



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

**The East Midlands Gateway Rail Freight
Interchange**

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Transport**

Paul Hudson

Lorna Walker

Gavin Jones

Examining Authority

12 October 2015

File Ref TR050002

The East Midlands Gateway Rail Freight Interchange and Highway Order 201X, Leicestershire

The application, dated 29 August 2014, was made pursuant to section 37 of the Planning Act 2008 to enable the construction of three nationally significant infrastructure projects within the criteria set out in sections 22 and 26 of the Act.

The applicant is Roxhill (Kegworth) Limited.

The application was submitted to the Planning Inspectorate on 29 August 2014 and accepted by the Secretary of State for Communities and Local Government for examination on 19 September 2014.

The examination of the application began on 13 January 2015 and was completed on 12 July 2015.

The development proposed is for a strategic rail freight interchange on land north of East Midlands Airport at Castle Donington, plus substantial improvements to Junctions 24 and 24A on the M1, and a proposed southern bypass of Kegworth to the east of the M1. It would include the construction and operation of:

- a new rail line connecting the terminal to the Castle Donington freight only branch line;
- an intermodal freight terminal accommodating up to 16 trains per day each way of up to 775 metres in length, and including container storage and HGV parking;
- up to 557,414 m² of rail-served warehousing and ancillary service buildings;
- new roads and works to the existing road infrastructure;
- demolition of existing structures and structural earthworks to create development plots and landscape zones;
- strategic landscaping and open space, including the creation of new publicly accessible open areas;
- alterations to public rights of way;
- a bus interchange; and
- other associated development.

Summary of Recommendation: The Examining Authority recommends that the Order not be made. If, however, the Secretary of State decides to make the Order we recommend it should be in the form at Appendix D.

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ERRATA SHEET – East Midlands Gateway Rail Freight Interchange (TR050002)

Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport

Corrections agreed by the Examining Authority prior to the Decision being issued

Page no.	Paragraph	Error	Correction
2	4	Statement that the examination of the application began on 13 January 2015.	Change 13 January 2015 to 12 January 2015.
7	1.1.5	Statement that the examination of the application began on 13 January 2015.	Change 13 January 2015 to 12 January 2015.

1 INTRODUCTION

- 1.1.1 The main development proposed by this application is for a new strategic rail freight interchange (SRFI) on current farmland to the immediate north of East Midlands Airport (EMA), south of the villages of Lockington and Hemington and west of the M1. In addition, substantial alterations are proposed to Junctions 24A and 24 of the M1 and improvements to the southbound carriageway of the M1 itself between these junctions. A southern bypass of Kegworth, which lies to the east of the M1, is proposed to enable traffic currently using the A6 to avoid passing through the town.
- 1.1.2 The applicant is Roxhill (Kegworth) Limited, based in Rugby, Warwickshire (APP-01). A useful overview of the main proposals is contained in the non-technical summary of the Environmental Statement (ES) (APP-631 and 632, Doc 5.3), and a selection of plans submitted for ease of reference (APP-31, Doc 2.14).
- 1.1.3 Throughout the rest of this report, East Midlands Gateway Rail Freight Interchange is abbreviated to 'EMGRFI'. This abbreviation is used when referring to the whole scheme within the application site¹ comprising the proposed SRFI, together with the highway works and any other development proposed as part of the application. We regard the proposed SRFI as including the new rail line, rail freight terminal, warehousing, intermodal area, and surrounding landscaping, so comprising Works Nos. 2 to 6. The term 'main site' is defined more narrowly in article 2 of the draft Order as comprising Works Nos. 2 to 5. Where our intention is to make reference to either the SRFI development, the main site, the highway works, or to any other specific element of the application this is made explicit.
- 1.1.4 Documents considered during the examination are listed in Appendix B of this report, and where they are referred to in the text they are cited with a unique reference category and number assigned to them as appropriate. In many cases this is followed by an additional reference (e.g.Doc...) which is the applicant's own reference for their documents submitted as part of the application or during the examination.
- 1.1.5 The application for a Development Consent Order (DCO or Order) granting development consent for the EMGRFI was submitted to the Planning Inspectorate on 29 August 2014, and accepted on behalf of the Secretary of State for Communities and Local Government for examination on 19 September 2014. A panel of three Examining Inspectors (Paul Hudson as the

¹ The red line boundary embracing all elements of the application within the Order limits as defined in article 2 of the draft Order (REP9-11, Doc 3.1D)

chair, Lorna Walker and Gavin Jones) was appointed by the Secretary of State on 12 December 2014 under s65 of the Planning Act 2008 (PA 2008) as the Examining Authority (ExA) to examine and report on the application under s74 of the PA 2008. The examination began on 13 January 2015 and was completed on 12 July 2015.

- 1.1.6 The proposals for the SRFI constitute a nationally significant infrastructure project (NSIP) under s14(1)(l) and the criteria contained in s26 of the PA 2008. The highway proposals involving the M1 and Junctions 24 and 24A constitute two further NSIPs under s14(1)(h) and the criteria contained in s22(1), (2) and (3). The proposed Kegworth Bypass and other more minor highway and public rights of way (PRoW) alterations constitute associated development under s115(2) and (3).
- 1.1.7 To the extent that the proposed development is or forms part of a NSIP, development consent is required before that project can proceed (s31). Development consent under the PA 2008 can only be granted by the Secretary of State and this report provides the Secretary of State for Transport with our findings, conclusions and recommendation on the application for development consent for the EMGRFI. This report also contains our recommendations on whether to grant consent for the powers sought for compulsory acquisition (CA) of land and rights, and the terms of the DCO should the Secretary of State decide to grant development consent for the application.
- 1.1.8 The application is Environmental Impact Assessment (EIA) development as defined by the EIA Regulations². It was accompanied by an ES (APP-117 to 632, Doc 5.2 and 5.3) which in our view meets the definition given in Regulation 2(1). Other environmental information was supplied during the course of the examination. In reaching our recommendation, we have taken all the environmental information into consideration in accordance with Regulation 3(2).

The examination

- 1.1.9 As the Examination Library in Appendix B illustrates, over 300 relevant representations (RR) were received concerning the proposal together with written representations (WR) and a considerable number of submissions, including from the applicant, made at deadlines during the examination. This is a sizable volume of material compared with some other recent applications for development consent, although many of the RRs contained virtually identical points. We sought the applicant's

² Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended

response to the RRs at an early stage in the examination (REP3-06, Doc 8.1).

- 1.1.10 A Preliminary Meeting (PM) was held on 12 January 2015 at which the applicant and all other interested parties (IP) were able to make representations to us about how the application should be examined (PM-02). Our procedural decisions as the ExA were issued on 19 January 2015 (PD-05), with some minor variations to the proposed timetable, and the examination proceeded broadly in line with this. In addition, we set out decisions in relation to Statements of Common Ground (SoCG), Local Impact Reports (LIR) and an updated draft DCO and Explanatory Memorandum (EM).
- 1.1.11 Our first written questions were issued simultaneously with our letter of 19 January 2015 (PD-06) and covered a wide range of matters concerning:
- the policy context;
 - transportation;
 - land use;
 - employment impacts;
 - construction and operational impacts (including flooding, noise and vibration, air quality, lighting, landscape and visual impacts, cultural heritage, ecology and nature conservation);
 - impacts on EMA; and
 - the draft DCO.
- 1.1.12 Following the receipt on 6 March 2015 (at deadline IV) and 12 April 2015 (at deadline V) of WRs, the LIRs, responses to our first written questions, a number of SoCGs and subsequent comments on these documents, we issued on 17 April 2015 our second written questions (PD-08). These covered matters such as transportation, land use, construction and operational impacts, and the impacts on EMA and were directed particularly to the applicant and the local authorities.
- 1.1.13 We held three issue specific hearings (ISH) on 4 February, 2 June and 1 July 2015 to consider the drafting aspects of the draft DCO. The first of these was held very early in the examination to enable sufficient time for some fundamental matters we raised about the structure and content of the draft

DCO to be considered. In particular, these covered the proposed s278 agreements³ for implementation of the highway works pursuant to granting construction powers in the draft Order. These draft agreements were submitted after acceptance of the application and prior to the PM (AS-030 and 031, Doc 6.19 and 6.20), and the matters which arose are dealt with in detail in chapter 4 below.

- 1.1.14 We took the representations submitted by Nabarro LLP acting for Lafarge Tarmac Trading Ltd⁴ (REP3-03 and REP4-13) to be a formal request for a compulsory acquisition hearing (CAH), which we decided to hold on 2 June 2015 to enable us to be satisfied about specific CA provisions in the draft Order. We received two requests for an open floor hearing (OFH), and consequently decided to hold such a hearing covering three sessions on 10 June 2015 to ensure all those participating in the examination had every opportunity to their concerns before us.
- 1.1.15 During the later stages of the examination, we issued several requests for information⁵ particularly relating to the assessment requirements for the highway NSIPs (PD-07) and the position of Lafarge Tarmac (PD-11). We carried out an accompanied site inspection at the beginning of the examination on 3 February 2015, and another one towards the end on 11 June 2015, as well as several unaccompanied site visits before the PM and during the examination. The examination closed on 12 July 2015.
- 1.1.16 In addition to development consent required under the PA 2008, the proposal would be subject to various environmental consents and licences from the Environment Agency (EA) to prevent adverse impacts on the water environment. At the time the examination closed on 12 July 2015, no outstanding issues remain which would suggest the licences from the EA would not be granted. No requirement for licences from Natural England (NE) in connection with European Protected Species was identified during the survey work undertaken by the applicant and submitted as part of the ES⁶.
- 1.1.17 We are satisfied that all those making representations had a full opportunity to participate in the examination, through the written submissions made and at the hearings. We took these matters and all representations properly made into account in our findings, conclusions and recommendation.

³ Pursuant to the Highways Act 1980

⁴ Abbreviated to Lafarge Tarmac in the rest of this report

⁵ Rule 17 The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

⁶ Conservation of Habitats and Species Regulations 2010 (as amended)

STRUCTURE OF THE REPORT

- 1.1.18 Chapter 2 sets out the main features of the site of the proposed development and the contents of the application. Chapter 3 summarises the legal and policy context applicable to it. In chapter 4, our findings and conclusions in respect of each of the main considerations and on the development merits are set out. Chapter 5 considers the case for granting development consent and advice to the Secretary of State if he agrees with our conclusion that the proposal is not compliant with relevant policy. Chapter 6 deals with compulsory acquisition and related matters. Chapter 7 considers the proposed draft Order, the changes which were made to it during the course of the examination, and further modifications we feel are necessary to make the draft Order acceptable if the Secretary of State decides to grant development consent. Chapter 8 sets out our overall conclusions and our recommendation that the Order should not be made for the reasons given.
- 1.1.19 The main events occurring during the examination are listed in Appendix A. Appendix B sets out the documents submitted by the applicant and others in connection with the examination according to the various deadlines we set, with the reference used assigned to each document. Appendix C contains a list of the main abbreviations used in this report. Finally, Appendix D is the final version of the draft Order submitted by the applicant at the conclusion of the examination with the further modifications we propose.

2 MAIN FEATURES OF THE PROPOSAL

The site

- 2.1.1 The application site encompasses an area of approximately 336 hectares (ha) for the proposed SRFI immediately to the north of the existing EMA and west of the M1 between Junctions 24 and 24A, and land required for new and altered highways and junctions. The application site is located in Lockington and Hemington, and Kegworth parishes within the administrative area of North West Leicestershire District Council (NWLDC) and Leicestershire County Council (LCC). This location is at the extreme north of Leicestershire, so the application site is close also to the boundaries of both Nottinghamshire and Derbyshire (APP-75, Doc 2.9).
- 2.1.2 There are no settlements or population on the application site apart from several farms. The nearest communities to the proposed EMGRFI development are the villages of Lockington and Hemington to the north of the SRFI site; the more substantial settlements of Castle Donington and Kegworth lie to the west and east of the M1 respectively.
- 2.1.3 The current use of the proposed SRFI site is mainly arable farmland and comprises essentially Hall Farm Lockington, with the farmhouse buildings of Field Farm located in the south-east corner of the site and accessed principally from Church Street, Lockington.
- 2.1.4 Public access to much of the SRFI site is possible through apparently well used footpaths and bridleways traversing the site, and linking to a recreational footpath running east-west along the north side of the airport boundary.
- 2.1.5 Within the SRFI site, the ground falls from the boundary with the EMA (approximately 90 metres AOD⁷) northwards towards Lockington (approximately 30 metres AOD). With the exception of this fall, the SRFI site is otherwise a largely rolling agricultural landscape in character.
- 2.1.6 The SRFI site is drained by the Lockington and Hemington Brooks flowing northwards to the River Soar. The Hemington Brook is partly culverted as it runs through the village itself. There are electricity and gas utilities crossing the SRFI site.
- 2.1.7 Views from Hemington and Lockington southward into the area proposed for the SRFI are largely obscured by an existing ridge lying to the south of these villages. Views eastward into the SRFI site from Castle Donington are rather more prominent. The

⁷ Above Ordnance Datum

most significant views of the proposed warehouse development on the SRFI site would be from the currently open land (but with planning permission for residential development) on the west side of Kegworth, east of the M1.

- 2.1.8 Junction 24 of the M1 is located immediately north-east of the SRFI site and Junction 24A further to the north. This is a particularly complicated junction for drivers unfamiliar with its layout, providing access between the A50 and the M1. Some areas of current farmland would be required for the proposed improvements to these junctions.
- 2.1.9 Traffic from the south-east currently reaches the M1 at Junction 24 via the A6 through Kegworth, and a bypass to the south of the town is proposed to handle this traffic. The land required is undulating so the new road would involve a mixture of cutting and embankment. It is mainly arable farmland forming part of Mole Hill Farm Kegworth, Lodge Farm Kegworth and Whatton Estates (APP-135, Doc 5.2 Chapter 14).
- 2.1.10 The application site itself does not contain any Scheduled Ancient Monuments (SAM), listed buildings (apart from a listed milepost), conservation areas, or other designated heritage assets.
- 2.1.11 Much the most prominent feature in the immediate vicinity of the application site is the large coal fired power station at Ratcliffe-on-Soar to the north-east. The cooling towers dominate the surrounding landscape, which is otherwise gently undulating arable and woodland typical of this part of the East Midlands.
- 2.1.12 To the north-west of the application site is substantial existing warehousing development on the site of the former Castle Donington power station, now called the East Midlands Distribution Centre (EMDC). The largest of these warehouses is occupied by Marks and Spencer and served by a rail link to the Castle Donington branch freight line. To the south is EMA, but apart from arriving and departing aircraft there is little obvious relationship with the application site.
- 2.1.13 Three Sites of Special Scientific Interest (SSSI) have been identified in the ES as being within the zone of influence of the EMGRFI application site: Lockington Marshes SSSI, Lount Meadows SSSI and Oakley Wood SSSI (APP-124, Doc 5.2 Chapter 6).
- 2.1.14 The applicant considers that the proposed EMGRFI development is not likely to give rise to a significant effect on the nearest

European Site⁸ which is the River Mease Special Area of Conservation (SAC) (over 15km from the application site), or indeed any other European designated site. Accordingly, in line with the Habitats Regulations⁹ and relevant supporting guidance and case law, the applicant considers that no appropriate assessment is required (APP-634, Doc 6.3 and AS-009, Doc 6.3A) and this is confirmed by the SoCG with NE (AS-011, Doc 7.9).

The proposed development

- 2.1.15 The proposed development is described in full in the application documents, particularly the ES (APP-117 to 630, Doc 5.2), the Works Plans (APP-33 to 38, Doc 2.2A to F), and the Parameters Plans (APP-17 to 19, Doc 2.10A to C). An overview of the proposals is provided in the Ease of Reference A3 Plans Bundle (APP-31, Doc 2.14) and the non-technical summary of the ES (APP-632, Doc 5.3).
- 2.1.16 The main elements of the application for development consent for the EMGRFI comprise the following:
- (1) The proposed SRFI (NSIP 1, Works Nos. 1 to 6) including:
- A new rail line running north out of the SRFI site adjacent to the M1/A50 to connect the rail freight terminal to the existing Castle Donington branch freight rail line. West and east facing connections to this existing rail line would be provided, giving direct access to the main container ports at Southampton, Felixstowe and London Gateway (Work No.1).
 - A rail freight terminal designed to accommodate trains up to 775 metres long (the standard length of UK freight trains). It would enable the transfer of freight from road to rail, and vice versa, and would serve a wider market in addition to operators located on the EMGRFI itself. In the early years of operation, the rail freight terminal is expected to handle 1 to 2 trains per day each way, rising over time to a maximum of 16 trains per day each way (Work No.2).
 - Up to 557,414 m² of rail-served warehousing and a small amount of space for ancillary service buildings. The detailed configuration of this space would be determined in due course, but the built development of the SRFI

⁸ The European protected sites within the Natura 2000 network in England, made up of Special Areas of Conservation designated through the 1992 Habitats Directive, and Special Protection Areas classified by the 1979 Wild Birds Directive

⁹ Conservation of Habitats and Species Regulations 2010 (as amended)

would be within a number of zones as shown on the Parameters Plans (APP-17 to 19, Doc 2.10A to C). These define maximum development floorspace, building plateau levels, and building heights for each zone (Work No.3).

- Areas for container storage and HGV parking at and adjacent to the rail freight terminal (Work No.4).
 - Main internal access roads and footways, and a bus interchange (Work No.5).
 - Earthworks, strategic landscaping, and open space surrounding the warehousing, rail freight terminal and HGV parking area (Work No.6).
- (2) New roads and works to the existing highway network (NSIP 2, Work No. 7) including:
- A50 eastbound to M1 southbound and Junction 24 interchange works on the east side of the M1.
 - A new slip-road to join directly to the M1 southbound and so remove all existing A50 to M1 southbound traffic from Junction 24.
 - A new private access from Lockington Quarry to Junction 24, and alterations to Warren Lane north of the A50.
- (3) New roads and works to the existing highway network (NSIP 3, Work No. 8) including:
- Removal of the existing A50 roundabout at Junction 24A.
 - A new slip-road to carry southbound traffic from the A50 over the M1 to join the new slip-road on the east side of the M1 provided as part of Works No. 7.
 - Alterations to the existing A50 east/southbound carriageway to Junction 24 to form a two lane local access road to the Hilton Hotel.
 - Improvements to the Junction 24 roundabout including a short link road carrying northbound traffic exiting the SRFI site, and from the A453 to the A50 without needing to pass through Junction 24.
 - Widening and signalisation of the A453 approach into Junction 24 from the east.
 - A new site access from the A453 south of Junction 24 to serve both the SRFI and the airport.

- (4) Associated Development (Works Nos. 9 to 13) including:
- Landscaping to the south west of Junction 24 (Work No. 9).
 - Closure of the current Church Street access to Lockington from the A50 and replacement by a new access to the village via Main Street (Work No. 10).
 - A Kegworth Bypass, connecting the A6 south of Kegworth to the A453 south of Junction 24. A new bridge over the M1 would replace the existing Ashby Road overbridge, which is substandard for vehicular use, but would be retained for pedestrian and cycle use. (Work No. 11).
 - Flood alleviation works (Work No. 12).
 - Improvements to the M1 itself southbound including widening a short stretch to 4 lanes, new slip-roads and alterations to slip-roads at Junction 24 (Work No. 13).

2.1.17 The proposed start of construction is 2016 and the completion date for the SRFI is 2023 (APP-134, Doc 5.2 Chapter 13). Construction and bringing into use of the new rail line is contingent on completion of major earthworks. Full usage of the rail line of 16 trains per day each way is forecast to be reached by 2047 (APP-112, Doc 6.7).

2.1.18 The purpose of the SRFI is to meet a market requirement for which no specific occupiers are identified as yet. In addition, the logistics market is very dynamic and the requirements of occupiers are constantly changing in order to meet market demands.

2.1.19 For these reasons, the applicant argues that the DCO needs to provide flexibility to enable occupiers' requirements to be accommodated. Otherwise this development would be substantially disadvantaged in comparison to other large scale distribution sites (REP9-13, Doc 3.2C). To that end, the application adopts a 'Rochdale Envelope' approach with a number of key scheme parameters fixed in the application as maxima within which future detailed design proposals for the SRFI will need to accord (REP9-13, Doc 3.2C).

2.1.20 The M1 junctions and associated highway works are intended to be completed within 18 months of the start of construction, followed by the Kegworth Bypass to be completed by the end of year 3 (REP8-10, Doc 6.10). These intentions for the timing and

phasing of the highway works are reflected in Requirement 5 (R5)¹⁰ of the draft DCO (REP9-11, Doc 3.1D).

Undertakings

- 2.1.21 During the course of the examination, two Development Consent Obligations (DCOb) made pursuant to s106 of the Town and Country Planning Act 1990 (TCPA) were offered by the applicant. Firstly, a unilateral undertaking to Nottinghamshire County Council concerning a contribution toward minor highway improvements at Kingston Crossroads (REP8-28, Doc 6.4D). Secondly, an agreement with NWLDC and LCC providing for matters such as a community fund for the benefit of parish councils immediately affected, establishment of a community liaison group, a local employment scheme, public transport services and sustainable transport, and contributions to highway works (REP8-31, Doc 6.4E). These have been executed and are dated 19 June 2015.

