.14 Requirement 10 (*Archaeological remains*) provides that no part of the authorised development is to commence until a heritage written scheme of investigation has been prepared and approved by the Secretary of State following consultation with the relevant planning authority.
- 7.15 Requirement 11 (*Traffic management*) provides that no authorised development is to commence until a traffic management plan has been prepared and approved by the Secretary of State following consultation with the relevant highway authority.
- 7.16 Requirement 12 (*Fencing*) provides that permanent and temporary fencing must be constructed and installed in accordance with the Applicant's Manual of Contract

Documents for Highway Works except where agreed otherwise by the Secretary of State.

- 7.17 Requirement 13 (*Pre-commencement works*) provides that any pre-commencement works must be carried out in accordance with the pre-commencement plan ([APP-112TR010066/APP/6.7](#)) submitted with the application.
- 7.18 Requirement 14 (*Approvals and amendments to approved details*) provides that with respect to any requirement that stipulates the authorised development must be carried out in accordance with the approved details, the approved details are taken to include any amendments that may subsequently be approved or otherwise agreed in writing by the Secretary of State.
- 7.19 Part 2 of Schedule 2 (Requirements 15-19) provides a procedure for the discharge of requirements by the Secretary of State. It sets out time limits for decisions to be made and makes provision for circumstances where the Secretary of State requires further information to be provided in relation to an application for the discharge of a requirement and includes provision for the maintenance of a register of requirements, to aid members' of the public understanding of the progress made by National Highways towards discharging requirements.
- 7.20 Paragraph 18 of Schedule 2 provides that any anticipatory steps which National Highways takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.
- 7.21 Paragraph 19 sets out what is required of National Highways where consultation with a third party is to be undertaken prior to the submission of details to the Secretary of State for approval under the requirements. It confirms that National Highways must give the third party in question 28 days to respond to such consultation and must submit a report to the Secretary of State setting out the consultation undertaken (and National Highways' response to it) to inform the details submitted to the Secretary of State for approval.

8 Schedule 3: Permanent stopping up of streets and private means of access – Article 17

- 8.1 This schedule sets out those streets that are to be permanently stopped up pursuant to article 17 (permanent stopping up of streets and private means of access).

9 Schedule 4: Classification of roads, etc. – Articles 18, 19 and 20

- 9.1 This schedule sets out which roads will be trunk roads and classified roads. It also sets out new footways to be created, private means of access to be created, speed limits and traffic regulation, pursuant to article 18 (classification of roads, etc.), article 19 (clearways) and article 20 (traffic regulation).

10 Schedule 5: Hedgerows and trees - Articles 25 and 26

- 10.1 Part 1 of this schedule sets out those hedgerows to be removed and indicates which are important hedgerows. Part 2 records those trees that are the subject of Tree Preservation Orders that may be subject to works as part of the Scheme.

11 Schedule 6: Land in which new rights only etc. may be acquired - Article 30

- 11.1 This schedule sets out land in which new rights may be required pursuant to article 30 (compulsory acquisition of rights and imposition of restrictive covenants).

12 Schedule 7: Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants – Article 30

- 12.1 This schedule sets out the modification of legislation on compensation and compulsory purchase for the purpose of creating new rights and imposing restrictive covenants.

13 Schedule 8: Land of which temporary possession only may be taken - Article 39

- 13.1 This schedule sets out the land of which temporary possession may be taken pursuant to article 39 (temporary use of land for carrying out the authorised development).

14 Schedule 9: Protective provisions - Articles 42 and 49

- 14.1 This schedule sets out any protective provisions for the benefit of Electricity, Gas, Water and Sewerage Undertakers; and the Operators of Electronic Communications Code Networks.
- 14.2 None of the protective provisions are yet agreed with the benefiting undertakers, but discussions have commenced with the relevant undertakers.

15 Schedule 10: Documents to be certified - Article 50

- 15.1 This schedule sets out the list of documents to be certified by the Secretary of State under the terms of article 55 (certification of documents, etc.).