Changes to the application during the examination

- 2.1.22 The application was formally accepted for examination on 19 September 2014. The applicant subsequently submitted a number of further documents prior to the PM and the formal start of the examination.
- 2.1.23 On 10 November 2014, the applicant submitted:
- additional and replacement plans (AS-002, Doc 1.5A and AS-004 to 008, Doc 1.5A, 2.8A, 2.10A to C);
 - explanations to clarify matters relating to the Book of Reference (BoR) (AS-010, Doc 6.18), and also European Sites (AS-009, Doc 6.3A); and
 - an additional SoCG with NE relating to ecology (AS-011, Doc 7.9).
- 2.1.24 On 19 December 2014, the applicant submitted a further comprehensive package of additional material covering:
- explanatory notes (AS-026, 027 and 032, Doc 4.4, 5.4, and 6.21);
 - revised Land Plans (AS-015 to 018, Doc 2.1A to F);
 - an amended draft DCO (AS-021 and 023, Doc 3.1A) and BoR (AS-024 and 025, Doc 4.3A);

¹⁰ References in this report to requirements in Schedule 2 of the draft DCO are abbreviated to R number as appropriate

- draft DCObs (AS-028 and 029, Doc 6.4A and B);
- draft s278 agreements with the highway authorities (AS-030 and 031, Doc 6.19 and 6.20); and
- additional SoCGs with the local authorities relating to ecology, noise and archaeology (AS-033 to 035, Doc 7.9A, 7.10 and 7.11).

2.1.25 We concluded that these did not constitute material changes to the application and accordingly formally accepted these at the PM as part of the application for examination (PM-02). During the course of the examination itself, we requested a number of supplementary documents to clarify elements of the proposal. Conversely, some original application documents were superseded or withdrawn by the applicant. All these changes are reflected in the applicant's final revised list of application documents (REP9-14, Doc 1.6E).

2.1.26 We are satisfied that the proposed authorised development in Schedule 1 of the draft Order comprising the three NSIPs (Works Nos. 1 to 8), the various elements of associated development (Works Nos. 9 to 13) and the range of further works listed following Works No. 13 in the draft Order are capable of being granted development consent under s115 of the PA 2008.

Planning history of the application site

2.1.27 Paragraph 4.2 of the Planning SoCG states that there is no relevant planning history on the application site save for where highway works, including the Kegworth Bypass, are concerned (APP-647, Doc 7.1). In fact, as a joint LIR submitted by LCC and NWLDC (REP4-19) sets out, there is a history of planning applications for storage, distribution and rail freight proposals submitted between 1994 to 1999, all of which were refused or were the subject of appeal against non-determination. None of these proposals has any current planning status.

2.1.28 Mineral planning permissions issued by LCC cover land within the application site to the east of the M1 for sand and gravel extraction at Lockington Quarry. Mineral extraction is completed, but the quarry processing plant which lies just outside the application site is permitted to continue operations until the end of December 2025. Access to the processing plant will need to be maintained throughout this period and potentially beyond, in the event of further extensions to the quarry being granted permission (REP4-19).

3 LEGAL AND POLICY CONTEXT

3.1 LEGAL FRAMEWORK

3.1.1 In the situation where a relevant national policy statement (NPS)¹¹ has effect, under s104 of the PA 2008 the Secretary of State must decide the application in accordance with the NPS, and in doing so he must have regard to:

- any local impact report (LIR);
- any prescribed matters; and
- any other matter the Secretary of State thinks both important and relevant to his decision.

3.1.2 At the time the application was submitted, the National Policy Statement for National Networks (NPSNN) concerning national road, rail and SRFI developments was in draft form. Following consideration by Parliament in December 2014, it was formally designated on 14 January 2015, just after the PM for the examination of this application.

3.1.3 The designated NPSNN therefore has effect under s104 of the PA 2008 and provides the primary policy basis for determining this application. It states that the Government has concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The ExA and the Secretary of State should therefore start their assessment of applications for infrastructure covered by this NPS on that basis (paragraph 2.10 of the NPSNN). There is a specific compelling need for an expanded network of SRFIs, located near the business markets they will serve (paragraph 2.56 of the NPSNN).

3.1.4 Subject to the detailed policies and protections in this NPS, and the legal constraints set out in the PA 2008, there is a presumption in favour of granting development consent for NSIPs that fall within the need for infrastructure established in the NPSNN (paragraph 4.2). Our starting points for the appraisal of this application are the policy requirements of the NPSNN for SRFIs in particular and these are set out in some detail in section 4.2 of this report.

3.1.5 A joint LIR was submitted by LCC and NWLDC (REP4-19) covering:

- socio-economic impacts;

¹¹ As defined by s5 PA 2008 and referred to in s104 of the Act

- landscape and visual effects;
- ecology and nature conservation;
- noise, vibration and lighting;
- air quality;
- flood risk;
- transportation and sustainable transport;
- land contamination and implications for mineral resources; and
- heritage and archaeology,

together with a consideration of appropriate mitigation measures.

3.1.6 A LIR was also submitted by Derbyshire County Council (DCC), (REP4-18) covering:

- impacts on the strategic and local road network;
- implications for public transport and wider accessibility to the site;
- implications for rail freight;
- economic impacts, job creation potential and market demand issues;
- landscape and visual impact issues;
- greenways and PRow issues;
- impacts on housing provision;
- impacts on security at EMA; and
- cumulative impact implications.

3.1.7 The issues raised by the LIRs are considered in the appropriate sections in chapter 4. No matters were prescribed by the Secretary of State for specific consideration in the examination of this application.

- 3.1.8 Every public authority has a duty under the Natural Environment and Rural Communities Act 2006 (NERC) with regard to the conservation of biodiversity¹². In particular, the Secretary of State must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 when deciding an application for development consent.
- 3.1.9 Specific steps are required to be taken under the Habitats Regulations¹³ in order to protect species and habitats. These Regulations also require competent authorities¹⁴ to comply with the requirements of the Habitats Directive¹⁵.
- 3.1.10 With regard to European Protected Species¹⁶ we set out our findings and conclusions in the biodiversity, ecology and nature conservation section in the following chapter (section 4.9), and taking into account the representations made by NE who is a statutory consultee in respect of NSIPs. There are limited exceptions to the strict protection from disturbance of protected species under the Habitats Regulations and in those cases a licence is required from NE before any disturbance takes place¹⁷.
- 3.1.11 If there were European designated sites likely to be significantly affected by the proposed development (either directly or indirectly, alone or in-combination with other plans or projects), an appropriate assessment under Regulation 61 of the Habitats Regulations would need to be undertaken by the Secretary of State prior to granting consent for the project, if he were so minded. However, as noted above at paragraph 2.1.14, in this case the applicant states there are no European sites affected by the proposed development (APP-634, Doc 6.3 and AS-009, Doc 6.3A) and NE agrees with this (AS-011, Doc 7.9). We accept the applicant's conclusions therefore that there are no European sites likely to be significantly affected by this development, and that an appropriate assessment is not required.
- 3.1.12 Every public authority is required to have regard to the Public Sector Equality Duty under s149 of the Equality Act 2010, and we have taken these matters into account as part of the examination of this application.

¹² Section 40: 'Every public authority must, in exercising its functions, have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'

¹³ Conservation of Habitats and Species Regulations 2010 (as amended)

¹⁴ Regulation 7 of the Conservation of Habitats and Species Regulations 2010 (as amended)

¹⁵ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

¹⁶ Listed in Annex IV of the Habitats Directive

¹⁷ Regulation 53 of the Conservation of Habitats and Species Regulations 2010 (as amended)

3.2 IMPORTANT AND RELEVANT POLICIES

3.2.1 We set out below the policy context that we consider is important and relevant to the application and within which we draw conclusions on the evidence in later sections of this report.

National policies

3.2.2 In addition to the then draft NPSNN, the application refers¹⁸ to two documents published by the Department for Transport in November 2011 as providing the national policy context for the application: The Logistics Growth Review - Connecting People with Goods, and Strategic Rail Freight Interchange Policy Guidance.

3.2.3 The Logistics Growth Review underlines the importance to the UK economy of the logistics sector, the potential for future growth in rail freight, and the changing needs of the logistics sector. The Government supports growth in this sector and hence recognises that the development of SRFIs is critical to the expansion of rail freight.

3.2.4 The Strategic Rail Freight Interchange Policy Guidance supports the development of a network of modern distribution centres linked into both the rail and trunk road systems as a main objective of government policy.

3.2.5 However, although the designated NPSNN confirms the policy on the SRFIs set out in the Guidance published in 2011, the Guidance itself is cancelled by the NPSNN which now provides the formal policy basis for determining this application (NPSNN paragraph 1.6).

3.2.6 The National Planning Policy Framework (NPPF) does not contain policies specifically concerning NSIPs. But pursuant to paragraph 1.18 of the NPSNN we have considered some parts of it to be relevant to this application and we have therefore taken the NPPF into account in our assessment of matters where appropriate.

Development Plan Policies

3.2.7 The Regional Spatial Strategy for the East Midlands (RSS) was previously part of the formal development plan in the East Midlands, and contained strategic land-use and associated policies. It was supported by technical studies and an evidence base, which according to the Planning Statement (APP-638, Doc 6.6) and the joint LIR between LCC and NWLDC (REP4-19), remains valid and relevant to consideration of this application. In

¹⁸ For example the Planning Statement (APP-638, Doc 6.6)

particular, the RSS was underpinned by a Regional Freight Strategy and an East Midlands Strategic Distribution Study which recommended that around 300 ha of additional land at appropriate rail connected sites would need to be brought forward across the East Midlands region.

- 3.2.8 As the revocation order for the RSS was made in March 2013, our conclusion is that the supporting documents should consequently be accorded only limited weight, and that the development plan applicable to the application site as a whole now consists only of the North West Leicestershire District Local Plan and countywide minerals and waste policies.
- 3.2.9 The Local Plan was first adopted in 2002, and alterations to it were made in 2004 and 2005. A number of the Local Plan policies were saved by the Secretary of State in 2006. These are now out of date in our view given that the plan had an end date of 2011, and so we accord them only limited weight. However, according to the joint LIR (REP4-19) some remain relevant at the local level, and we do therefore consider them where appropriate.
- 3.2.10 Although the application site is not allocated for development in the Local Plan, the joint LIR states that compliance with most policies can be achieved by appropriate mitigation via the DCO requirements and obligations. However, the SRFI would not be compliant with Policy S3 (Countryside) of the Local Plan, which sets out the circumstances in which development will be permitted outside limits to development. In considering the impacts of the application within this policy, the joint LIR advises that the overall scale of the proposal, and the built forms in particular, should be appropriately assessed. The two local authorities cannot advise on compliance with Policies T19 and T20, which deal with the EMA.
- 3.2.11 The Leicestershire Minerals Core Strategy and Development Control Policies, and Leicestershire and Leicester Waste Core Strategy and Development Control Policies were adopted in 2009. These seek to ensure valuable mineral resources are protected from unnecessary sterilisation by development, and in certain circumstances require the extraction of the mineral in advance of surface development. The majority of the application site does not contain any potential mineral resources, but the northern portion of the application site lies within a sand and gravel mineral consultation area.
- 3.2.12 The proposed development would accord with the principles of the policies contained within the Minerals Core Strategy (REP4-19), and we agree that the minerals policies should be accorded some weight given they are reasonably up to date.

Emerging development plan policy

- 3.2.13 In April 2013 NWLDC consulted on a draft 'Local Plan: Core Strategy' to set out the planning framework for the area to 2029, and this was subsequently submitted for examination. The submitted version of the Core Strategy stated that:

'A SRFI in the area north of East Midlands Airport, west of the M1 would be uniquely placed in the centre of the Three Cities area, the East Midlands and the country making it both suitable and attractive for distribution uses'

and included a specific policy regarding the development of a SRFI.

- 3.2.14 The submitted Core Strategy was withdrawn following an exploratory meeting in September 2013 with the Planning Inspector who raised significant concerns over the robustness of the evidence and policies on housing need, the cross-boundary dialogue which had taken place, and the duty to cooperate in the context of housing market issues.
- 3.2.15 Following the withdrawal of the Core Strategy, in December 2013 NWLDC's Cabinet reaffirmed the Council's in principle support of the EMGRFI proposal, to ensure there was clarity about the Council's position during the period until the Core Strategy is resubmitted (REP4-19).

Other policy contexts

- 3.2.16 LCC's Local Transport Plan (LTP3) was published in 2011 and provides the policy context for the management and future development of the local road network. The ES considers the SRFI is fully consistent with the LTP3, and the highway works would contribute to addressing traffic capacity at Junctions 24 and 24A (APP-134, Doc 5.2 Chapter 13).
- 3.2.17 The proposed EMGRFI is located within the Leicester and Leicestershire Local Economic Partnership (LLLEP) area, but is also considered to be of relevance to the Derby and Derbyshire, Nottingham and Nottinghamshire LEP (D2N2 LEP).
- 3.2.18 In March 2014, the LLLEP published its Strategic Economic Plan which makes explicit reference to the EMGRFI proposals to establish *'the UK's largest multi modal hub creating over 7,000 new jobs'*, and recognises the location and accessibility advantages offered by this location (APP-638, Doc 6.6).
- 3.2.19 The D2N2 LEP has also recognised the significance of the EMGRFI, and the role it might play in supporting and enabling economic growth within their area:

'The importance of the M1 J23a/24 area within North West Leicestershire for high-value freight will be further strengthened with planned investment in a major intermodal rail freight interchange by M1 Junction 24... We will be working with LLEP to capitalise on the transformational impacts of this project, which could bring more than 6,000 new jobs to the area. This will create a dynamic regional economic hub, East Midlands Gateway, which is strongly supported by both LLEP and D2N2 LEPS¹⁹'.

Alternatives

- 3.2.20 As reflected in paragraph 4.26 of the NPSNN, the European EIA Directive requires projects with significant environmental impacts to include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental impacts.
- 3.2.21 In this regard, the Planning Statement (APP-638, Doc 6.6) notes that AECOM were commissioned in 2010 by the former East Midlands Development Agency on behalf of a partnership of local authorities within the 'Three Cities' area, the then Highways Agency (HA)²⁰ and Network Rail (NR). The purpose of the study (APP-115, Doc 6.15) was to identify and assess potential large sites of at least 50 ha, which could be rail-linked and suitable for development as SRFIs. Following a detailed assessment of 36 potential sites, AECOM identified a shortlist of 3 sites, which included the proposed EMGRFI (APP-638, Doc 6.6). LCC and NWLDC note in their joint LIR that the AECOM report represents a valid and robust assessment of potential alternative SRFI sites (REP4-19).
- 3.2.22 In terms of consideration of alternatives to the highway proposals put forward, the application includes in the ES the alternatives considered for the Kegworth Bypass (APP-590, Doc 5.2 Appendix 13.1). The evolution of the proposals for Junctions 24 and 24A and the M1 were supplied by the applicant in response to questions we posed in our first written questions (REP4-44, Doc 8.3 Appendix 2).
- 3.2.23 Overall, we consider the applicant's assessment of alternatives, both in the application documents and responses to our questions, satisfies the requirements of paragraphs 4.26 and 4.27 of the NPSNN.

¹⁹ D2N2 Strategic Economic Plan, March 2014, Page 36

²⁰ On 1 April 2015 the Highways Agency became Highways England

3.3 REPRESENTATIONS CONCERNING THE PRINCIPLE OF DEVELOPMENT

- 3.3.1 Both NWLDC and LCC support the proposed development in principle as set out in their joint LIR (REP4-19). In addition, NWLDC submitted a representation in support of the joint LIR outlining the Council's support for the development proposals due to the substantial potential for job creation and the likely local, regional and national benefits of such a proposal being located within the district (REP4-20).
- 3.3.2 Leicestershire, Derbyshire and Nottinghamshire County Councils, and Leicester, Derby and Nottingham City Councils have no grounds for objection to the Order on transport matters, as reflected in their SoCGs (APP-649 to 653, Doc 7.2A to E).
- 3.3.3 Further afield, South Derbyshire District Council's representation concerned local procurement and employment opportunities, air quality, noise, light intrusion and suggested that better provision should be made for improved cycle access from South Derbyshire (RR-290). Charnwood Borough Council's concern was about the relationship between the jobs to be created by the development and the impact on housing growth (RR-040).
- 3.3.4 RRs from the Castle Donington, Kegworth, Lockington and Hemington, Long Whatton and Diseworth, and Shardlow and Great Wilne Parish Councils (RR-037, 144, 159, 160, 161, 162 and 282) covered a range of matters:
- the consideration of alternatives, loss of farmland and the preferred use of a brownfield site were raised by Kegworth, Lockington and Hemington, Castle Donington, and Long Whatton and Diseworth Parish Councils;
 - the justification for some of the highway proposals, and particularly the route of the Kegworth Bypass, was raised by Lockington and Hemington and Kegworth Parish Councils;
 - flooding was a concern to Castle Donington, Lockington and Hemington and Shardlow and Great Wilne Parish Councils;
 - the impact on the Lockington conservation area was raised by Castle Donington Parish Council; and
 - the employment and job creation aspects of the application, air quality, lighting and noise concerns were raised by the Castle Donington, Lockington and Hemington and Long Whatton and Diseworth Parish Councils.

3.3.5 A comprehensive representation covering a range of objections to the proposed EMGRFI was submitted by the Junction 24 Action Group (REP4-10), with specific points being reinforced on several occasions during the examination (REP5-02, 5-11, 7-02, 8-04, 8-05 and 9-04).

4 FINDINGS AND CONCLUSIONS ON THE MAIN ISSUES

4.1 INTRODUCTION

4.1.1 Prior to holding the PM on 12 January 2015, we identified a number of principal issues for the examination having regard to the application documents submitted by the applicant and RRs submitted by IPs (PD-04). As noted above in paragraphs 1.1.11 and 1.1.12, we expanded upon these matters in our first and second written questions, and the responses in subsequent stages of the examination provide an important element of our assessment of the application.

Our approach to assessment

4.1.2 This is an unusual application for development consent as it consists of three NSIPs. The Planning Statement (APP-638, Doc 6.6) sets out that for the purposes of the EIA the three NSIPs and the associated development are dealt with as a single project and assessed as such. The ES does not distinguish between the NSIPs and their associated development, and indeed it would be difficult to do so given that the SRFI, highway works and associated development are inextricably connected. The likely cumulative and combined environmental impacts and impacts of them are therefore assessed as one project (APP-118, Doc 5.2 Chapter 2).

4.1.3 We appreciate this view in as much as the principal development, NSIP 1, is the SRFI supported by a range of highway works to ameliorate and mitigate the adverse traffic consequences arising from it. Some of these highway works happen to qualify themselves as NSIPs 2 and 3 because they are above the threshold for such works set out in the PA 2008.

4.1.4 The contrary argument is that given the size and scale of the highway works which form NSIPs 2 and 3 they cannot be regarded as simply larger versions of associated development. On this basis, the assessment of these highway projects would need to be carried out against the appropriate parts of the NPSNN dealing with major highway schemes.

4.1.5 We have therefore considered whether the assessment criteria for highway schemes set out sections 4 and 5 of the NPSNN should be applied to NSIPs 2 and 3 (Works Nos. 7 and 8). This would be to ensure that the justification for what are substantial highway schemes in their own right and the consequences are fully considered in the examination of the application as a whole. We explore this matter in some detail in paragraphs 4.2.45 to 4.2.56 below, but our conclusion is to accept the approach to assessment contained in the application.

Structure of this chapter

4.1.6 We set out in this chapter our findings and conclusions in respect of these issues and any other matters we consider important and relevant which were raised during the examination, except CA and related matters which are contained in chapter 6, and the draft DCO in chapter 7.

4.1.7 This chapter is structured to deal with the policy justification for the development first, which is relevant to the compelling case that must be made out for the grant of CA powers. It then covers topics where they most logically fit with principal issues identified at the outset and so deals with:

- cumulative impacts with other development proposals;
- transportation;
- land use;
- landscape and visual impacts;
- historic environment;
- noise and vibration;
- biodiversity, ecology and nature conservation;
- climate change adaption and carbon emissions;
- flood risk;
- water quality and resources;
- civil aviation;
- socio-economic impacts;
- construction;
- land instability, geology, soils, groundwater, earthworks and contamination;
- air quality;
- dust and other potential nuisance;
- waste management; and
- utilities.

4.2 THE POLICY JUSTIFICATION FOR THE DEVELOPMENT

4.2.1 The Planning Statement (APP-638, 6.6) reviews the policy support for the SRFI elements of the application from national, regional and local planning frameworks and studies. The Rail Report (APP-112, Doc 6.7) and Market Report (APP-113, Doc 6.8) review the market demand for rail related warehouses and rail freight, noting that the SRFI is driven by commercial opportunity, rapid changes in the logistics sector, locational preferences, property requirements and availability.

Meeting the NPSNN criteria for the SRFI proposal - NSIP1

4.2.2 In view of the fact that the NPSNN was designated in January 2015, after the application had been submitted and accepted for examination, the purpose of our first written question at the beginning of the examination was to afford the applicant (and indeed all IPs) the opportunity to submit any views arising from the designated NPSNN which they considered might have a bearing on this application (PD-06).

4.2.3 The applicant responded that the EMGRFI application is fully compliant with the requirements for SRFIs set out in the NPSNN and meets the locational, functional and assessment requirements (REP4-43, Doc 8.3 Appendix 1).

Locational criteria

4.2.4 The NPSNN notes that the aim of a SRFI is to optimise the use of rail in the freight journey by maximising rail trunk haul and minimising some elements of the secondary distribution leg by road, through co-location of other distribution and freight activities. SRFIs are important in reducing costs and facilitating the transfer of freight from road to rail, thereby reducing trip mileage of freight movements on both the national and local road networks (NPSNN paragraph 2.44).

4.2.5 The users and buyers of warehousing and distribution services are increasingly looking to integrate rail freight into their transport operations. This requires the logistics industry to develop new facilities that need to be located alongside the major rail routes, close to major trunk roads as well as near to the conurbations that consume the goods. The nature of that commercial development means that some degree of flexibility is needed when schemes are being developed, in order to allow the development to respond to market requirements as they arise (NPSNN paragraph 2.45).

4.2.6 SRFIs can provide considerable benefits for the local economy as they are relatively labour-intensive and can therefore create many new job opportunities. The availability of a suitable

workforce will therefore be an important consideration (NPSNN paragraph 2.52).

- 4.2.7 For these reasons, paragraph 2.56 of the NPSNN concludes that there is a compelling need for an expanded network of SRFIs. It is for the market to determine where individual SRFIs should be located, but the NPSNN notes it is important that they are near the business markets they will serve – major urban centres, or groups of centres – and are linked to key supply chain routes. Given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited, which will restrict the scope for developers to identify viable alternative sites.
- 4.2.8 The proposed EMGRFI is adjacent to the M1 which serves as the key north-south motorway link in the UK, and in a central location in the Midlands providing access to a large proportion of the national population. In addition, the proposed EMGRFI is very close to the existing rail freight network which is cleared to W12²¹ standard, providing access to the key deep sea ports at Felixstowe, London Gateway, Southampton and other locations.
- 4.2.9 In our view, the applicant's arguments in the reports referred to in paragraph 4.2.1 above and in response to our first written questions (REP4-43, Doc 8.3 Appendix 1) that the proposed EMGRFI is compliant with the NPSNN are justified in relation to the locational criteria for SRFIs as set out in paragraphs 4.84 to 4.87 of the NPSNN.

Functional criteria

- 4.2.10 However, we consider that meeting the functional criteria is less straightforward in relation to this application, and as these centre on paragraphs 4.83, 4.88 and 4.89 of the NPSNN, we set them out in full below.
- 4.2.11 Paragraph 4.83 states that *'Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities'*.
- 4.2.12 Paragraph 4.88 states that *'Applications for a proposed SRFI should provide for a number of rail connected or rail accessible buildings for initial take up, plus rail infrastructure to allow more extensive rail connection within the site in the longer term. The initial stages of the development must provide an operational*

²¹ W12 is the maximum UK rail freight loading gauge allowing the largest European containers and swap bodies to be carried on the rail network

rail network connection and areas for intermodal handling and container storage. It is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be.'

- 4.2.13 Paragraph 4.89 states that *'As a minimum, a SRFI should be capable of handling four trains per day and, where possible, be capable of increasing the number of trains handled. SRFIs should, where possible, have the capability to handle 775 metre trains with appropriately configured on-site infrastructure and layout. This should seek to minimise the need for on-site rail shunting and provide for a configuration which, ideally, will allow main line access for trains from either direction.'*

Compliance with paragraphs 4.83 and 4.88 of the NPSNN

- 4.2.14 The first issue is the extent to which the proposed EMGRFI would meet the requirements of the NPSNN in being able to accommodate rail activities *'from the outset'* (paragraph 4.83), or be capable of providing *'for a number of rail connected or rail accessible building for initial take up'* (paragraph 4.88). In our view, the operation of the proposed EMGRFI as a whole would fall short of these requirements. A number of warehousing units would be constructed at the outset of the development programme, but these would not be rail accessible until the rail line is constructed. As this would not be within the first 3 years, rail activities would not be available at the outset, nor the warehouse buildings rail accessible for initial take up (see paragraphs 4.2.22 to 4.2.24 below).
- 4.2.15 The second issue is the test in the last sentence of paragraph 4.88 of the NPSNN²² which is that *'it is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be'*. The expectation we draw from this is that a SRFI should provide for some of the warehouse buildings to be rail connected in due course, even if this is not achieved at the commencement of the development programme.
- 4.2.16 From the description of the proposed works in Schedule 1 of the draft DCO, the Works Plans (APP-33 to 38, Doc 2.2A to F), and the Illustrative Masterplan (APP-21 to 23, Doc 2.11a to c), we conclude that none of the proposed warehousing units is intended to be directly rail connected. The arrangement proposed in the application is that rail borne freight would be transported between the terminal and individual warehouses by road based goods tractors (APP-112, Doc 6.7). The application form describes the proposed SRFI development as *'rail-served'* which confirms to our minds that the warehouses would be rail

²² This is rather more prescriptive than s26(6) of PA 2008 as one of the criteria an application has to meet to qualify as an NSIP

accessible, but not directly rail connected (APP-01). As the application for the EMGRFI does not provide for any warehouse to be directly rail connected, whether or not this is at the outset does not even arise.

- 4.2.17 The third issue is the criterion in paragraph 4.88 of the NPSNN of providing for more extensive rail connection within the site in the longer term. There are no proposals within the application to extend the rail connections within the site once the rail freight terminal has been fully completed with all the proposed sidings in place. If there were such proposals, particularly if they would enable some at least of the warehouses to be directly rail connected, these might go some way to meeting this criterion.
- 4.2.18 Fourthly, whilst there is arguably some flexibility concerning these criteria in paragraph 4.88 so far considered, the NPSNN uses the word '*must*' in relation to an operational rail network connection in the '*initial stages of the development*'. The proposed development would certainly provide an operational rail network connection and areas for intermodal handling and container storage in due course as implementation takes place. The issue is whether what is proposed for the rail network connection is sufficient to satisfy the requirement of being provided in the '*initial stages of the development*' as required by paragraph 4.88.
- 4.2.19 The principal concern of some IPs during the examination was that the proposed development could progress without a commitment to the delivery of an operational rail freight terminal. The applicant recognised this point as is recorded in paragraphs 7.109 to 7.110 of the version of the EM submitted in June 2015 for deadline VIII (REP8-15, Doc 3.2B). The rail freight terminal is a fundamental component of the scheme and the applicant is committed to it being delivered in accordance with the programme included in the Construction Management Framework Plan (CMFP) (REP8-09 to 12, Doc 6.10), with the precise details of phasing and delivery controlled through R2(1).
- 4.2.20 It is therefore necessary at this point to examine the proposed development programme. Reflecting the ES (APP-121, Doc 5.2 Chapter 4), beyond the first phase of development of 186,000 m², the intended completion rate of the warehousing would be between 70,000 m² and 93,000 m² per year. From the applicant's response to our first written questions (REP4-42, Doc 8.3), taking the bottom of this range would lead to the following likely cumulative development quantities:
- 2016-17: 186,000 m²
 - 2017-18: 256,000 m²
 - 2018-19: 326,000 m²

- 2019-20: 396,000 m²
- 2020-21: 466,000 m²
- 2021-22: 536,000 m²
- 2022-23: 560,000 m²

- 4.2.21 In response to our second written questions (PD-08), the applicant again confirmed 2023 as achievable for the complete development of the warehousing element of the proposed EMGRFI, and that the rail freight terminal would be fully operational by then (REP6-08, Doc 8.6). As noted in paragraph 4.2.30 below, the profile for the build-up of rail traffic in the Rail Report indicates a commencement of rail operations in 2017 with a total of 3 freight trains each way per day forecast in 2022, rising to 5 in 2027 and reaching 16 trains each way per day by 2047 (APP-112, Doc 6.7).
- 4.2.22 However, a commencement of rail operations in 2017 is not possible according to the CMFP because of the essential earthworks which have to be completed first (REP8-10, Doc 6.10 Part 2). The rail line and the rail freight terminal are shown in the CMFP as construction works component No. 4. The rail line would be the earliest of these works to be started at the beginning of Q2 in year 2 of the construction programme. This, together with the sidings, signalling and the rail freight terminal are shown as completed by the end of Q2 in year 4. Assuming the beginning of 2016 as the start of construction, we conclude that Q2 2019 is the expected completion date for the rail line.
- 4.2.23 Given the lengthy period of 30 years intended for the build-up of rail operations, the availability of the rail line and the terminal not until 3 years after the start of construction of the SRFI could be argued as consistent with the requirement that they be provided in the '*initial*' stages of the scheme as a whole, but not in relation to the development programme in our view.
- 4.2.24 The reason for this is that the programme set out in the CMFP suggests zones A1, A2 and A4, equating to 276,570 m² of warehousing development, would be completed by the end of year 3, so before the rail line becomes operational in year 4. This is also confirmed in paragraph 7.117 of the final version of the EM (REP9-13, Doc 3.2C). Both the Campaign to Protect Rural England (CPRE) and the Junction 24 Action Group made the point in their representations that if a substantial proportion of the total warehousing development envisaged for the EMGRFI is effectively completed before the start of rail services to the site, this casts doubt on the extent to which the proposal is a SRFI (REP4-01, REP7-02). A similar point was made

subsequently by Lockington cum Hemington Parish Council (REP7-03).

- 4.2.25 The applicant's response to the CPRE representation is that the proposal:

'will, in accordance with the NPS, provide an operational rail network connection and areas for intermodal handling and container storage as part of the initial stages of development and will ensure that there is a commitment, from the outset, to deliver a scheme which can accommodate "both rail and non-rail activities"' (REP5-06, Doc 8.5),

and in response to the Junction 24 Action Group:

'the scheme is fully compliant with the requirements of the National Policy Statement for National Networks (NPS)' (REP9-12, Doc 8.12).

- 4.2.26 The related questions are whether the occupiers of the warehousing on zones A1, A2 and A4, having established themselves as road based freight operations before the availability of the rail line, would then switch to multimodal operations, or indeed would they be replaced by new organisations for whom the rail freight terminal is an important part of their business. Whilst part of the function of the rail freight terminal is to provide a road/rail interchange for logistics operators outside the SRFI site itself, as well as those on site, the risk is that the first phase at least of warehousing development at the proposed EMGRFI could remain essentially a road based operation.
- 4.2.27 We put to the applicant at the second ISH dealing with the draft DCO (HG-15 to HG-16) our concern that as it stood then, there was no requirement in the draft DCO to ensure that the rail freight terminal was brought into operation even once it was constructed. The applicant accepted it is necessary to ensure a rail freight terminal capable of being operational is delivered during the construction of the scheme (REP9-13, Doc 3.2C). Accordingly, the final version of the draft DCO contains at R2(2) an obligation that the rail freight terminal must be constructed and available for use prior to the occupation of more than 260,000 m² of rail-served warehousing.
- 4.2.28 The basis for this figure is the earthworks programme set out in the CMFP explained in paragraph 4.2.22 above. Put another way, this quantum of warehousing would be permitted to be available for occupation around the end of the third year of the construction programme. As this volume of warehousing would be nearly 47% of the proposed total before an operational rail network connection is provided, we find it difficult to see how this is consistent with it being in the *'initial stages of the*

development'. Our conclusions on this matter are drawn in paragraph 4.2.57 *et seq* below.

Compliance with paragraph 4.89 of the NPSNN

- 4.2.29 The Junction 24 Action Group argued throughout the examination that the inability of the EMGRFI to be served by 775 metre long freight trains from both directions from the outset, and the timing of overcoming connectivity and capacity constraints on the strategic rail network, meant the proposal was not compliant with paragraph 4.89 of the NPSNN as a matter of principle. The application should be rejected on this ground alone therefore (RR-137, REP5-02, REP5-11, REP7-02, REP8-04 and REP9-04). In addition, the Junction 24 Action Group maintained that there would be insufficient capacity on the Castle Donington branch freight line for the amount of rail freight traffic predicted in the application (REP4-10).
- 4.2.30 The applicant's response was that the configuration of the rail junction with the Castle Donington branch freight line to the north of the site would allow for both east and west facing rail access. From the outset, 775 metre long trains would be able to access the site from the west, but the maximum length of trains accessing from the east initially would be 650 metres. Once electrification of the Castle Donington branch has taken place (programmed between 2019 and 2024), then physical constraints would be removed²³ allowing 775 metre long trains to access the EMGRFI from both east and west directions (REP5-06, Doc 8.5 and REP9-12, Doc 8.12). The restriction in the early years on the maximum length of trains using the site from the east would be no handicap according to the Rail Report, as the build-up of freight traffic would be slow in the early years rising from 1 train per day each way in 2017 to 3 trains per day each way in 2022 (APP-112, Doc 6.7).
- 4.2.31 NR stated in its SoCG that there are no barriers to constructing network connections. NR supports the applicant's intention to construct both east and west facing connections on to the network either simultaneously or sequentially so enabling EMGRFI to enjoy excellent connectivity with cleared access to the deep sea ports of Southampton, Felixstowe, London Gateway and the Channel Tunnel. In addition, NR is satisfied with the layout of the rail lines within the rail freight terminal as being appropriate for the projected level of rail traffic. Whilst future capacity on the freight network cannot be reserved for specific operators, NR believes that capacity can be made

²³ The Rycroft Road bridge would be reconstructed to achieve electrification clearances. At that point there would be the opportunity to extend the span of Rycroft Road bridge beyond the existing two track formation to allow future extension of the head shunt to the west through and beyond Rycroft Road bridge

available in line with the planned profile of the build-up of rail freight traffic to and from the SRFI, in the context of developing the capability of the rail network as a whole (APP-654, Doc 7.3).

4.2.32 The applicant's claim that 775 metre long freight trains would be able to access the SRFI site from the west '*from the outset*' is incorrect in our view, given the proposed timing of completion of the rail link from the SRFI to the Castle Donington branch freight line. But as the criteria in paragraph 4.89 of the NPSNN are expressed as desirable, we consider the application is compliant with it in terms of:

- the capability of the SRFI to handle freight trains of optimum length;
- the future capacity of the Castle Donington branch freight line to handle the likely level of freight trains using the EMGRFI²⁴; and
- the proposed capacity of the SRFI to handle 16 trains per day each way in due course.

Is the SRFI needed?

4.2.33 Several representations were received suggesting that the proposal is unnecessary in view of available warehousing at the existing EMDC nearby at Castle Donington. In addition, several IPs drew attention to the rail link from the Castle Donington branch freight line serving a large Marks and Spencer warehouse (an east facing connection installed in 2011) which has not so far been used. Even if a SRFI is necessary, it was argued that better sites are available elsewhere (REP4-10, REP5-03, and REP5-11).

Available supply

4.2.34 The Market Report (APP-113, Doc 6.8) underlines the response of the property market to the demand for distribution warehousing with good access to the motorway network. This has been driven in particular by the move towards 'just in time' logistics and reduced stockholding levels in the retail industry, especially reinforced most recently by the substantial increase in online retailing. Distribution centres which are rail-served are therefore likely to be a key requirement of the logistics market in the medium to long term.

4.2.35 In terms of the distribution property market, although it varies as a proportion year to year, on average the Midlands

²⁴ The existing Castle Donington branch freight line is part of a network of routes that are being cleared to W12 gauge by Network Rail under the Strategic Freight Network Programme

consistently accounts for over a third of the take up in England, with the West Midlands seeing considerably higher levels of take up compared with the East Midlands. This is partly a reflection of low levels of available stock, especially for larger units on the rail-served sites. Nonetheless, the East Midlands is home to 20% of all large scale warehouse capacity nationally, and on average units in the East Midlands are 25% larger than any other region in England and Wales.

- 4.2.36 The primary market area the EMGRFI would serve is the three cities of Leicester, Nottingham and Derby. The five year average annual take up between 2009 and 2013 is 355,000 m². The current supply position is just less than 500 ha of available land capable of accommodating over 2 million m² of floor space equating to approximately 5.8 years of supply. However, only 8 sites are capable of accommodating units in excess of 46,000 m² and only 4 sites are rail-served. The EMDC is one of these, but it is not an open terminal as the rail connection is principally to serve the Marks and Spencer warehouse (APP-113, Doc 6.8).
- 4.2.37 The applicant has no particular theory as to why rail freight has not been taken up more readily at the EMDC (REP3-06, Doc 8.1), but the reasons may include land or rental costs on the site, available plot size, and quality of rail access provided. In response to our first written questions, the applicant highlights that the EMDC is a much smaller warehousing site than the scale of a SRFI, and the rail connection is for the exclusive use of one operator i.e. Marks and Spencer, rather than being available to all users of warehouse sites. It is therefore operating in a different sector of the distribution warehousing market (REP4-42, Doc 8.3).
- 4.2.38 The applicant's position on need is set out in the Planning Statement with reliance on the NPSNN which identifies a compelling need for an expanded network of SRFIs (APP-638, Doc 6.6). The applicant considers that there is currently extremely strong demand and it expects this to continue to grow in the future.
- 4.2.39 We agree with the need case put forward by the applicant. Nonetheless, in a more local context, the current availability of undeveloped warehouse plots at the EMDC might suggest the intended rate of take up of warehousing space (186,000 m² in the first year alone of the development programme) is ambitious.

Alternative sites

- 4.2.40 As noted in paragraph 3.2.21 above, one of the reports submitted as part of the application is an assessment of sites in the sub region carried out by AECOM in 2010, but which the applicant considers remains a valid and important part of the

evidence base (APP-115, Doc 6.15). In what is a systematic appraisal of 36 potential sites, the report identified four sites as suitable and preferred locations for SRFIs:

- EMDC, under construction;
- Markham Vale between Chesterfield and Bolsover, Derbyshire;
- Eggington Common, south of the Toyota plant near Derby; and
- East Midlands Gateway, the application site.

4.2.41 As the EMDC was under construction at the time the report was carried out it was excluded from further consideration, but for each of three remaining sites the report provided:

- a critical assessment of their relative merits;
- a preliminary assessment of their viability;
- an outline of any essential infrastructure that would be required to deliver these sites; and
- a consideration of any key environmental impacts and constraints.

4.2.42 The Junction 24 Action Group suggested that the report then went on to rank these three shortlisted sites and that the application site was ranked third (REP4-10 and REP5-11). We agree with the applicant's response that there were several stages to the AECOM assessment of potential SRFI sites. The final conclusions were a qualitative process, with no use of any scoring, or even direct comparison of the final three most suitable sites which have the capability to serve different areas of the region and with different facilities (REP7-04, Doc 8.8).

4.2.43 Since then, it is understood the site at Markham Vale is being developed for distribution uses, but without a rail connection (APP-638, Doc 6.6). Several representations were received arguing that in any event the site at Eggington Common is better than the EMGRFI proposal because it is a brownfield site where development would have less environmental impact. In fact, we understand an application for a DCO is being prepared for this site, termed the East Midlands Intermodal Park (EMIP), as a SRFI for submission in early 2016. The potential applicant, Goodman Shepherd (UK) Limited, suggests the commercial development market perceives EMGRFI and EMIP as complementary and agrees that the two proposals are not mutually exclusive (RR-085 and REP5-01).

- 4.2.44 Our conclusion is that whilst there are current sites available for a range of warehousing developments at EMDC and other sites, the NPSNN (for example at paragraph 2.58) makes it clear it is for the market to determine the viability of particular proposals. The applicant believes that there is both existing and growing demand for a SRFI in this location. This is consistent with paragraph 2.56 the NPSNN which states a compelling need for a network of SRFIs.

Meeting the NPS criteria for the highway proposals - NSIPS 2 and 3

- 4.2.45 The application contains three NSIPs, two of which are major highway schemes. In addition, associated development also contains substantial highway works, principally the Kegworth Bypass. The ES argues that all three NSIPs are inextricably linked and each will not proceed without the others (APP-118, Doc 5.2 Chapter 2).
- 4.2.46 The proposed highway works (Works Nos. 7 and 8 forming NSIPs 2 and 3) require development consent for them as they fall within s22 of the PA 2008, and s104 requires the Secretary of State to determine the application in accordance with the NPSNN. The concern we had therefore was the extent to which the highway NSIPs are simply part of the SRFI application and therefore fall to be treated within paragraph 4.8 of the NPSNN, or whether they should be regarded as separate road projects and therefore subject to the appraisal requirements set out in paragraphs 4.5 and 4.6 of the NPSNN.
- 4.2.47 The expectation at paragraph 5.207 of the NPSNN is that applications for SRFIs:
- 'likely to have significant transport impacts should include a Transport Assessment using the WebTAG methodology stipulated in Department for Transport guidance'.*
- 4.2.48 Paragraph 4.5 of the NPSNN says:
- 'applications for road and rail projects (with the exception of those for SRFIs...) will normally be supported by a business case prepared in accordance with Treasury Green Book principles and based on the Department's Transport Business Case guidance and WebTAG guidance. The economic case prepared for a transport business case will assess the economic, environmental and social impacts of a development. The information provided will be proportionate to the development. This information will be important for the Examining Authority and the Secretary of State's consideration of the adverse impacts and benefits of a proposed development'.*
- 4.2.49 Paragraph 4.27 of the NPSNN says:

'All projects should be subject to an options appraisal.... Where projects have been subject to full options appraisal in achieving their status within Road or Rail Investment Strategies or other appropriate policies or investment plans, option testing need not be considered by the ExA or the decision maker.... It is not necessary for the ExA and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken'.

- 4.2.50 With these points in mind, in our first written questions we asked the applicant to set out the compliance of the application with the NPSNN as well as the Road Investment Strategy (RIS) and National Infrastructure Plan (NIP) published in early December 2014 as part of that year's Autumn Statement. The RIS lists improvements to M1 Junctions 24 and 24A as privately funded schemes to be delivered between 2015 and 2020²⁵, whilst the NIP identifies the SRFIs generally as one of the top 40 priority investments. The applicant's response was a confirmation of compliance of the application with the NPSNN in their view (REP4-43, Doc 8.3 Appendix 1).
- 4.2.51 We also asked the applicant to identify within the Transport Assessment (TA) (APP-583, Doc 5.2 Appendix 13.1) how the business case for the proposed highway improvements had been prepared. The response was that no such business case had been prepared using the WebTAG methodology. In the applicant's view, paragraphs 4.5 and 4.8 of the NPSNN do not require a business case for road schemes in association with a SRFI, even if these schemes constitute NSIPs in their own right. Rather, this is a judgement of viability within the market framework.
- 4.2.52 Nonetheless, we wrote to the applicant (PD-07) about how the application is to be treated in the context of paragraph 4.5 of the NPSNN. The applicant's response was that the circumstances of this application make it a legitimate exception that a business case would be required in respect of the highway NSIPs and that this would normally be based on WebTAG guidance. The justification the applicant put forward for this approach was that the application is completely integrated, the highway NSIPs are simply a consequence of the thresholds in the PA 2008 and there is no hierarchy amongst the highway infrastructure works that are required to service the SRFI as NSIP 1.

²⁵ 'M1 Junctions 24-24A improvement – as part of the transport mitigation measures associated with the new Roxhill rail freight interchange, developers are proposing to fund improvements to Junctions 24 and 24A on the M1, including removal of the roundabout at Junction 24A, a new direct southbound link from the A50 to the M1 and better links to Junction 24' (RIS Investment Plan – Midlands, DfT March 2015)

- 4.2.53 The proposed approach had been the subject of extensive discussion with the HA who had not required a WebTAG analysis or any similar business case to be produced, on the basis that the highway proposals are not being publicly funded. The applicant argued that the requirement in paragraph 4.5 of the NPSNN is really intended to justify investments requiring public funds, and as such this does not apply to this case where the highway NSIPs are to be funded entirely by the applicant (R17-001).
- 4.2.54 We were keen to pursue the applicant's conclusion that the application is an exception to the general rules set out in paragraph 4.5 of the NPSNN. Plainly, if in the context of the NPSNN a requirement to submit supporting information in the form of a business case prepared in accordance with the Treasury Green Book principles is not being met, this would represent a serious weakness in whether development consent could be granted. We therefore sought confirmation from the HA for the applicant's position, which was provided, together with the comment that *'the SRFI proposal and associated mitigation do not require government approval of the business case as it is not to be publically funded'* (REP6-02).
- 4.2.55 To sum up, the applicant's argument is that because the highway works are being privately funded, the assessment requirements of paragraph 4.5 of the NPSNN do not apply, but even if they do an exception should be made. We note the HA's agreement that a WebTAG appraisal is not required where public highway assets are to be funded entirely through private investment, though this does not sit comfortably with paragraph 5.207 of the NPSNN.
- 4.2.56 Our view is that one purpose of requiring a business case to be prepared is to ensure that adverse impacts of the proposed development are set out and understood, and the necessary mitigation fully demonstrated. The practical position is that the range of material in the TA and appendices submitted as part of the application provides much of the material normally expected as part of a WebTAG appraisal. We consider therefore that even if the TA has not precisely followed the WebTAG methodology stipulated in Department for Transport guidance, the environmental analysis of the impacts of the highway NSIPs is adequately set out in the ES.

Conclusions

- 4.2.57 The previous paragraphs consider in some detail the compliance of the application for the proposed EMGRFI with the policy requirements of the NPSNN as the principal policy basis. Our judgment is that with one exception, the application complies with the policy tests and locational and functional criteria of a SRFI (paragraphs 4.83 to 4.89 of the NPSNN), and the approach

to assessment requirements for the major highway schemes which are NSIPs in their own right (paragraphs 4.5 to 4.8 of the NPSNN).

4.2.58 The exception is, however, an important point of principle which goes to the heart of meeting the objectives set out in paragraphs 2.53 and 2.54 of the NPSNN of encouraging the transfer of freight transport from road to rail. Our finding on the issue of compliance with the NPSNN is that it is difficult to reconcile the elements of the application as a SRFI against the requirements of paragraphs 4.83 and 4.88:

- rail activities are not available at the EMGRFI '*at the outset*';
- direct rail connected services to any of the warehouses are not proposed in any event, so the criterion of some at least being rail connected '*from the outset*' cannot be met;
- even with the restriction imposed by R2(2) of the draft DCO, nearly 47% of the warehousing would be permitted to be constructed and used before the rail freight terminal is available; this does not comply in our view with the requirement that '*the initial stages of the development must provide an operational rail network connection and areas for intermodal handling and container storage*'; and
- there are no proposals within the application to extend the rail connections within the site once the rail freight terminal has been fully completed with all the proposed sidings in place, and so '*allow more extensive rail connection within the site in the longer term*'.

4.2.59 We offered the applicant at the beginning of the examination the opportunity to set out their views about how the application complies with the NPSNN, given that this NPS was designated after the submission of the application (PD-06). We also put the point at the second and third ISH hearings dealing with the draft DCO (HG-04 to HG-06 and HG-15 to HG-16) about the quantum of warehousing development that could be brought into use before the rail line is constructed.

4.2.60 The applicant's response as noted in paragraph 4.2.3 above, and repeated in response to several IPs' representations, is that the application is fully compliant with the NPSNN, including paragraphs 4.83, 4.88 and 4.89 (REP4-43, Doc 8.3 Appendix 1).

4.2.61 We also considered whether a better fit with paragraph 4.88 of the NPSNN could be achieved by reducing the quantum of development in R2(2), so that a much smaller proportion of the total warehousing development proposed would be permitted to

be occupied before the rail terminal is constructed and available for use. We suggested at the third ISH dealing with the draft DCO (HG-30) that the lower the figure the better for this purpose, but paragraph 7.117 of the EM provides a clear basis for the figure of 260,000 m² in R2(2) proposed by the applicant (REP9-13, Doc 3.2C).

4.2.62 For the reasons above we conclude that the application does not comply with paragraphs 4.83 and 4.88 of the NPSNN. We return to this matter in chapter 5, along with our conclusions on all the other topics considered in this chapter in recommending on the overall case for granting development consent.

4.3 CUMULATIVE IMPACTS WITH OTHER DEVELOPMENT PROPOSALS

4.3.1 The assessment of other significant development proposals in combination with the application for the EMGRFI is summarised in the ES (APP-137, Doc 5.2 Chapter 15). The main ones shown on an accompanying plan (APP-138, Doc 5.2 Chapter 15) are:

- land adjoining 90 Ashby Road, Kegworth;
- Park Lane, Castle Donington;
- EMDC, Castle Donington; and
- land north and south of Park Lane, Castle Donington.

4.3.2 For the purposes of the TA, a larger number of committed and proposed sites were taken into account (APP-583, Doc 5.2 Appendix 13.1). The ES chapters which rely on data produced through the TA (principally those relating to air quality, and noise) therefore equally take account of the cumulative effect of the commitments assumed in the TA. The scale of likely expansion of EMA over the next 20 years was also taken into account in consideration of socio-economic aspects in the ES (APP-121, Doc 5.2 Chapter 4).

4.3.3 Only the first of the sites listed above is seen by the applicant as having a cumulative effect in combination with the EMGRFI proposals. This is a residential development scheme for up to 110 dwellings on the western edge of Kegworth. Cumulatively, that committed development and the proposed SRFI would result in further, albeit relatively limited, urbanisation of the overall landscape adjacent to this stretch of the M1 motorway.

4.3.4 The approved residential development scheme at Ashby Road, Kegworth includes landscaping, mounding and planting to provide visual screening to the motorway, and is therefore likely to result in the mitigation of some visual impacts of the EMGRFI

from the existing community on the western edge of Kegworth (APP-122, Doc 5.2 Chapter 5).

- 4.3.5 Several IPs argued that other proposals in the wider vicinity of the application site should also be considered in terms of cumulative impacts. These included particularly the proposed EMIP, as requested by DCC (AS-040 and REP-18), and Lockington cum Hemington Parish Council (REP5-03). Additionally, the Junction 24 Action Group drew attention to a proposed distribution site at Sawley Crossroads (REP5-02)²⁶. As we explained at the PM, we could not take into account proposals which were not at that stage committed, which includes both of these sites. We are satisfied therefore that the assessment of the potential cumulative impacts of the proposed development with other significant development proposals carried out by the applicant is appropriate.
- 4.3.6 However, it is worth noting at this point the implications for the EMGRFI of the proposed route for the eastern arm of phase two of HS2 from the West Midlands towards Leeds, highlighted by representations from CPRE (REP4-01), Castle Donington Parish Council (REP4-02) and the Junction 24 Action Group (REP4-10). The Design and Access Statement (DAS) says that the design and layout for the proposed SRFI has fully taken into account the emerging proposals for HS2, such that these unrelated and independent proposals could both be delivered (APP-640, Doc 6.9).
- 4.3.7 In response to our first written questions, the applicant provided a plan superimposing the current route of HS2 upon the Illustrative Masterplan (REP4-61, Doc 8.3 Appendix 11). This shows a complex arrangement of HS2 in tunnel beneath the EMA runway and the warehousing of the EMGRFI, emerging in a tunnel portal immediately to the north. The route would then be in cutting across the earth mounding and landscaping proposed as part of the EMGRFI, to cross the EMGRFI rail line and M1 on a viaduct immediately north of Junction 24. This would require demolition of the existing Hilton Hotel.
- 4.3.8 The applicant's response is that HS2 proposals are still at a relatively early stage and a hybrid Bill for this phase has not yet been deposited in Parliament. Once a preferred route for HS2 is determined, that project will have to undergo an EIA including taking into account committed development. This would include the EMGRFI of course, if approved. Given the uncertainty regarding the HS2 route, it is not possible to consider the cumulative impacts arising from its possible construction (REP4-

²⁶ It is understood that a resolution to grant planning permission for the Sawley Crossroads scheme was made in June 2015, and as paragraph 4.2.43 above indicates, an application for development consent for the EMIP is not expected until early 2016

42, Doc 8.3). We agree with this, but recognise, as the Junction 24 Action Group point out, the construction constraints of these two projects being built on the same site, whether synchronously or independently, are formidable.

4.4 TRANSPORTATION

Rail

- 4.4.1 No forecasts of the volumes of freight likely to be handled by the EMGRFI are provided in the application documents. As set out above in paragraph 4.2.30 the Rail Report (APP-112, Doc 6.7) indicates that rail traffic volumes would rise in line with current forecasts of market demand from 1 train per day each way in 2017 (2 train movements), to 5 in 2027 (10 train movements), 10 in 2037 (20 train movements), and 16 in 2047 (32 train movements).
- 4.4.2 The terminal would be operational 24 hours a day and at full operation would provide capacity for up to 4 trains at any one time. At commencement, the terminal would be operated with two rail lines and reach stackers (large mobile tractors that can lift a 45 tonne container from the train) used to load /unload containers. As traffic volumes increase, two further rail lines would be constructed within the terminal and loading/unloading would be transferred to gantry crane operations in addition to or replacing the use of reach stackers (APP-112, Doc 6.7).
- 4.4.3 Again, as noted above in paragraph 4.2.31, NR confirms there is sufficient capacity in terms of potential train paths on the strategic rail freight network. Such paths are not guaranteed, but are available on a first come first served basis to rail freight operators at the time (APP-654, Doc 7.3).
- 4.4.4 We consider therefore that there are no overriding impediments to the proposed development from the point of view of likely freight train paths being made available when required to accommodate forecast volumes of trains and containers as demand increases.

Roads

Current highway network

- 4.4.5 The highway network in the vicinity of the application site is dominated by the M1 running north-south to the immediate east of the proposed SRFI, and Junctions 24 and 24A. Essentially, the two junctions function as a large comprehensive interchange between the M1 and three heavily trafficked trunk roads, which are mostly dual carriageway. Junction 24 is an extensive gyratory providing interchange between the M1 and the A6, A50 and A453 and has recently been the subject of an improvement scheme to improve the flow of southbound A50 traffic through

the junction²⁷. Junction 24A provides for interchange between the A50 and the M1 involving the complex and often difficult to navigate Warren Roundabout (APP-134, Doc 5.2 Chapter 13).

- 4.4.6 Local access is provided to Lockington, Hemington and Castle Donington and to the Hilton Hotel to the immediate north of Junction 24. Local access to Lockington Quarry is provided from Junction 24A.
- 4.4.7 HE (formerly the HA until 31 March 2015) has responsibility for the M1, A453, A42 and A50 as major elements of the strategic road network (SRN). Other roads within the application area are the responsibility of LCC as the local highway authority; in the wider area of influence (AOI), Derbyshire and Nottinghamshire County Councils and Derby and Nottingham City Councils are the local highway authorities. SoCGs have been agreed between the applicant and all these highway authorities (APP-648 to 653, Doc 7.2, 7.2A to E and REP4-32 to 37, Doc 7.12, 7.12A to E).
- 4.4.8 The main existing highway conditions are:
- Kegworth suffers from heavy traffic including significant numbers of HGVs using the A6 to reach the M1 at Junction 24;
 - the SRN operates above capacity during weekday peak periods with extensive queuing on the A50 and A453 approaches to Junction 24;
 - similarly at Junction 24A where the A50 westbound traffic leaving the motorway gives rise to long queues during the am peak hour;
 - substantial delays are common place at and around Junction 24 including on the M1 itself;
 - non-motorised provision (walking, cycling etc.) in this area is severely limited because of the severance effect of main roads; and
 - the recent improvement works to the A453 and the approach to Junction 24 will not provide a comprehensive long term solution to congestion at Junctions 24 and 24A.

The Transport Assessment

- 4.4.9 The applicant's TA (APP-583, Doc 5.2 Appendix 13.1) examined the capacity of relevant local transport infrastructure to accommodate the proposed development. The assessment has

²⁷ Highways Agency Pinch Point scheme -see APP-628, Doc 5.2 Appendix 13.1

been carried out by establishing base year flows, future year traffic flows and the potential impacts of the proposed development. Locations where predicted changes might cause significant adverse impacts were then identified and assessed.

4.4.10 In terms of transport modelling, a two-stage process was carried out:

- strategic modelling covering a wide AOI using the Three Counties Model (TCM), an expanded and recalibrated version of the Greater Nottingham Transport Model to deal with issues such as reassignment, congestion and the cumulative impact of planned future development and network improvements; and
- microsimulation modelling to demonstrate the operation of the network particularly around Junctions 24 and 24A, and with both the proposed development and associated highway works in place.

4.4.11 Department for Transport Circular 02/2013²⁸ states that traffic likely to be generated by the proposed development should be assessed at the year of opening and over future years. Where insufficient capacity exists to provide for overall forecast demand at the time of opening, the impact of the development will be mitigated to ensure that at that time, the SRN is able to accommodate existing and development generated traffic.

4.4.12 Accordingly, for the EMGRFI proposal, the assessment years adopted for the transport modelling with the levels of development taken into account as appropriate are:

- 2012 - the base year;
- 2016 - the opening year assumed for the proposed development, and including 100% of committed development but no development proposed in local plans;
- 2023 - the forward planning scenario, and including 100% of committed development and 50% of development proposed in local plans; and
- 2031 - the future year assessment, and including 100% of committed development and 100% of development proposed in local plans.

4.4.13 The TCM has also been used to derive Annual Average Weekday Traffic (AAWT) and Annual Average Daily Traffic (AADT) flows for use in the EIA work (specifically for noise and air quality

²⁸ The Strategic Network and the Delivery of Sustainable Development

impacts). This has different assumptions from those in the previous paragraph about development quantities, for example 30% of committed development and 10% of development proposed in local plans at 2016.

4.4.14 The methodology and approach is described in detail in the TA and appendices. SoCGs agreed with the HA and the five local highways authorities confirm that the TA is an appropriate assessment of the likely transport impacts, and there are no outstanding areas of disagreement (APP-648 to 653, Docs 7.2, 7.2A to 7.2E, and REP4-32 to 37, Docs 7.12, 7.12A to 7.12E).

4.4.15 The TA covers:

- the modelling approach;
- reference case developments;
- trip generation, distribution and assignments;
- the package of proposed highway improvements;
- impacts of improvement schemes on the highway network;
- the public transport strategy;
- non-motorised users; and
- access and rights of way.

4.4.16 EMA made representations claiming that the strategic traffic model underestimates future road traffic which would be generated through growth of the airport (REP4-06). The applicant provided further sensitivity tests (REP5-06, 08 and 09), and by the end of the examination EMA were in agreement with the transport modelling (AS-046 and REP9-19).

Proposed transport improvements

4.4.17 As set out in full in paragraph 2.1.16 above, the highway improvements and changes put forward by the applicant to mitigate the adverse traffic consequences of the SRFI include:

- a new southbound slip-road to carry southbound traffic from the A50 over the M1 to replace the Junction 24A Warren Roundabout; this slip-road would run to the east of the M1 rather than to the west as at present; it would join directly to the M1 southbound and also provide a link to the Junction 24 roundabout; all A50 to M1 southbound traffic would be removed entirely from Junction 24;

- an additional lane to the M1 southbound between the new A50 slip-road and the existing Junction 24 slip-road;
- improvements to the Junction 24 roundabout including a short link road carrying northbound traffic exiting the SRFI site, and from the A453 to the A50 without needing to pass through Junction 24;
- widening and signalisation of the A453 westbound approach to Junction 24;
- a new access to the A453 south of Junction 24 to serve the SRFI site; this would be a large signalised roundabout, designed to meet the needs of both the SRFI site and the airport;
- bus interchange facilities at the SRFI site access roundabout on the A453;
- a new bridge over the M1 at the SRFI site access to replace the nearby existing Kegworth Road bridge; the existing bridge would remain for pedestrian and cycle use only, and bus priority would be created through to Ashby Road in Kegworth;
- a Kegworth Bypass to the south of the village which would remove most A6 and airport related traffic from Junction 24, and allow HGV traffic in particular using the A6 to avoid Kegworth; and
- closure of the current junctions between Church Street and the A50, and Main Street and the A50 which provide access to Lockington; instead, a new two-way local access from Lockington to Junction 24 would be provided, using what would be the redundant existing A50 southbound carriageway; this would also provide access to the Hilton Hotel.

4.4.18 As well as these highway works, the application contains measures to provide alternatives to private car usage. The close proximity of the airport means existing bus services are good in the area of the site, and provide a basis on which the public transport proposals can build. Existing walking and cycling routes would be enhanced or extended, and some existing physical barriers to walking and cycling caused by major roads or other features would be reduced by the proposed highway improvements.

4.4.19 The SRFI itself would be served by a single new road access from a new interchange on the A453 connecting to the western end of the proposed Kegworth Bypass. There is no other road access proposed from the SRFI to the surrounding settlements

of Lockington, Hemington and Castle Donington, although connections are provided from within the site to the existing PRoW network. All roads within the SRFI site would be private and not adopted public highway.

- 4.4.20 The Illustrative Masterplan shows a relatively simple internal highway network, with the main spine road from the proposed new A453 transport interchange passing east-west through the middle of the application site. In turn, this would enable road access to the proposed warehousing development zones, the intermodal site and rail freight terminal (APP-20, Doc 2.11).

Transportation issues

- 4.4.21 The package of highway schemes set out in the application and contained in Schedule 1 of the draft DCO is the outcome of studies by a transport working group formed in 2012 to consider the implications of the development proposals and potential mitigation measures²⁹. SoCGs were agreed between the applicant and all the highway authorities confirming their support for the package of highway proposals (APP-648 to 653, Docs 7.2, 7.2A to 7.2E). Accordingly, no objections were received from the highway authorities to the highway works provisions of the draft DCO.
- 4.4.22 But the Junction 24 Action Group maintained throughout the examination their doubts about the adequacy of the transport proposals to meet the traffic generated by the SRFI (REP5-02 and 11, REP7-02, REP 8-04 and 05, REP9-04), with corresponding rebuttals from the applicant (REP3-06 Doc 8.1, REP5-06 Doc 8.5, REP7-04 Doc 8.8 and REP9-12 Doc 8.12).
- 4.4.23 In our first written questions we asked the applicant to set out the alternatives considered for NSIPs 2 and 3. The applicant provided a supplement to the TA to demonstrate that the highway schemes Works Nos.7 and 8 contained in the draft Order are the optimum as an evolution from the options considered in 1994 and 2006 (REP4-44 and 45, Doc 8.3 Appendix 2).
- 4.4.24 The main consideration arising from our assessment of the transport issues is the extent to which the highway schemes are justified exclusively to mitigate the traffic generation consequences of the SRFI. We were conscious that various proposals for improving the functioning of the M1 at Junctions 24 and 24A have been put forward over the past 20 years, and

²⁹ This working group consisted of five local highway authorities (Leicestershire, Derbyshire, Derby City, Nottinghamshire and Nottingham City), the Highways Agency, their consultants AECOM, the applicant and their consultants Systra, Lawrence Walker Ltd, Geoff Bounds Consulting and Integrated Transport Planning (REP4-19)

indeed in the case of the Kegworth Bypass since the Second World War. These highway proposals would otherwise fall to be funded as public schemes, but the application presents these highway works as being justified to meet the consequences of constructing the SRFI and therefore the responsibility of the applicant.

- 4.4.25 The applicant estimated the total costs of carrying out the project at £131m of which highway works represented about £31m (REP6-08, Doc 8.6)³⁰. About a quarter of the total costs of carrying out the proposed development of the EMGRFI as a whole is therefore highway mitigation. We considered this rather surprising given that as a private sector scheme, one might expect the applicant to seek to minimise the extent of improvements to the highway network.
- 4.4.26 The scale of the highway improvements would certainly provide a substantial and comprehensive solution to long-standing traffic problems on this part of the M1, and particularly Junctions 24 and 24A, but we were sceptical as to the extent to which these are justified exclusively to meet the traffic consequences of the proposed SRFI.
- 4.4.27 We were unable to obtain a convincing justification from the TA as to the consequences for the highway system of constructing just NSIP 1 on its own. This is set out in paragraphs 7.5 to 7.9 of the TA (APP-583, Doc 5.2 Appendix 13.1) which indicate that a significant increase in traffic due to the development would occur on the A453, M1, A42 and several roads in Kegworth. Traffic generated by the SRFI would be likely to displace traffic along the A50, with consequential impacts on the routing of traffic into and out of Derby. In addition, the TA states in several places (for example at paragraph 7.55) that the overall mitigation scheme more than deals with the congestion impacts of the SRFI and indeed provides a net benefit to the operation of the highway network as a whole.
- 4.4.28 Much of the detailed material as output from the TCM is contained in the appendices to the TA, but rather generally presented and at a small-scale graphically, making it very difficult for us to appreciate precisely the justification supporting the written assertions in the application documents. The TA concentrates on justifying the package of schemes put forward in the application. This work is comprehensively set out and rigorously approached, and supported by all the highway authorities in their SoCGs with the applicant. Our challenge,

³⁰ However, the total construction cost for the proposed development including both the SRFI and the highway schemes is projected to be at least £300 million according to the ES (APP-121, Doc 5.2 Chapter 4)

however, was to be sure of the dimensions of the problem these highway works are designed to solve.

- 4.4.29 In order to fully understand the current position, and the situation which would be caused by constructing the SRFI, we asked for the traffic data to be presented on a consistent basis for 2012, 2016, 2023 and 2031 at a number of defined locations. The applicant did so in response to our first written questions (REP4-42, Doc 8.3), but we remained unconvinced that the justification for individual highway improvements was actually demonstrated by the data. Indeed, in several cases the consequence of constructing the proposed SRFI would seem to lead to traffic flows reducing on particular links in the immediate highway network being proposed for improvement.
- 4.4.30 We therefore attempted ourselves to set out the applicant's data in a way which we found easier to understand, and put this back to the applicant in the form of our second written questions (PD-08). We also explained³¹ that the reason for asking for this information was specifically to provide us with a clear demonstration that the highway works contained in the application are indeed required as a direct consequence of constructing the SRFI.
- 4.4.31 The applicant's response was to underline the effect of constructing the SRFI in leading to a reassignment of other traffic, i.e. not associated with the proposed SRFI, particularly at Junction 24, to alternative routes. We were also referred back to the explanation in the TA, which had been the cause of our disquiet in the first place in its brevity in explaining the consequences for the immediate highway network of constructing the SRFI (REP6-08, Doc 8.6).
- 4.4.32 For this reason, we decided to hold an ISH to deal with transportation matters, which took place on 3 June 2015 (HG-19 to HG-21). We explained our concerns in terms of the deficiencies in the TA as we saw them, and the difficulty we faced in trying to interpret the traffic data to justify each of the elements of the highway works included in the application.
- 4.4.33 The explanation provided at the hearing was that the individual links should not be looked at in isolation. Rather, they should be taken together as a comprehensive view of how the network in the locality of the SRFI operates, and particularly Junctions 24 and 24A. The applicant explained the traffic reassignment as a consequence of constructing the SRFI was contained in the data forming the TA. The projected traffic growth for the area with the SRFI in addition could not be met at Junction 24, and would

³¹ In question 2Q1.2

find other routes, leading to increased congestion levels throughout the wider highway network. Individual links may well see what appears to be no or reduced impact in traffic flows from constructing the SRFI, but this is a consequence of traffic generated by the development supplanting existing traffic flows which finds another route, and in turn simply leads to extra congestion elsewhere.

- 4.4.34 The applicant therefore argued that the proposed highway works would not only mitigate the traffic consequences of the SRFI, but also provide additional capacity. This would enable the traffic growth predicted for the area to be fully accommodated as well. The results of the microsimulation modelling demonstrate that the proposals would provide a net benefit to the operation of the highway network, with average delays to vehicles improving by approximately 50% in all scenarios. The capacity of the mitigation works is seen as the minimum necessary to meet all the requirements.
- 4.4.35 In summary, the applicant's response during the ISH was that the network has to be treated comprehensively, and that our interpretation of the SRFI leading to traffic flows reducing in some cases on particular links in the highway system is simply a consequence of the reassignment of traffic.
- 4.4.36 In the light of the discussion at the hearing, we invited the applicant to set out these arguments in a further explanatory technical note (REP8-026, Doc 8.9 Appendix 3). We also agreed the final presentation of the traffic data on defined links in the highway network (REP8-024, Doc 8.9 Appendix 2). In the light of these, we conclude that the transport analysis of the consequences of constructing the proposed EMGRFI set out in the TA is appropriate and acceptable.

Specific transport matters

- 4.4.37 Several representations were made concerning proposed changes to the existing road access to Lockington as a result of the closure of Church Street, for example from Lockington cum Hemington Parish Council (REP7-03). The reasoning for the proposed changes and the options considered is set out in the applicant's response to our first written questions (REP4-44, Doc 8.3 Appendix 2). The applicant considers these changes are likely to result in longer distances being travelled, but taking a shorter time (REP3-06, Doc 8.1). This is supported by LCC and NWLDC who similarly concluded in the joint LIR that impacts on local road access provision would be neutral (REP4-19). We agree.
- 4.4.38 The joint LIR drew attention to the impact of traffic on the A6 through Kegworth as the most significant issue for the county road network (REP4-19). The Kegworth Bypass should deliver a

significant reduction in traffic passing through the settlement, a weight restriction would help to significantly reduce HGV levels, and the proposed works to Junction 24 would reduce rat running (REP4-19). But Kegworth Parish Council expressed concern in their representations about the alignment chosen for the bypass, the intersection of Whatton Road with the bypass and the gradient of what would be a single carriageway road (RR-144 and REP4-11).

- 4.4.39 Kegworth Parish Council stated it would wish the bypass to follow the route as published by the Department of Transport in 1994. Appendix L of the TA contains the assessment of the options considered for the Kegworth Bypass, and the applicant's response to the Parish Council sets out the reasoning for selection of the bypass route as the most appropriate and effective one (REP3-06, Doc 8.1). This is supported by LCC and NWLDC in their joint LIR (REP4-19), and we agree.
- 4.4.40 Kegworth Parish Council also argued that Whatton Road, a rural road that joins the two villages of Kegworth and Long Whatton, should not cross the bypass as a staggered at grade junction as proposed, but instead should be a bridge over or tunnel under the bypass. The Parish Council argued that providing access from Whatton Road to the bypass would cause rat running through Kegworth, and that existing users of Whatton Road should not have to negotiate this new junction to cross the bypass.
- 4.4.41 The view put forward in the joint LIR is that as Whatton Road is lightly trafficked, there is no reasonable justification to require a grade separated junction, and consequently the proposed layout is acceptable. The proposals for the bypass have been considered through the normal design procedures, and as a result the local authorities are content that neither a climbing lane nor any changes to the proposed gradient are required (REP4-19). We have no evidence to suggest otherwise and are content therefore with the design of the Kegworth Bypass and the proposed junction arrangements with Whatton Road.
- 4.4.42 The joint LIR noted that the proposed EMGRFI development would result in an increase in traffic on the single carriageway part of the A6 through the settlement of Hathern, which lies to the south of Kegworth. The TA concludes on this point that peak hour traffic problems in Hathern can be improved by better existing box marking at junctions. We visited Hathern during our second accompanied site inspection on 11 June, 2015, and we agree this proposed mitigation is reasonable in the circumstances. In so doing, we also accept the local authorities' view in their joint LIR that there is no reasoned justification for the applicant to fund a bypass of Hathern (REP4-19).

4.4.43 DCC drew attention in their LIR and WR to the views of County Councillor Linda Chilton about the possible impact of traffic generated by the EMGRFI using Swarkestone Causeway on the A514 (REP4-05 and 18). Swarkestone Causeway is a SAM, and not suited to the volume and nature of existing traffic using it. The TA and transport modelling does not suggest that the SRFI itself would generate significant extra traffic using this part of the A514, and the County Council concurred with this in their SoCG with the applicant (APP-649, Doc 7.2A). We visited Swarkestone Causeway on our second accompanied site visit on 11 June 2015, and can appreciate that although a 7.5 tonne weight limit is in operation, a comprehensive solution to traffic usage of this SAM is needed. But this is a much wider matter, and not as a direct consequence of the application before us.

Access from Lockington Quarry to Junction 24

4.4.44 Nabarro LLP on behalf of Lafarge Tarmac submitted a representation objecting to the proposed access arrangements at Lockington Quarry (REP4-13). The current access to and from the quarry is via Warren Lane to Junction 24A. Reconstruction of this junction would require the access to the site to be altered, but provided this is to agreed highway standards it appeared to be generally acceptable.

4.4.45 The proposed egress was a more serious matter. The current arrangement of an egress to Junction 24A would be replaced by construction of a single lane private road alongside the new southbound A50 to the east of the M1 to Junction 24. This option had been arrived at after considering several other possibilities (REP4-44, Doc 8.3 Appendix 2).

4.4.46 Lafarge Tarmac argued that both the proposed new access and egress routes should be part of the public highway, and were particularly concerned about the possible delays to quarry traffic using the private new egress road exiting to Junction 24. The applicant provided a detailed response (REP5-06, Doc 8.5 and REP5-10, Doc 8.5 Appendix 4), and discussions between the parties about these issues took place during the course of the examination.

4.4.47 In addition, a number of minor amendments to the engineering of Junction 24 were put forward, including provision of two lanes at the quarry egress approach to Junction 24 (AS-019 Doc 2.4A), and a box junction (REP 8-25, Doc 6.26).

4.4.48 Nearly all matters were agreed between the applicant and Lafarge Tarmac and contained in the redrafted protective provision at Schedule 21 of the draft DCO. The outstanding matter was the amount of money to be provided by the applicant for continuing maintenance of the private access road under paragraph 12 of Schedule 21. The applicant claims the

sum put forward is more than ample, but acknowledged this was not yet agreed by Lafarge Tarmac (REP9-13, Doc 3.2C).

- 4.4.49 However, at the close of examination we had received no confirmation from Lafarge Tarmac or Nabarro LLP acting on their behalf about this matter (REP9-01), so in these circumstances we conclude that the provisions of paragraph 12 of Schedule 21 of the draft DCO are sufficient for the purpose.
- 4.4.50 In addition, there are outstanding matters concerning CA of Lafarge Tarmac's interests at Lockington Quarry, and these are dealt with in chapter 6 of this report.

Public transport and vehicle parking provision

- 4.4.51 An important part of the overall transport proposals for the EMGRFI are improvements to public transport provision. The SRFI site is adjacent to EMA, which has a well-developed public transport network serving a wide area, and which therefore provides the framework within which public transport provision for the application might reasonably be set.
- 4.4.52 We were concerned about the balance of parking to be made on the SRFI site as set out in chapter 5 of the TA (APP-583, Doc 5.2 Appendix 13.1) in the context of encouraging public transport expressed in the site wide travel plan (SWTP) (REP8-33, Doc 6.25). Car and HGV parking provision appeared to be below the allowances of local parking standards, which we therefore assumed were intended to be maxima. For that reason, we suggested that the vehicle parking quantities contained in the TA and the revised Illustrative Masterplan (REP6-11, Doc 8.6 Appendix 2) should be included as part of the Parameters Plans (APP-16, Doc 2.10), which the applicant argued against (REP9-13, paragraph 7.111 of Doc 3.2C).
- 4.4.53 Keeping vehicle parking provision to the levels set out in the TA we expected to be contingent on the successful achievement of increasing public transport usage, car sharing arrangements and encouraging walking and cycling access. Although the SWTP contains mode share targets, it also states that no specific levels of car trip reduction are needed to meet the requirements of the TA; moreover, the SWTP did not appear to us to propose any particular sanctions. LCC and NWLDC also underlined in the joint LIR the importance of travel plans having challenging targets (REP4-19).
- 4.4.54 We were therefore concerned as to what the impact would be if the objectives of the SWTP and mode share targets of 20% non-car access to the site on opening rising to 30% at full occupation are not achieved. If meeting these targets was unsuccessful, then the likelihood would be a requirement for more car parking provision than the TA currently assumes. If this is not on site,

then the consequences for overspill parking in settlements in the locality could be severe and of considerable annoyance to local residents.

- 4.4.55 However, we are mindful that implementation of the SWTP is reinforced by the DCOB (REP8-31, Doc 6.4E) which includes provisions requiring:
- occupier travel plans as development takes place, managed by a SWTP coordinator;
 - establishment of a sustainable transport working group to monitor the SWTP and public transport strategy; and
 - contributions by the applicant to a bus service fund (£1.7m), a travel plan fund (£1m) and a fall back travel plan fund if the SWTP measures are not being met (£700,000).
- 4.4.56 In addition, R6 of the draft DCO (REP9-11, Doc 3.1D) includes the submission of bicycle, motorcycle and vehicle parking details for approval by the local planning authority (LPA) for each phase of the authorised development.
- 4.4.57 In the light of these measures we consider the proposed arrangements meet the requirements of paragraph 5.208 of the NPSNN. They are appropriate for encouraging alternatives to car usage and balancing their success with vehicle parking provision to be made on the SRFI site itself.

Access and rights of way plan

- 4.4.58 The Access and Rights of Way Plan (APP-40 to 45, Doc 2.3A to F) sets out the proposed changes to the local highway and PRow network and changes to accesses to individual properties. These are given effect by articles 11 to 14 and Schedules 4 to 6 of the draft DCO. Some minor changes to the proposed highway works were made during the course of the examination, for example the private exit from Lockington Quarry to the approach to the Junction 24 roundabout and to the Kegworth Bypass, all of which we accepted.
- 4.4.59 The main changes to the PRowS crossing the SRFI site are to:
- public footpath L57 running west to east from Diseworth Lane to the A453; and
 - public bridleway L103 continuing southwards from Lockington to the airport perimeter footpath.
- 4.4.60 In the first case, this is to be replaced by a proposed permissive cycle track to be constructed by the applicant running alongside the main spine internal access road within the SRFI site. In the

second case, the proposal is to substitute a new public bridleway between Lockington and Hemington to the north of the SRFI site, outside the Order limits. At its western end this would link up with the existing footpath L57 to Castle Donington. The improvement of this is secured in the DCOB by a contribution of £181,000 from the applicant to LCC (REP8-31 Doc 6.4E).

- 4.4.61 A new off-carriageway footway/cycleway route would be provided alongside the Kegworth Bypass between the A6 south of Kegworth and the A453 west of the M1. Existing public footpaths that cross the route of the bypass would be amended, with informal crossing facilities provided at suitable locations. Signalised crossings would be provided for pedestrians and cyclists to cross the A453, which would enhance the existing route between the EMA and Kegworth.
- 4.4.62 Links to Lockington would be changed by the closures of Main Street and Church Street. The existing pedestrian and cycle route at the north end of Main Street would be enhanced where it passes under the A50. A new off-carriageway footway/cycleway route would be provided over the Warren Lane bridge.
- 4.4.63 The HA has provided enhanced pedestrian and cycle crossing facilities at Junction 24 as part of the Pinch Point and A453 dualling schemes and these would be retained as part of the reconstruction of this junction. A new footway/cycleway route would be provided to the east of the M1 between Warren Lane and Junction 24 which would provide a missing link in the route between Long Eaton and Kegworth. The existing footway/cycleway that runs along the A50 southbound past the Hilton Hotel would be retained.
- 4.4.64 In general, the majority of the proposed changes to the PRow network were welcomed by the Leicestershire Local Access Forum (RR-157) and the Ramblers Association (RR-261). The latter objected, however, to the proposed diversion of footpath L83 joining with L74. A proposal by the applicant to alter the alignment of footpath L74 to avoid a crossing of the railway line was not pursued because of changes which would have resulted to the Order limits. Instead, this is left for handling in due course with an intention that the applicant will fund a diversion order separate from this application.
- 4.4.65 A recurring concern of some IPs was that some of the existing PRowS across the SRFI site are to be substituted by permissive paths. This is to allow flexibility to determine their precise alignment during the course of the development (REP9-13, Doc 3.2C). We considered these matters during the hearings into the draft DCO, and at the transportation ISH. However, the permanency of the permissive rights of way to ensure public access at all times is secured by the DCOB completed with LCC

(REP8-31 Doc 6.4E). This deals with the matter satisfactorily to our minds.

- 4.4.66 We noted a number of inconsistencies between the non-motorised user strategy described in the TA and the formal Access and Rights of Way Plans. These were dealt with by the applicant in amendments to the draft DCO, and given the SoCG with LCC as the local highway authority accepting the changes to the PRoW network set out in the Access and Rights of Way Plans (APP-651, Doc 7.2C and REP4-35, Doc 7.12C), there are no outstanding objections to the proposals.
- 4.4.67 The Secretary of State may only include in the DCO a provision extinguishing PRoWs if he is satisfied either that there will be an alternative right of way provided or that an alternative right of way is not required³². Accordingly, we conclude that the proposed changes to local access and rights of way would deal adequately with the consequences of constructing the EMGRFI.

Construction traffic

- 4.4.68 Several representations were received, for example from Castle Donington Parish Council (REP4-02) and the Junction 24 Action Group (REP4-10, REP7-02, REP8-04 and 05, REP9-04), about the impact of construction traffic on the local area, both from the SRFI and the highway works. In addition, a representation was received from Royal Mail Group Limited setting out their concern that construction traffic would have a significant impact on the transport operations of Royal Mail, and that during construction of the works there would be increasing congestion and delays on the existing highway network (AS-043).
- 4.4.69 The applicant responded to general objections and representations from parish councils about construction traffic (REP3-06, Doc 8.1, REP5-06, Doc 8.5, REP7-04, Doc 8.8 and REP9-12, Doc 8.12), and the forecast impact of construction traffic is set out in chapter 9 of the TA (APP-583, Doc 5.2 Appendix 13.1). As part of our discussion about these matters at the transportation ISH on 3 June 2015 (HG-19 to HG-21), we asked the applicant to respond specifically to the representation from Royal Mail (REP8-27, Doc 8.9 Appendix 4).
- 4.4.70 The assumption is that the construction programme for the SRFI would occur over a 7 year period, and the busiest year in terms of HGV and light goods vehicle movements would be year 3. Both LCC and the HA were satisfied that construction traffic is unlikely to have a material impact on the operation of the highway network. Essentially, traffic associated with construction of the SRFI is predicted to be no more than 5% of peak hour

³² s136 PA 2008

traffic flows at Junction 24 and hence not of sufficient significance to require mitigation works in its own right.

- 4.4.71 In addition, the actual construction programme would be controlled by the Construction Environmental Management Plan (CEMP) appropriate to each phase of the SRFI covering, *inter alia*, routing of construction HGVs accessing the site. Each CEMP needed under R11 of the draft DCO would need the approval of the highway authorities, i.e. HE and LCC, as appropriate. Requirements controlling working hours and noise (R20 and 21) would be subject to agreement by NWLDC. Taken together, these measures would enable potential delays and disruption on the existing highway network to be mitigated during the construction programme.
- 4.4.72 In our view, construction traffic generated by both the SRFI and the highway works is not likely to have a significant effect on the existing highway network, and there are appropriate measures in R11 and Schedules 19 and 20 of the draft DCO to control its impacts. This means that the particular concerns of Royal Mail should be satisfactorily addressed. Indeed, once the highway improvements are carried out, particularly at Junctions 24 and 24A, Royal Mail along with the other commercial users of this part of the SRN would be net beneficiaries.
- 4.4.73 However, this is not the same for the residents of Lockington, Hemington and Castle Donington. The potential for disruption from construction traffic associated with the SRFI (both the structural works to enable the new railway to be built, the preparation of the development plateaus and then the construction of warehousing units) seem to us to be considerable. The mechanisms in the CMFP (REP8-09 to12, Doc 6.10) and the subsequent CEMPs required by R11 are crucial in ensuring the adverse impacts of such construction are adequately mitigated. It is therefore vital that the LPAs ensure that these control mechanisms to be provided by the Order, if confirmed, are properly used.

Conclusions

- 4.4.74 The fundamental points are that:
- the proposed highway works in the draft Order are not being promoted as public sector schemes needing to be justified by the usual business case analysis;
 - despite the shortcomings in our view in the presentation of data in the TA, at the end of the examination we are in agreement with the applicant that the highway schemes are required to mitigate the traffic generation consequences of constructing the SRFI;

- we are also mindful of the SoCGs between HE, LCC, the other highway authorities and the applicant, all of whom were participants in the working group looking at the traffic model and the design of the package of transport improvements;
- very few objections or representations have been made about the actual proposed highway works themselves, as distinct from the principle of the SRFI; and
- construction traffic generated by both the SRFI and the highway works is not likely to have a significant effect on the existing highway network.

4.4.75 We conclude therefore that it is reasonable to accept the analysis of the current traffic situation in the area, the likely impacts of constructing the SRFI, and the package of highway improvements put forward in line with paragraph 5.213 of the NPSNN. The benefits to the existing SRN from constructing the proposed transport improvements would be substantial, and therefore need to be accorded significant weight in recommending whether the Order should be made.

4.5 LAND USE

4.5.1 The area of land within the Order limits of the application is approximately 336 ha, although around 45% (around 158 ha) of that area is proposed to form part of the green infrastructure and landscaping elements of the EMGRFI. The main issues referred in the NPSNN concerning land use matters are agricultural land quality (paragraphs 5.168 and 5.176) and the assessment of SRFI proposals on Green Belt land (paragraph 5.171). The latter is not relevant to this application but the former is a major consideration.

4.5.2 The majority of the proposed development would take place on agricultural land currently mainly in arable production, but with a small amount of grassland for grazing. The effect of the application on agricultural businesses, soil resources and agricultural land quality has been assessed in the ES (APP-135, Doc 5.2 Chapter 14):

- the agricultural businesses that would be affected by the proposed development were interviewed; this covered issues such as land tenure, stocking and cropping practices, environmental stewardship, and the use of land outside of the application site;
- soil resources were assessed by desk study of published and unpublished soil maps and reports, and detailed surveys of soil and land characteristics at a density of one observation per hectare; and

- using information from the soil resources survey and details of other constraints on land use, such as climate and slope, agricultural land quality was assessed using the Revised Guidelines and Criteria for Grading the Quality of Agricultural Land, published by MAFF³³ in 1988.

Agricultural use

4.5.3 From the ES and in the light of our first written questions, we understand the application site includes five agricultural holdings:

- Hall Farm (Field Farm) Lockington; this is much the largest agricultural holding that would be affected by the proposed development with 223 ha of mainly arable land (about half the total farm) land needed for the SRFI site, A50 and Junction 24 improvements; the land is owned by the farmer who would thus benefit from the sale of the land for development;
- contract-farmed land; 5 ha of mainly arable land would be taken for provision of the rail link; the effect on the integrity of the farming operation, owned by a non-farming business, would be negligible;
- Whatton Estates; 3 ha owned by the estate would be needed for the Kegworth Bypass; Whatton Estates is a large (>600 ha) mainly arable operation, so the impact on the farming business would be negligible;
- Lodge Farm; 9 ha would be needed for the Kegworth Bypass; this is land farmed by the Whatton Estate as tenants, and the impact on the farming business would be small; and
- Mole Hill Farm; about 7.3 ha of arable land would be needed for the Kegworth Bypass, and the impact on the farming business would be small; the farmer owns the land and would thus benefit from the sale of the land for development.

4.5.4 The ES states that overall, 91 ha of grade 2 and 134 ha of sub-grade 3a agricultural land quality would be lost to the proposed development, and this represents 80% of the total agricultural land which would be taken. It is therefore a major loss of the best and most versatile agricultural land, and cannot be mitigated (APP-135, Doc 5.2 Chapter 14).

³³ Ministry of Agriculture, Fisheries and Food

- 4.5.5 Construction would involve the progressive stripping of topsoils from development phases, and storing them for future structural landscaping. In parallel with this would be the progressive loss of agricultural use of the land.
- 4.5.6 The principal impact would be on the land to the south of Lockington where large areas are designated in the plans for warehousing and car-parking, with relatively small amounts of structural landscaping. The proposed rail line to the north of Lockington has a narrow footprint and is thus likely to be less disruptive for soils and agriculture. The situation in respect of the proposed Kegworth Bypass would be similar.
- 4.5.7 Agriculture would be able to continue on the land as the phased development proceeds. To ensure that it can, new accesses would be provided to replace any severed by development.
- 4.5.8 Soil functions would be severely compromised over about half of the application area through sealing by roads and buildings. However, this would be partly mitigated by the creation of areas of structural landscape and enhancement of biodiversity within them.
- 4.5.9 Castle Donington and Lockington cum Hemington Parish Councils raised the loss of farm land and of 'green' space between villages (RR-037 and RR-161). The applicant's response acknowledges that the site is currently mostly in agricultural use, and, if approved, the development would result in the loss of farmland, some of which is of a high quality (REP3-06, Doc 8.1).
- 4.5.10 Although largely undeveloped, the site of the proposed SRFI is currently affected by a number of urbanising influences including transport infrastructure (M1, A50, and A453), the EMA and settlements, the largest of which is Castle Donington. This has been recognised in the landscape character assessments described in chapter 5 of the ES. The Planning SoCG with NWLDC (APP-647, Doc 7.1) also makes explicit reference to the influence of surrounding uses and development on the site.
- 4.5.11 We requested a SoCG between the applicant and NE (PD-05) and this largely reflected the ES and subsequent material supplied in response to our questions (REP4-38). We therefore pursued the significance of the loss of large areas of grade 2 and 3a agricultural land quality in our second written questions, and specifically whether NE and NWLDC were content with this situation.
- 4.5.12 NE responded that it does not directly provide advice on the acceptability of the loss of best and most versatile agricultural land, and was content that the soil impact assessment is

acceptable to be used for the assessment required in NPPF paragraph 112 (REP-6-03).

4.5.13 NWLDC referred back to the joint LIR that *'the likely financial contribution of the agricultural land to the local economy would be far outweighed by that generated by the East Midlands Gateway.'* Given this statement, NWLDC is content with the loss of the agricultural land (REP6-06).

4.5.14 The NPSNN recognises that it may not be possible to develop SRFIs without using countryside and undeveloped greenfield land (NPSNN paragraph 5.163). However, the economic and other benefits of the best and most versatile agricultural land (i.e. grades 1, 2 and 3a) should be taken into account (NPSNN paragraph 5.176).

4.5.15 The NPPF states that:

'Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification). Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality'.

4.5.16 National Planning Policy Guidance states that the planning system should protect and enhance valued soils. Defra has published a code of practice on the sustainable use of soils on construction sites³⁴.

4.5.17 Although we place limited weight on saved Local Plan policies, as noted in paragraph 3.2.10 above, the joint LIR acknowledges that the proposal is not compliant with saved Policy S3 of the Local Plan which aims to limit development to specifically allocated sites, with limited exceptions. In addition, in our view saved Policy S1 of the Local Plan is also relevant to this issue as it sets out the aim that *'built development in the countryside is minimised and the best and most versatile agricultural land is protected'.*

Conclusions

4.5.18 During construction, agriculture would be able to continue on the land as development proceeds with new accesses provided to replace any severed by development. Soil management measures would be implemented or soil would be retained and used on site to provide landscaping.

³⁴ Safeguarding our Soils, A Strategy for England, Defra, 2009

- 4.5.19 The largest impacts of the proposed development would be on Field Farm which would lose a considerable part of its area, and therefore substantially affect the integrity of the current farming operation. In contrast, there would be negligible impacts on the contract farmed land to the north, and similarly agriculture could continue after construction of the Kegworth Bypass on the land of Mole Hill Farm and the Whatton Estates.
- 4.5.20 Soil functions would be severely compromised over about half of the application area through sealing by roads and buildings. But this would be partly mitigated by the creation of areas of structural landscape and enhancement of biodiversity within them which would deliver a moderate beneficial impact in the landscaped areas.
- 4.5.21 However, the loss of 91 ha of grade 2 and 134 ha of sub-grade 3a agricultural land quality within the development site boundary would be a major adverse effect on the availability of the best and most versatile land. Whilst neither NE nor NWLDC raised objections, in our view such an extent of loss of good quality agricultural land is in conflict with the policy position in paragraph 5.176 of the NPSNN, and reflected also in the NPPF and saved Local Plan policies. We therefore conclude this to be a significant disbenefit of the proposed development.

4.6 LANDSCAPE AND VISUAL IMPACTS

- 4.6.1 The NPSNN requires that where development is subject to EIA, the applicant should undertake an assessment of any likely significant landscape and visual impacts (NPSNN paragraph 5.144). The Landscape and Visual Effects chapter of the ES (APP-122, Doc 5.2, Chapter 5) contains this assessment, based on the Landscape Institute and the Institute of Environmental Management and Assessment Guidelines³⁵.
- 4.6.2 As regards the baseline conditions, there are no specific landscape designations either within or in close proximity to any part of the EMGRFI.
- 4.6.3 The SRFI site comprises an undulating farmland landscape, consisting mainly of fields enclosed by hedgerows, which slopes down from south to north. There is a difference in levels of some 60 metres from the boundary with the airport to the lower levels of the northern part of the SRFI. There are hedgerows throughout the site of a varying standard, and the principal woodland areas are King Street Plantation and The Dumps.
- 4.6.4 The proposed SRFI would entail open farmland being replaced with new built development and associated infrastructure, and

³⁵ Guidelines for Landscape and Visual Impact Assessment, third edition (GLVIA3)

an altered landform with new landscaping. Whilst 'Rochdale Envelope' considerations would apply to the proposed development, the height of the tallest of the proposed buildings on the SRFI site would be up to 26.5 metres to the ridge, as indicated on the Parameters Plans (AS-006 to AS-008, Doc 2.10A to C). The ES states that there would also be extensive grassland, pasture and open space preserved and created that would amount to some 112 ha overall (APP-122, Doc 5.2 Chapter 5).

- 4.6.5 The DAS (APP-639 and APP-640, Doc 6.9) details the design considerations and the various iterations of the masterplan for the scheme as it evolved. The final designs for the proposed buildings on the SRFI site have not been provided, but R6 of the draft DCO would encompass their detailed design including building materials and layout. The visual impact of external solar panels which might be fixed to the proposed buildings has not been assessed in the ES, and this would also need to be considered as part of the detailed design approval for each phase under R6(2)(g)³⁶.
- 4.6.6 The DAS outlines the underlying design principles for the buildings and states that they would be designed to high environmental and quality standards with elevational treatment designed to minimise the visual impact of the buildings towards sensitive views. Although the choice of building materials has not been specified, the DAS states that cladding materials with low reflectance properties, avoiding bright colours, would be selected.
- 4.6.7 These buildings would be sited on development plateaus that would be created as a result of significant cut and fill operations. The result of these earthworks would be that the buildings sited on the southern element of the SRFI site, Zones A1 to A4, would be set down some 10 to 15 metres below the existing ground levels. In addition, the proposed intermodal area and rail freight terminal in the eastern part of the SRFI site would largely be set down below existing ground levels (APP-122, Doc 5.2 Chapter 5).
- 4.6.8 As regards the highway works, the route for the proposed Kegworth Bypass would be across open farmland to the south of Kegworth. The ES states that the Kegworth Bypass would only require shallow cuttings and low embankments (APP-477), and that mounding is proposed along the bypass, with landscaping proposed to screen the eastern part of the bypass from The Wymeshead SAM.

³⁶ See also the consideration of glare from solar panels in relation to EMA in paragraphs 4.13.21 and 4.13.22 below

- 4.6.9 As part of the ES, a series of photomontages were provided depicting current and proposed views from a variety of locations. In response to our first written questions, both LCC (REP4-23) and NWLDC (REP4-24) confirmed that they were in agreement with the locations chosen for the photomontages.
- 4.6.10 Overall, in terms of local landscape description areas the ES (APP-122, Doc 5.2 Chapter 5) concludes that there would be a range of impacts from moderate/major adverse for the SRFI site through to negligible for the EMA. As regards the impact on landscape features, the ES predicts a moderate adverse impact on landform, through to a minor/moderate beneficial impact for woodland, trees and vegetation.

Assessment of landscape and visual impact issues

- 4.6.11 The ES states that given the context of the wider landscape with the edges of urban conurbations, major road networks, the Ratcliffe-on-Soar power station and the airport all within the locality, the magnitude of landscape impact would be reduced. This matter was not challenged in the joint LIR from LCC and NWLDC (REP4-19). However, this interpretation was contested in some of the representations from IPs who maintain that this site forms a valuable remaining 'green oasis' in an otherwise urbanised landscape.
- 4.6.12 The methodology of the photomontages was criticised by the Junction 24 Action Group (REP5-11 and REP9-04) who considered that not all the landscape impacts had been properly assessed, since the photomontages did not show any cranes, stacked containers or pylons. Furthermore, they also expressed concerns that the photomontages depict the development with 10 years of vegetation growth. However, we note that the photomontages not only illustrate the proposed development upon completion of the development, but also the proposed planting depicted at its initial planting size. In our view, the photomontages are a reasonable representation of different phases of the development of the scheme.
- 4.6.13 As part of the examination we undertook two accompanied site visits, on 3 February 2015 and 11 June 2015 (ASI-01 and ASI-02). A number of locations were chosen by us and other locations were suggested by IPs. The site visits enabled us to visually assess all the elements of the proposed development, to understand the existing topography and view key features within the local and wider landscape that could be affected, such as the main buildings and viewpoints.
- 4.6.14 These included locations in Church Street and Main Street, Lockington, Hemington Lane, Hemington and the Moira Dale recreation ground in Castle Donington. From the area near the King Street Plantation, it was possible to look northwards down

towards the villages of Hemington and Lockington to gain a better appreciation of both the existing landscape and topography, and the works required to create the development plateaus and mounding. The most prominent views into the SRFI site would be from the Ashby Road area of Kegworth looking west across the M1 to the proposed warehouse buildings.

- 4.6.15 The Junction 24 Action Group questioned the selection of this site for a SRFI due to its raised elevation and sloping topography (REP4-10). It contended that better sites are available elsewhere on land that is more level and thus would require fewer earthworks. It is clearly the case that significant earthworks would be required for the proposed development. In our view, the prediction in the ES of a moderate adverse effect on landform would appear to be an underestimate of the extent to which the landform within the SRFI site would need to be cut and filled, in order to accommodate the development plateaus and create the perimeter mounding.
- 4.6.16 Although of a significant size and scale, the built development within the SRFI site would largely be screened from external views due to the landform changes and the mounding with associated landscape planting. In their joint LIR (REP4-19), LCC and NWLDC consider that it would be inevitable that a development of this scale would give rise to a significant landscape and visual impact at the local level. This would particularly be the case until the proposed landscaping had matured, and it would then assist in screening the majority of the built development.
- 4.6.17 There also would be substantial areas of grassland pasture and open space both preserved and created. Several of the photomontages show how prominent are the existing two main areas of woodland at The Dumps and King Street Plantation, and therefore their retention as proposed, coupled with significant additional planting, are important elements of mitigation. When set in the context of the major built landscape development in the locality we do not consider that the wider landscape impacts would be significantly detrimental. We therefore concur with the conclusions in the ES on this matter (APP-122, Doc 5.2 Chapter 5).
- 4.6.18 The resultant landform within the SRFI site would be substantially altered from the existing one. The representation from the CPRE (REP4-01) refers to the replacement of the fields that lie to the south of Hemington and Lockington with a 'green wall' of proposed bunding. However, a contrary view is taken in the joint LIR (REP4-19) where it is considered that the proposed bunding has been designed with variations in slope profiles and height, and would blend in with the existing landscape. We consider that if undertaken sensitively the landform changes

would be acceptable in terms of their landscape and visual impact.

- 4.6.19 Overall, we agree with the ES conclusion that there would be a minor/moderate beneficial impact for the woodland, trees and vegetation. In so doing, we have taken into account the matters concerning the photomontages that were raised by the Junction 24 Action Group (REP9-04), and all other issues raised in relation to landscape and visual impacts.
- 4.6.20 We are unable to consider the potential landscape and visual impact of a possible HS2 route through the SRFI site for reasons explained in paragraph 4.3.8 above.

Lighting

- 4.6.21 Chapter 12 of the ES (APP-133, Doc 5.2) contains an assessment of lighting at 10 receptors, comprising the closest residential properties and settlements to the application site. The SRFI site is currently farmland, and is representative of an E2 Environmental Zone (area of low district brightness), but Junction 24 and the approach roads to it are prominently lit.
- 4.6.22 It is envisaged that the SRFI site would operate 24 hours a day. Consequently, it is inevitable that lighting would be needed to ensure the safe operation of the site. In addition, vehicles using the site would use their own lighting during hours of darkness.
- 4.6.23 Mitigation is proposed for the SRFI site lighting by the use of controlled light distribution, optimised optics, and reducing lighting column heights on the perimeter of the site.
- 4.6.24 In response to our first written questions (REP4-42, Doc 8.3) the applicant confirmed that the Kegworth Bypass would mainly be unlit, with lighting only being provided for the junctions at either end. The lighting at the junctions would be in accordance with the standards for highways (BS 5489³⁷) and to luminous intensity Class G6.
- 4.6.25 The lighting assessment that was submitted as part of the ES considers that lighting impacts from the operation of the site can be reduced to an acceptable level. Although the potential effect of lighting, especially through the night, was raised as an issue by a number of IPs, for example Castle Donington Parish Council (REP4-02) such concerns have not been reflected in the representations received from the local authorities. In response to our first written questions (REP4-42, Doc 8.3), the applicant indicated that the assessment work showed that there would be 0 lux light spill beyond the boundary of the SRFI site, which

³⁷ British Standard for the code of practice for the design of road lighting BS 5489-1:2013

would not result in a change to the environmental category of the surrounding area.

- 4.6.26 R14 of the draft DCO requires that details of the permanent lighting for each phase of the development are submitted for the approval of the LPA, or the relevant highway authority for the highway works, prior to the commencement of development. We consider that R14 would provide sufficient future safeguards to ensure that an appropriate lighting scheme is provided to avoid unnecessary adverse impacts on nearby residents.

Landscape planting

- 4.6.27 Significant landscape planting is proposed as part of the proposed development. In order to provide the degree of screening that is envisaged in the ES it is vital that the proposed landscaping, particularly on the mounding, is properly maintained to ensure it becomes established and thrives. This is secured for the SRFI site in R8 of the draft DCO, and for the highway works by R4 and R5 and also by the protective provisions in Schedules 19 and 20. R8 contains the requirement for the applicant to submit a landscape management plan setting out future maintenance methods for a period of 20 years. We consider that this would be an acceptable time period to allow for the landscaping to become fully established.

- 4.6.28 However, the requirement for a 20 year maintenance programme for the landscaping on the SRFI site is not matched by that for the highway works. At the third ISH dealing with the draft DCO (HG-29 and HG-30) the applicant was asked about this difference and responded that the landscape management would be in accordance with Design Manual for Roads and Bridges (DMRB) recommendations and would be managed by the relevant highways authority. Both LCC and HE stated they considered these arrangements for long-term landscaping maintenance for the proposed highway works elements to be acceptable. Consequently, we agree that appropriate future landscaping maintenance would be provided for both the SRFI site and the highway works.

Conclusions

- 4.6.29 The NPSNN acknowledges that due to their particular locational requirements, countryside locations may be required for SRFIs (NPSNN Paragraph 4.84). The consideration of this proposed development within the context of the NPSNN is whether harm to the landscape has been avoided or minimised, with reasonable mitigation provided.
- 4.6.30 Although the existing character and appearance of both the SRFI site and the area for the Kegworth Bypass would be clearly altered, we do not consider the wider landscape impacts would

be significantly detrimental. This is because both the context provided by the surrounding area already contains significant elements of built development, and also the effect of the earthworks in providing significant mitigation through landform screening.

- 4.6.31 For these reasons we conclude that the landscape and visual impacts, including lighting, of the proposed development are acceptable and accord with paragraphs 5.144 to 5.146 inclusive of the NPSNN in terms of the applicant's assessment methodology and paragraphs 5.160 and 5.161 of the NPSNN in terms of the mitigation proposed. The DAS demonstrates that the design considerations have been taken into account during the evolution of the scheme, in compliance with paragraphs 4.30 and 4.35 of the NPSNN.

4.7 HISTORIC ENVIRONMENT

- 4.7.1 The NPSNN acknowledges that the construction and operation of national networks infrastructure has the potential to result in adverse impacts on the historic environment. Those elements of the historic environment that hold value are termed heritage assets (NPSNN paragraph 5.122).

- 4.7.2 Categories of designated heritage assets include SAM, listed buildings, registered parks and gardens, registered battlefields, and conservation areas. Furthermore, the NPSNN states that non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to SAM should also be considered as subject to the policies for designated heritage assets.

Built heritage assets within the application site and its locality

- 4.7.3 There are no SAM within the application site itself, but there are 14 SAM within the 5 km search buffer. The closest of these to the application site, and the only SAM that is likely to be intervisible with any part of it, contains the medieval settlement remains east of The Wymeshead, which lies just to the north of the eastern end of the proposed Kegworth Bypass. There are two registered parks and gardens within the 5 km search buffer, although both of these are some distance from any part of the application site (APP-131, Doc 5.2 Chapter 11).
- 4.7.4 A Grade II listed milepost is the only listed feature within the application site, and this lies on the A50 approximately 400 metres south-east of the junction with Netherfield Lane. There are, however, a total of 402 listed buildings within the 5 km search area including a number of listed buildings in the nearest settlements of Castle Donington, Hemington, Lockington and Kegworth. Of particular note are the Grade I listed St Nicholas'

Church in Lockington, and The Nunnery, a Grade II* listed building in Hemington. There are several conservation areas in the locality including those encompassing part of Castle Donington and the majority of both Hemington and Lockington.

- 4.7.5 Several representations were received, including from St Nicholas' Church, Lockington (RR-291), raising concerns about the potential impact of both the construction and operational phases of the proposed development on the fabric of the Grade I listed St Nicholas' Church. Others concerned the potential impact of the scheme on the setting of the Lockington and Hemington conservation areas, and also the setting of significant listed buildings within these villages (REP4-10 and REP5-03).
- 4.7.6 Concerns were raised by DCC and in particular Councillor Chilton as quoted in DCC's LIR (REP4-18) about the impact of traffic on the Swarkestone Causeway SAM. Despite the Swarkestone Causeway's 7.5 tonne weight limit there is a concern that additional vehicles as a result of the proposal could have a detrimental impact on its structural integrity. The Swarkestone Causeway was visited on the second accompanied site inspection (ASI-02) and our conclusion on this matter is set out in paragraph 4.4.43 above.
- 4.7.7 With the exception of the listed milepost, all the impacts on built heritage assets after the completion of the development are assessed in the ES as being negligible in terms of their significance of impact. Neither the joint LIR (REP4-19) nor the SoCGs between the applicant and NWLDC (APP-658, Doc 7.7), and English Heritage³⁸ (EH) (APP-659, Doc 7.7A), raised any concerns about the effect of the proposed development on the existing built heritage.
- 4.7.8 As regards the historic milepost there seemed to be some evidence, according to the Built Heritage Assessment (APP-574), that this had been moved from its original location as a consequence of changes in the road alignment. The proposal would be to relocate this milepost if required by the works, and this would provide an acceptable outcome.
- 4.7.9 The only buildings on the application site to be lost would be the Field Farm farmhouse and its associated farm buildings, Mole Hill Farm building and the repeater stations. Although the Field Farm farmhouse building is of some local importance, it is not a designated heritage asset and consequently we consider that its loss would not be significantly detrimental.
- 4.7.10 The SRFI would bring built development, notably large warehouse buildings, much closer to the conservation areas of

³⁸On 1 April 2015 the statutory functions of English Heritage became Historic England

Castle Donington, and in particular Hemington and Lockington. As such it does have the potential to affect the setting of these conservation areas. There is an obligation to have regard to the desirability of preserving or enhancing character or appearance of conservation areas³⁹.

- 4.7.11 A significant amount of mounding around the SRFI site and associated landscaping is proposed as part of the overall scheme. Also the creation of development plateaus would set down the southern part of the SRFI site. Although these earthworks would not entirely screen all the proposed elements of the development, nevertheless they would largely screen the SRFI from the conservation areas of Castle Donington, Lockington and Hemington. In addition, proposed tree planting would screen the Kegworth Bypass from the SAM near to The Wymeshead.
- 4.7.12 The two most important listed buildings, St Nicholas' Church and The Nunnery, lie within the southern parts of Lockington and Hemington respectively. However, both already have other buildings that lie directly to their south which would provide a degree of screening from the SRFI.
- 4.7.13 We visited both the Hemington and Lockington conservation areas (ASI-01) which enabled us to assess the views from them towards the relevant elements of the proposed development. Also we looked down towards Lockington and Hemington from the higher ground near to King Street Plantation that would encompass part of the SRFI site.
- 4.7.14 Overall, we consider that the proposed development would not give rise to substantial harm to the setting of the conservation areas or listed buildings that lie within the vicinity of the application site for the following reasons:
- a substantial amount of mitigation is proposed through the creation of development plateaus that are generally at a lower level than the surrounding areas, with associated landscape planting and earthwork bunds; this would largely screen any views of the proposed development from the nearby settlements;
 - the nearest of any of the proposed warehouse buildings would be some distance from the boundaries of the Lockington, Hemington and Castle Donington conservation areas; we consider that these distances, combined with the proposed landform changes and landscape planting, would be sufficient to ensure that any impacts on the

³⁹ Regulation 3, The Infrastructure Planning (Decisions) Regulations 2010 (as amended)

settings of the Castle Donington, Hemington or Lockington conservation areas or the settings of any listed buildings within any of these or other nearby settlements, would not be significantly detrimental; and

- the Castle Donington Conservation Area (CDCA) is primarily within the central part of the settlement, and as such there is already other built development located between the boundary of the conservation area and the proposed development; in our view, the existing built development around the CDCA would serve to mask views into and out of the CDCA with regard to the SRFI site.

Archaeology

- 4.7.15 The initial archaeological evaluation (REP4-64 to REP4-68 inclusive) consisted of a programme of evaluation trenching based on the Written Scheme of Investigation that was approved by LCC. A total of 79 trenches were excavated across the application site. Combined with the geophysical survey results, the trenching programme results revealed that the evaluated area contains a dispersed scatter of enclosure complexes and ditched field systems.
- 4.7.16 An assessment of the built heritage and archaeological features, both within the SRFI site and within a 5 km search area is contained within the Cultural Heritage section of the ES (APP-131, Doc 5.2 Chapter 11). An Archaeological Desk-Based Assessment (APP-573), a Built Heritage Assessment (APP-574), a Detailed Gradiometer Survey Report (APP-575) and an Archaeological Fieldwalking Report (APP-576) were submitted as part of the application. Additional archaeological evaluation was undertaken and submitted in response to our first written questions (REP4-42, 4-43, Doc 8.3, and REP6-25, Doc 6.24).
- 4.7.17 An Archaeology SoCG between the applicant and LCC (APP-658, Doc 7.7) and between the applicant and EH (APP-659, Doc 7.7A) were submitted. An updated SoCG between the applicant and LCC (AS-035, Doc 7.11) was also provided.
- 4.7.18 In our first written questions we asked both LCC and EH to provide comments on the results of the trial trenching programme. In response, a further Archaeology and Cultural Heritage Addendum SoCG between the applicant, LCC and EH (REP4-41, Doc 7.16) was submitted. The production and submission by the applicant of archaeological information can therefore be considered to have been an iterative process.
- 4.7.19 R13 of the draft DCO (REP9-11, Doc 3.1D) requires that further archaeological investigative works are carried out before the implementation of each phase of the development. The details of these required works are set out in the Schedule of

Archaeological Works (REP6-25, Doc 6.24), which was submitted as a result of the Addendum SoCG between the applicant, LCC and EH (REP4-41, Doc 7.16). In brief, these works consist of:

- further fieldwalking and geophysical survey;
- walkover and LIDAR survey of the wooded areas;
- geo-archaeological investigations and deposit modelling; and
- additional exploratory trial trenching.

- 4.7.20 The findings of these works would then inform a programme of archaeological mitigation, post-excavation assessment and analysis and archive preparation and deposition, again as required by R13 of the draft DCO.
- 4.7.21 The applicant has completed a DCOB with LCC and NWLDC that sets aside a sum of £25,000 for the curatorial management of the archaeological mitigation programme (REP8-31, Doc 6.4E).
- 4.7.22 Although LCC considered that R13 adequately covered the required archaeological considerations, it contended that a reference to archaeology needed to be included within the list of matters referenced in R2. This was referenced in the joint LIR and was expanded upon at the third ISH dealing with the draft DCO (HG-29 and HG-30).
- 4.7.23 LCC argued that it was important that archaeology was included in R2 as one of the pre-commencement matters. The applicant's view was this is not required as further archaeological works are covered by R13. We asked LCC to provide a final submission outlining its reasoning that the inclusion of archaeology in R2 of the draft DCO would ensure that the archaeological investigation and mitigation contained within R13 is appropriately integrated into the overall development phasing and programming that is outlined in R2 (REP9-02).
- 4.7.24 The applicant considered that a reference to archaeology in R2 is neither necessary nor desirable as it would represent a perceived duplication of control (REP-9-15, Doc 8.11 and REP9-13, Doc 3.2C).
- 4.7.25 On balance, in the light of the requirements of paragraph 5.142 of the NPSNN regarding heritage assets of archaeological interest, we consider a reference to archaeology should be included in R2 as this would correlate the timing of the required archaeological works with the overall phasing of development.

Conclusions

- 4.7.26 Apart from a listed milepost, there are no heritage assets within the application site and the archaeological evaluation has not so far discovered any significant archaeological remains. The main issue of concern from IPs was the potential impact on the setting of Hemington and Lockington conservation areas and some of the listed buildings within these villages.
- 4.7.27 However, in view of the proposed screening of the SRFI site, the change in land levels and the distances involved, we do not consider that the proposed development would have a substantial harm on the settings of any of the conservation areas or listed buildings.
- 4.7.28 We also consider that the proposed development would not impact on any archaeological features to a significant degree. This is subject to an appropriate level of further archaeological evaluation and mitigation being undertaken, as covered in R13, and with our recommendation for inclusion of the schedule of archaeological works within the phasing programme which would be secured by R2 of the draft DCO.
- 4.7.29 For these reasons we conclude that the impacts on the historic environment are acceptable, and the proposal accords with paragraphs 5.126 and 5.127 of the NPSNN in terms of the applicant's assessment and with paragraph 5.131 of the NPSNN in terms of decision-making considerations, and with Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (as amended).

4.8 NOISE AND VIBRATION

- 4.8.1 The NPSNN sets out at paragraph 5.195 the assessment needed of construction and operational noise of the new rail line, rail freight terminal and warehouse buildings and road improvements arising from the proposed development. Paragraph 5.195 goes on to say that the Secretary of State should not grant development consent unless satisfied that the proposals will meet the following aims within the context of Government policy on sustainable development⁴⁰:

- avoid significant adverse impacts on health and quality of life from noise as a result of the new development;
- mitigate and minimise other adverse impacts on health and quality of life from noise from the new development; and

⁴⁰ See also Noise Policy Statement for England (NPSE) Defra March 2010

- contribute to improvements to health and quality of life through the effective management and control of noise, where possible.

4.8.2 Using the applicable British Standards and other relevant guidance, the ES sets out the noise assessment based on the proposed development shown on the Parameters Plans (APP-128, Doc 5.2 Chapter 9). The proposed methodology for the noise assessment and baseline survey, including 11 monitoring locations, was agreed with NWLDC.

4.8.3 The proposed development has the potential to generate noise and vibration from the following activities:

- change in road traffic flows on existing roads;
- additional train movements; and
- the operation of gantry cranes and the movement of HGVs and trains into, within and out of the site.

4.8.4 Baseline noise levels are relatively high in many locations in and around the site of the proposed development because of existing noise from several major sources including the:

- M1 motorway, and Junction 24 (this junction is currently over-capacity during the peak hours, and carries around 6,000 vehicles per hour);
- A50 and A453 trunk roads;
- Castle Donington branch freight railway line which currently carries 32 train movements per day on this stretch; and
- EMA which in addition to being a regional passenger airport is the busiest pure cargo airport in the UK.

Construction noise

4.8.5 The level of construction noise would depend on a number of factors such as the final site programme, and the operating conditions that prevail during construction. The assessment demonstrates a wide range of potential activity noise levels, varying from 36 to 78 dB LAeq according to the activity under consideration. During the working day, noise levels are generally expected to be below 60 to 65 dB LAeq (allowing for nominal cumulative increases from multiple activities). Typical construction activities would result in a noise level of 55 dB LAeq,t or less for most activities, except for short term works which would be completed in a maximum of four weeks.

- 4.8.6 In addition to on-site activities, construction traffic passing to and from the SRFI site would also represent a potential source of noise to surrounding properties.
- 4.8.7 However, taking into account R11 setting out the need to submit a CEMP for each phase of the proposed development (covering both the SRFI and the highway works) to accord with the CMFP (REP8-09 to 12, Doc 6.10) and R21, construction activities would be controlled to within acceptable noise limits. The overall noise effect of the construction phases of the proposed development is therefore considered to be negligible.

Operational noise

SRFI site

- 4.8.8 The DAS suggests noise impacts from the general operational activities on the SRFI site would be negligible or a slight, barely perceptible change at all of the receptors considered as a result of design and mitigation measures proposed, including:
- significant bunding, which would offer considerable protection from road, rail and operational (plant) noise, as well as providing visual screening;
 - earthworks and changes to ground levels to create a development plateau well below the bunding which would help reduce the extent to which noise from the site would affect local receptors; for example, the southern end of the rail interchange is some 20 metres below existing ground level, and parts of the Kegworth Bypass are in cut below existing ground levels;
 - the location of the freight interchange terminal on the eastern edge of the site, adjacent to the A453 and M1, and furthest away from the most sensitive receptors;
 - the location of the new rail line to the east of existing bunding and planting (associated with the old A6 road), with provision of additional fencing to help reduce noise and visual impacts on Lockington in particular;
 - 2 m high acoustic fencing along the route of the new railway line and Kegworth Bypass; and
 - operational design features and requirements; for example, the use of quieter plant to reduce noise from the buildings, and slow train speeds on site (APP-640, Doc 6.9).
- 4.8.9 The end users of the warehouse buildings are not known at this stage and therefore the noise assessment has been carried out

in generic terms. The operation of the SRFI is likely to involve HGV movements in the intermodal area, heavy and light vehicles on the access roads to the site and movements around the staff car parking areas. These could lead to air-brake noise generated by the release of air pressure from HGV brake systems, revving engines, reversing alarms and car door slams.

Rail traffic

- 4.8.10 The level of noise generated by trains on the new rail line into the SRFI would be the same as the trains using the existing Castle Donington branch freight line. The predictions indicate a change in noise level no greater than 1 dB(A) whether during the day or at night-time. This change is the minimum perceptible and would therefore be a negligible impact.

Highway improvements

- 4.8.11 Increases in traffic noise are predicted to be slight and barely perceptible except at two locations where the increase in traffic would be of minor significance. A reduction in traffic noise would be likely along the A6 through Kegworth resulting from reductions in traffic flows if the proposed Kegworth Bypass is built.

Assessment

- 4.8.12 The noise assessment was challenged by some IPs including the Junction 24 Action Group (RR-137 and REP4-10). Concerns were expressed about noise impacts on residential buildings and the conservation areas of Lockington and Hemington, and that some likely sources of noise from the operational SRFI had not been considered, with specific reference to cranes.
- 4.8.13 The applicant's response was that the relatively high levels of existing and background noise experienced by some surrounding areas at present makes it very unlikely that there would be any discernible changes as a result from the proposed development. The noise assessment explicitly includes an assessment of the impacts of site specific activity such as the proposed cranes (REP3-06, Doc 8.1).
- 4.8.14 In addition, the noise assessment predicts the impacts of the proposals overall will be negligible. Indeed, the highway proposals, including HGV routing and other measures are likely to result in noise reductions in some areas which will experience considerably less traffic after the development than they do now. The proposed earthworks and visual screening, as well as the approach proposed to the layout of the SRFI buildings, would have some noise reduction benefits.
- 4.8.15 A SoCG was agreed with NWLDC covering the methodology for the noise assessment and concluding that subject to R11

(dealing with the submission of CEMPs for each phase of development) and R20 to 23 in the draft Order (covering construction and operational noise levels), the proposed development would be acceptable both during construction and operation (AS-034, Doc 7.10). This was endorsed by the joint LIR which concludes that the development as a whole would not result in significant detriment to the amenities of residential properties within the neighbouring settlements (REP4-19).

- 4.8.16 We asked a series of questions in our first written questions concerning the noise assessment, identifying what we considered to be incompatibilities and inconsistencies with other parts of the ES. Although vibration had been scoped out of the EIA, we pursued the possible impacts from the rail line in view of the representations made concerning fears of vibration damage to St Nicholas' Church in Lockington (RR-291). However, the nearest receptor is 120 metres away so we consider vibration levels during the construction and operation of the development are unlikely to be significant.

Conclusions

- 4.8.17 The noise assessment predicts the impacts of the highway proposals, particularly the Kegworth Bypass, are likely to result in noise reductions in some areas which would experience considerably less traffic after the development than they do now. This would be an overall benefit of the proposed development.
- 4.8.18 We conclude that the explanations given by the applicant in response to our questions and the representations of IPs do not change the basic outcomes of the assessment that the noise consequences are likely to be negligible. Some changes to the requirements covering construction and operational noise were put forward by the applicant during the examination, which in our view meet the tests of paragraph 5.196 of the NPSNN and would strengthen the ability of the LPA to control noise arising from the proposed development.

4.9 BIODIVERSITY, ECOLOGY AND NATURE CONSERVATION

- 4.9.1 Paragraph 5.23 of the NPSNN states that the applicant should show how the project has taken advantage of the opportunities to conserve and enhance biodiversity and geological conservation interests. This echoes the NPPF which sets out the ways that the planning system should enhance the natural and local environment. Matters which should be considered in decision-making are described in paragraphs 5.24 to 5.35 and mitigation in paragraphs 5.36 to 5.38 of the NPSNN.
- 4.9.2 Ecology and nature conservation impacts were assessed in the ES (APP-124, Doc 5.2 Chapter 6) identifying designated sites,

habitats, fauna and flora. The application site is primarily arable agricultural land with some habitats of neutral and acidic grassland sites, dumps, woodlands and hedgerows.

Designated sites

European sites

- 4.9.3 The nearest European designated site is the River Mease SAC which is over 15km from the application site. The applicant submitted a Report on European Sites (APP-634, Doc 6.3) stating it considered that the proposed development would not be likely to give rise to a significant effect on the River Mease SAC or any other European designated site, and therefore no appropriate assessment of the plan/project would be required.
- 4.9.4 As noted in paragraph 2.1.14 above, NE was satisfied that the ES demonstrated beyond reasonable scientific doubt that there would be no significant effect on the integrity of the River Mease SAC, as the site is distant from the development site and there are no obvious pathways to the site through which impacts could occur (RR-224).
- 4.9.5 The applicant submitted a Supplemental Note on European Sites (AS-009, Doc 6.3A), following the post acceptance advice from the Planning Inspectorate (PD-02), confirming that there are no hydrological pathways to the River Mease from the site. The assessment in the air quality chapter of the ES (APP-129, Doc 5.2 Chapter 10) did not identify this SAC as a likely receptor for changes in air quality. There were no outstanding matters in the SoCG between the applicant and NE (AS-011, Doc 7.9) regarding European designated sites (Special Protection Areas or SAC) or Ramsar sites that could be affected by either the construction or operation phases of the SRFI.
- 4.9.6 We are satisfied that any waterborne pollutants or changes in the air quality would not have a significant effect on River Mease SAC or any other European designated sites. The information provided is sufficient in our view to conclude that an assessment required by Regulation 61(1) of the Habitats Regulations is not needed.

Statutory designated sites

- 4.9.7 There are no statutory designated sites within the application site or immediately adjacent to it. The nearest such site is Lockington Marshes SSSI which is approximately 1km north of Junction 24. The closest statutory site to the Kegworth Bypass is Sutton Bonnington Spinney and Meadows Local Nature Reserve, which is approximately 1 km to the south-east (APP-124, Doc 5.2 Chapter 6).

- 4.9.8 The applicant identified two other statutory designated sites in the air quality assessment as being within 200 metres of an 'affected road'. The Lount Meadows SSSI, which lies to the west of the A42 dual carriageway and Oakley Wood SSSI, to the immediate east of the M1, could be affected by increased emissions from the proposed development (APP-124, Doc 5.2 Chapter 6). NE in their RR (RR-224) and in the SoCG with the applicant (AS-011, Doc 7.9) was satisfied that air pollution from increased road traffic would be unlikely to adversely affect the condition of the SSSIs.
- 4.9.9 According to the applicant, the project would also be unlikely to have a direct effect on Lockington Marshes SSSI as it is physically separated from the site. However, the Lockington Marshes SSSI is fed in part from Lockington and Hemington Brooks so any changes to the drainage and hydrology on the application site could have an adverse effect.
- 4.9.10 The mitigation measures to deal with the downstream flow rates from Lockington and Hemington Brooks are set out in the ES (APP-127, Doc 5.2 Chapter 8). The applicant and NE in the Ecology SoCG agreed that the mitigation measures for the construction and operational phases would ensure that the water quality, design flow rate and downstream flow rates from Lockington and Hemington Brooks would not be significantly altered. In that case, they would not have an adverse effect on the ecological interest of this SSSI (AS-011, Doc 7.9).
- 4.9.11 NE noted that the Lockington Marshes SSSI would receive drainage water from the development site. Foul water would be directed to the sewer network and any surface water runoff would be managed through sustainable urban drainage systems (SuDS), oil traps and attenuation lagoons to ensure that the water quality and quantity reaching the SSSI would be similar to that found presently. It stated that a mitigation strategy to avoid water impacts on Lockington Marshes needed to be secured in the draft DCO (RR-224).
- 4.9.12 In response to our second written questions (PD-08), NE confirmed that it was content with the requirements in the draft DCO dealing with detailed design approval and flood risk and surface water drainage (REP6-03).
- 4.9.13 The EA stated in its RR that the Lockington and Hemington Brooks regularly silt up and are subject to routine desilting works through the villages. It advised that a sediment management plan for the construction and operation phases of the project should be included in the draft DCO to ensure that there is not an increase in sediment (RR-075). The EA later confirmed it had considered the CMFP, and was satisfied that the sediment would be managed appropriately to prevent any discharges to local watercourses during construction (REP4-07).

- 4.9.14 According to the applicant, the EA Pollution Prevention Guidelines would be adhered to at all times to reduce the chance of chemical spills or other pollution events. Petrochemical interceptors would be installed to address potential pollutant runoff in the operational phase. These measures are described in the CMFP (REP8-09 to 12, Doc 6.10) and included in R11 requiring the CEMP for each phase of development (REP9-11, Doc 3.1D).
- 4.9.15 In our view, the impacts on statutory designated sites are properly assessed. The measures described in the ES and secured in the draft DCO would be sufficient to prevent any changes to the quality or quantity of the water feeding the Lockington Marshes SSSI. Similarly, air pollution from increased traffic would not affect the condition of Lount Meadows and Oakley Wood SSSIs.

Non-statutory sites

- 4.9.16 Non-statutory sites within and adjacent to the application site are shown in the ES (APP-124 and 125, Doc 5.2 Chapter 6). Certain sites are designated as Local Wildlife Sites (LWS), with a large number of further areas earmarked as Candidate or Potential Local Wildlife Sites (cLWS). Mitigation measures for non-statutory sites to be retained within the site include a management regime to protect and enhance their nature conservation interests (APP-124, Doc 5.2 Chapter 6). Those retained sites would be fenced and signposted. For the lost habitats on the non-statutory sites, significant areas of new landscaping would be provided including wildflower grassland, hedgerows, ponds and tree planting.
- 4.9.17 According to the LCC Ecology SoCG (AS-033, Doc 7.9A), a number of the candidate non-statutory designated sites were considered to meet the Local Wildlife Site Selection criteria. For example, the Castle Donington Pasture, Woodland and Stream (cLWS3) was considered to be of County significance for its grassland habitats. The new landscaping would provide sufficient area for the necessary mitigation and compensation. We have no basis to believe otherwise.

Habitats

- 4.9.18 The main habitat and vegetation types identified in the SRFI site, rail line, M1 junctions and Kegworth Bypass areas are shown in the ES (APP-125, Doc 5.2 Chapter 6). Virtually all existing features would be lost across the SRFI site, but an extensive landscaped area is proposed to provide mitigation and compensation for the lost habitats.

Veteran trees

- 4.9.19 The surveys undertaken by the applicant recorded 27 veteran trees and 13 near veteran trees within the SRFI site, of which all but three would be lost (APP-143, Doc 5.2 Appendix 5.4). It is proposed to attempt to translocate several of these trees but it is accepted that the survival rate of translocated mature trees would be low and therefore the impact could not be fully mitigated (NPSNN paragraph 5.32).
- 4.9.20 The NPSNN states that aged or veteran trees found outside ancient woodlands are particularly valuable for biodiversity and their loss should be avoided. However, it goes on to say that if the loss of the trees is unavoidable the applicant should set out the reasons why.
- 4.9.21 We were concerned about the loss of virtually all the trees on the site and asked the applicant in the first written questions (PD-06) for further details on the location and specific methods of translocation. All veteran trees would be assessed for their viability prior to the translocation. If the translocation was not successful, the deadwood would be retained on the site to give an ecological benefit by being incorporated into new and retained woodland (REP4-42, Doc 8.3).
- 4.9.22 The applicant also proposed a new clause to R10 concerning the Ecological Management Plan to secure the creation of alternative habitats to compensate for the loss of irreplaceable habitats such as veteran trees. This mitigation was also agreed in the NE Ecology SoCG (AS-011, Doc 7.9) and LCC Ecology SoCG (AS-033, Doc 7.9A).
- 4.9.23 Our conclusion is that the loss of the veteran trees would be a disbenefit of the proposed development.

Grassland

- 4.9.24 An area of 12.9 ha of semi-improved grassland would be lost across the site. This includes 4.4 ha of species-rich semi-improved grassland situated mainly in the Castle Donington Pasture, Woodland and Stream area (listed as cLWS3) located in the north-west corner of the SRFI site (APP-125, Doc 5.2 Chapter 6).
- 4.9.25 The joint LIR from LCC and NWLDC (REP4-19) states that the loss of the grassland in Castle Donington would present the most serious impact. Calcareous grassland is rare in Leicestershire, and its occurrence in this area, away from naturally occurring base rich soils, is unusual.
- 4.9.26 We asked the applicant in our second written questions to provide details of the calcareous grassland and to set out the method of translocation (PD-08). The area of calcareous

grassland that would be lost is estimated at 1.9 ha and the receptor site, within the north of the application site would be 4.37 ha. A summary of the methodology was given together with the confirmation that the detailed description would be produced as part of the relevant Ecological Management Plan (REP6-08, Doc 8.6).

- 4.9.27 Grassland mitigation measures were confirmed in agreements in the NE Ecology SoCG (AS-011, Doc 7.9) and in the LCC Ecology SoCG (AS-033, Doc 7.9A). A scheme of landscape mitigation/compensation would be provided which would include new areas of species-rich grassland, hedgerows, tree planting and ponds. Whilst the LCC County Ecologist would prefer to see the retention *in situ* of Castle Donington Pasture, Woodland and Stream, it was agreed that the new areas proposed for the grassland translocation and creation constitute an appropriate mitigation strategy.
- 4.9.28 The Ecological Management Plan for each phase of the development required by R10 in the draft DCO would ensure that new and retained habitats are safeguarded and therefore contribute to enhancing biodiversity of the area. The enhancement of the nature conservation interest in habitats is further secured by the DCOb (REP8-31, Doc 6.4E).
- 4.9.29 Taking into account all the views regarding the effect on the grassland, including the opposing view of the Lockington cum Hemington Parish Council (REP7-03), other IPs and particularly those of NE and LCC, we conclude that the impacts on the grassland are a minor disbenefit.

Hedgerows

- 4.9.30 Hedgerows are summarised for the whole application site in (APP-165 to 167, Doc 5.2 Chapter 6 Appendix 6.5). One hedgerow, H42, is located in the centre of the SRFI site and is in cLWS 8. The existing hedgerows are stated to be generally of good structure, provide suitable nesting and foraging habitat for small mammals and birds, and potentially suitable foraging and navigational resources for bats.
- 4.9.31 The boundary hedgerows would be retained but the majority of the internal hedgerows would be lost. Across the whole application site it was estimated that 15 km of hedgerow would be removed. Some retained hedgerows have the potential to be damaged by encroachment and construction activities.
- 4.9.32 The mitigation proposed by the applicant is the establishment of new species rich hedgerows as part of the landscape strategy which would be subject to a suitable Ecological Management Plan for each phase of the development, as required by R10 of

the draft DCO. Retained hedgerows would be securely fenced and signposted (REP8-09 to12, Doc 6.10).

- 4.9.33 We believe that the mitigation proposed to establish new hedgerows and protect the retained hedgerows would be sufficiently provided for in the draft DCO. We therefore conclude that the impacts of the proposed development on hedgerows would be broadly neutral.

Invasive species

- 4.9.34 The Dumps woodland is classified as a cLWS and is considered in detail in the ES (APP-163, Doc 5.2 Chapter 6 Appendix 6.4). Japanese Knotweed and Himalayan Balsam are present along the watercourses, while New Zealand Pygmyweed, another invasive species, was found in cLWS 22 and 23.
- 4.9.35 These species are listed in the Wildlife and Countryside Act 1981 (as amended). In addition under the Environmental Protection Act 1990 these species are categorised as 'controlled waste' and must be disposed of safely at licensed landfill sites. As discussed in paragraph 4.19.7 below, an addition to R11 is recommended to ensure that such controlled waste is properly provided for in dealing with construction waste.
- 4.9.36 The applicant stated that appropriate measures would be taken to prevent the spread of these species and the Himalayan Balsam and Japanese Knotweed would be treated by an experienced contactor. The feasibility of removing the New Zealand Pygmyweed would be investigated (APP-124, Doc 5.2 Chapter 6).
- 4.9.37 Subject to our proposed amendment to R11, we agree that the applicant has proposed adequate measures to remove invasive species and to prevent them from spreading.

Impacts on fauna

- 4.9.38 Surveys for badgers, bats, otters and water voles, wintering and breeding birds, reptiles, amphibians and invertebrates are presented in the ES (APP-124, Doc 5.2 Chapter 6). NE agreed in its Ecological SoCG that the proposed development is unlikely to give rise to significant adverse impacts on badgers (AS-011, Doc 7.9) as has LCC in its Ecological SoCG (AS-033, Doc 7.9A). NE stated in its WR that there is no need for a European Protected Species licence to be acquired for bats (REP4-16).
- 4.9.39 NE stated that a mitigation strategy to avoid impacts on any legally protected species which have been recorded on the site (bats, breeding birds and badgers) needed to be addressed through suitably worded requirements (RR-224). In order to confirm this, we asked NE in our second written questions if it was content that R10 and R11 of the draft Order were sufficient

to avoid impacts on legally protected species. NE agreed with the requirements proposed and confirmed there would be no need for licences (REP6-03).

- 4.9.40 The results from the reptile surveys found that it would be unlikely that any are present on the SRFI site. In addition, no great crested newts were identified in any of the ponds surveyed (APP-124, Doc 5.2 Chapter 6).
- 4.9.41 We are satisfied with the analysis of the overall impacts of the proposed development on fauna.

Conclusions

- 4.9.42 Overall, habitats within the application site are unremarkable, consisting in the main of intensively managed arable fields of limited conservation significance. The proposed landscape strategy would include a substantial bund to the north of the SRFI site and where new areas of wildflower grassland, hedgerows and tree planting would be provided.
- 4.9.43 We have considered the advice of the statutory authorities and conclude that the impact of the proposed development on biodiversity, ecology and nature conservation is broadly neutral.
- 4.9.44 The application generally meets the requirements of the NPSNN with two exceptions. The loss of veteran trees is addressed in paragraph 5.32 which states that if the loss is unavoidable, reasons should be given. In our view, the applicant has provided sufficient reasoning.
- 4.9.45 An area of semi-improved calcareous grassland would be lost but the applicant has proposed relocation of the grassland to a site within the application boundary. We therefore conclude that paragraph 5.25 of the NPSNN has been satisfied as although harm to the biodiversity interest would occur, an acceptable form of mitigation has been proposed.

4.10 CLIMATE CHANGE ADAPTATION AND CARBON EMISSIONS

- 4.10.1 The NPSNN sets out how the potential impacts of climate change should be taken into account using the latest UK Climate Projections available, and appropriate mitigation or adaptation measures then included in the ES (NPSNN paragraphs 4.36 to 4.47). Carbon impacts should be considered by the applicant and evidence of appropriate mitigation measures provided (NPSNN paragraphs 5.16 to 5.19).

Climate change adaptation

- 4.10.2 Climate change adaptation is not specifically addressed in the ES although there is a brief mention in the air quality chapter (APP-129, Doc 5.2 Chapter 10).

- 4.10.3 The implications of climate change are however addressed in the Planning Statement which considers that the loss of greenfield land would have impacts on local drainage and flooding. Almost 50% of the site would be incorporated into the proposed green infrastructure and landscaping. Further, the implementation of SuDS would include the provision of water storage and balancing areas to manage and control surface water runoff (APP-638, Doc 6.6).
- 4.10.4 The EA considered in their representation that the draft DCO was not at the time in accordance with the draft NPSNN particularly with regard to climate change (REP4-22). We therefore sought to obtain clarification in our second written questions (PD-08) from the EA on this point.
- 4.10.5 The EA responded that the application had been submitted in September 2014 and climate change was addressed through reference to the NPPF. The NPSNN was published in December 2014 and made reference to UK Climate Projections 2009 (UKCP09). It was considered that the documents did not necessarily accord directly (REP6-01).
- 4.10.6 The applicant believed the EA's views were based on the fact that the application pre-dated the final NPSNN being designated. It also stated that it had a signed SoCG with the EA and this issue had not been raised (REP6-08, Doc 8.6).
- 4.10.7 In the same round of questions we asked the applicant to set out how climate change adaptation was provided for when considered against the NPSNN and how the provisions were reflected in the draft Order. The response was that climate change adaptation in respect to water and flood risk is secured in the draft DCO by R17 for the SRFI site, and Schedules 19 and 20 for highway works with reference to the DMRB (REP6-08, Doc 8.6).
- 4.10.8 The applicant also provided a technical note describing the adaptation against the NPSNN (REP6-20). It considered that the DAS (APP-639 and 640, Doc 6.9) together with the Sustainability Report (APP-114, Doc 6.13) explained how the development responds to a range of factors. Consideration was given to location, design of layout and buildings and operation of the project.
- 4.10.9 Part of the railway lies in the floodplain of the River Soar and River Trent and the applicant considered therefore that the railway could be safety critical. As a consequence, UKCP09 had been applied with an allowance for an increase of 20% in peak river flows.
- 4.10.10 Increased rainfall and more intense and frequent storm events had been taken into account in predictions of increased peak

river flows and rainfall events. The applicant had also followed the requirements of the DMRB for design of the highway works. It confirmed that the drainage strategy within the proposed development included sufficient attenuation to allow for an increase in rainfall.

- 4.10.11 It is apparent to us that although climate change adaptation had not been presented as a specific matter in the ES, the applicant has considered this throughout the design of the project. The main issue relevant to climate change would be the possible increase in flood risk. We believe that this has been assessed and mitigated sufficiently as discussed in the following section 4.11 of this report.

Carbon emissions

- 4.10.12 The Planning Statement considers that the EMGRFI could play a major part in the shift from road to rail which would support environmental and transport policies. At full capacity, 16 freight trains each way per day would use the SRFI which would remove the equivalent of 1800 HGV movements per day from the SRN. The SRFI would make a direct and significant contribution towards national efforts to reduce emissions from transport as rail freight is five times more efficient in terms of carbon dioxide than road freight on a tonne for tonne basis (APP-638, Doc 6.6).
- 4.10.13 The highway proposals would deliver a reduction in air pollution, including the reduction of carbon emissions from road transport (APP-638, Doc 6.6).
- 4.10.14 The Sustainability Report addresses the design and construction of the warehouse buildings only. An exemplar approach is proposed based on low energy design principles including energy demand minimisation through effective building form and orientation, good design and proficient use of services (APP-114, Doc 6.13).
- 4.10.15 It was shown through computer modelling that incorporating best practice efficiency measures alone would result in a reduction in CO₂ emissions compared to a notional 2.0%. This apparently modest improvement over the notional development was due to the fact that for warehouse elements, Part L Building Regulations stipulate an improvement on the CO₂ emissions of about 40% against 2006 standards. A BREEAM 2011 pre-assessment of the development was undertaken which scored 62.42% translating to an overall rating of 'Very Good'.

Conclusions

- 4.10.16 In our view, the design approach taken by the applicant for the proposed warehouses should lead to energy efficiency maximisation and a small reduction in CO₂ emissions. We are

less convinced that the predicted reduction in carbon emissions as a result of the removal of HGVs from the transport network to rail freight will be realised. Until the proposed rail line is constructed and operated (see paragraph 4.2.21 above), modal shift from road to rail will not occur and there would be no resultant reduction in CO₂. Once the rail line is constructed, it seems to us that the reductions proposed would not be realised until the link is at full capacity, in about 30 years' time according to the Rail Report (APP-112, Doc 6.7).

- 4.10.17 Our conclusion therefore is that while climate change adaptation has been sufficiently addressed in line with paragraphs 4.36 to 4.47 of the NPSNN, we do not believe that the predicted carbon reductions from modal shifts consequent upon the construction of the rail line are at all certain, in the early years of the proposed development at least. In these circumstances, the proposed development may not assist the Government in meeting its carbon reduction targets. Whilst this would not be of the scale of significance warranting a reason for refusal set out in paragraph 5.18 of the NNPS, it is nonetheless a disbenefit to be weighed in our recommendation about whether the Order should be made.

4.11 FLOOD RISK

- 4.11.1 The NPSNN states that a flood risk assessment should be carried out if the application is in Flood Zones 2 and 3 (medium and high probability of river and sea flooding), and in Flood Zone 1 (low probability) for projects of 1 ha or greater (NPSNN paragraph 5.92). The volumes and peak flow rates of surface water leaving the site should be no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect (NPSNN paragraph 5.113).

Assessment

- 4.11.2 Flooding is addressed in the water resources and drainage chapter of the ES (APP-127, Doc 5.2 Chapter 8). Given the substantial area of proposed new development and hard standing, surface water drainage and flood risk are clearly very important considerations, and for this reason we identified flooding as a principal issue in our Rule 6 letter (PD-04).
- 4.11.3 The SRFI site and the Kegworth Bypass are located entirely within Flood Zone 1. The proposed slip-road between Junctions 24A and 24, changes to the existing highways and the new rail line are in areas designated as Flood Zone 3a, associated with flooding from the River Soar to the east and River Trent to the north.

- 4.11.4 A Flood Risk Assessment (FRA) (APP-556, Doc 5.2 Chapter 8 Appendix 8.1) appraised the flood risk to the proposed development from all potential sources. It focussed mainly on the hydraulic modelling of the Hemington and Lockington Brooks to establish baseline flood risk assessments. It also identified the impacts and provided simulation of the impacts the proposed development could have on the flood risk catchment area. An associated Technical Note covering the hydraulic modelling is included in the ES as an appendix (APP-557, Doc 5.2 Chapter 8 Appendix 8.2).
- 4.11.5 The proposed development would result in a reduction of the flood plain of the River Trent due to the construction of the rail line, and in the flood plain of the River Soar due to the junction improvements. Detailed flood compensation work was therefore carried out to calculate the area required to offset the loss in flood plain capacity. Hydraulic modelling was carried out to demonstrate the appropriateness of the mitigation measures proposed (APP-562 and 563, Doc 5.2 Chapter 8 Appendices 8.5 and 8.6).
- 4.11.6 A SoCG with the EA agreed that the FRA had been carried out in accordance with the NPPF, and the flood risk had been properly identified and assessed (APP-655, Doc 7.4). Areas of ongoing work were identified, so a subsequent addendum to the SoCG was submitted (REP4-40, Doc 7.15). This confirmed that the hydraulic models for Hemington and Lockington Brooks, and the River Trent-Derwent and River Soar were fit for purpose. It was also agreed that the modelling confirmed that the compensation for the loss of flood plain was viable in principle.
- 4.11.7 Up to the 1:1000 year flood return periods, the flood risk in Hemington village would be significantly reduced and there would be no flooding for the 1:2 year flood return period. For Lockington village, up to the 1:1000 year flood return period the flood risk would be slightly reduced at a number of locations and significantly reduced in the surrounding areas. For the 1:2 year flood return period the flood risk would be slightly increased for a small non-residential area of the village, and significantly reduced in the surrounding areas. We have no reason to disagree with the SoCG with the EA.
- 4.11.8 To provide compensation for the loss of flood plains for the Rivers Soar and Trent, it was proposed by the applicant to over-deepen areas in and around Lockington Park, which is located to the north of the SRFI site and south-west of Junction 24A. In addition, the footpath adjacent to the railway would be lowered to allow it to flood and provide the necessary compensation (APP-563, Doc 5.2 Chapter 8 Appendix 8.6).
- 4.11.9 The EA confirmed that the proposed compensation measures for loss of the flood plain were viable in principle, and would be

subject to further analysis and design as part of the Flood Defence Consent application (REP4-40, Doc 7.15).

- 4.11.10 There would inevitably be an increase in surface water runoff from the large areas of hardstanding once the SRFI development is in place if mitigation measures are not provided. The purpose of the proposed surface water drainage strategy therefore would be to ensure that the rate and quality of water leaving the site would not be increased or compromised.
- 4.11.11 The measures proposed include the provision of water storage areas, basins and swales as part of a SuDS to prevent an adverse impact to the wider catchment. These features would collect and slow the rate of water runoff. The design and assessment work showed that the combination of measures would result in a reduced risk of flooding during periods of heavy rain by restricting the rate of runoff from the site to levels below those seen currently. This would have a beneficial impact on Hemington in particular (APP-127, Doc 5.2 Chapter 8).
- 4.11.12 However, many of the IPs who are residents of the villages disagreed that the flooding risk would be mitigated by these proposals. For example, one stated that there had been many years of flash flooding in the villages and that there was not sufficient evidence to support the limitation of local flooding (RR-210). Castle Donington, and Lockington and Hemington Parish Councils raised similar concerns (RR-037 and 159, REP7-03).
- 4.11.13 The Junction 24 Action Group set out on several occasions during the examination their concerns about the flood risk both during construction and operation of the project, and did not feel that the mitigation measures adequately addressed the increased flood risk to Hemington and Lockington (REP4-10 and REP5-11). Over the last 40 years there have been seven incidents of flash flooding in Hemington and Lockington from the land on which the EMGRFI is proposed, most recently in November 2012. All of the surface water drainage runoff from the SRFI would be directed northwards into the existing Hemington and Lockington Brooks.
- 4.11.14 The flood control measures proposed would create surface water storage ponds at the heads of the two brooks. It is not clear that the engineering studies have been done to substantiate whether these ponds will be adequate, but the Junction 24 Action Group state that in their view:
- the size of these ponds appear to be small in proportion to the site surface water runoff likely to occur in storm conditions;
 - their locations appear to clash with the proposed HS2 route or are very near the head-works;

- they are positioned very near the proposed freight yard; and
 - if they are made larger, as suggested, the control of bird movement becomes more complicated and will jeopardise the flight safety of the EMA.
- 4.11.15 Because of these concerns during our first accompanied site inspection (ASI-01) we were shown areas in the villages where flooding had occurred in the past. We also inspected the brooks, particularly where they were culverted.
- 4.11.16 The joint LIR from LCC and NWLDC said that by reducing the runoff from the development to green field rates and incorporating SuDS schemes in the design, the proposed development had the potential to reduce flooding to adjoining land. However, LCC and NWLDC voiced the concern that some infrastructure located within Flood Zone 3 would be raised to protect its future operations. Although the majority of the site is at relatively low risk from flooding, the large areas of impermeable surfaces could lead to an aggravation of existing localised flooding impacts within adjoining communities and should be assessed by the EA (REP4-19).
- 4.11.17 The measures to secure the control of flood risk and water drainage are included in R16 to R18 of the draft DCO. In our first written questions we asked the applicant, the EA and the local authorities if they required any monitoring of changes in the flood risk and/or the effectiveness of the proposed mitigation measures (PD-06). The applicant responded that no requests for monitoring had been received and that monitoring of the flood compensation features would not be feasible. The surface water attenuation features would be subject to a maintenance strategy to be submitted under R17(d) (REP4-42, Doc 8.3).
- 4.11.18 The EA responded that there were no standard measures available to monitor the effectiveness of such measures but that site inspections would be carried out to ensure compliance with the approved design (REP4-22). LCC responded (REP4-23) that it did not ordinarily require monitoring of flows from a site, however it would support securing monitoring of the surface water drainage scheme by additional wording in R17(d). It later confirmed that the additional wording in the draft DCO was sufficient (REP6-05).
- 4.11.19 We also asked the EA in our first written questions (PD-06) if they believed there would be any impediments to issuing appropriate consents for works associated with Hemington and Lockington Brooks, amongst others. It confirmed that there should be no impediments to issuing the consents under the Water Resources Act 1991 and the Midlands Region Land

Drainage Byelaws, or any equivalent legislation which might supersede these, as long as the proposals meet the requirements of the issuing body (REP4-22).

Conclusions

- 4.11.20 We are satisfied that the applicant has carried out a comprehensive review of the possible impact on flooding from the EMGRFI as a whole, and particularly from the SRFI on the villages of Hemington and Lockington, and the adequacy of this has been confirmed by the EA and the local authorities. It meets the requirements of paragraphs 5.98 and 5.99 of the NPSNN.
- 4.11.21 Whilst we understand the concerns of the IPs who are local residents and the parish councils, we are satisfied that the EA has reviewed the proposal adequately and that the risk of localised flooding arising directly from implementation of the proposed development will not be worsened, and may indeed be somewhat alleviated.
- 4.11.22 The proposed flood plain compensation measures should ensure that no extra flooding is caused by the development. It has been confirmed by EA that there should be no impediment to issue the necessary flood consents. Overall, we consider there would be a benefit from the proposed development in terms of reducing risk from flooding.

4.12 WATER QUALITY AND RESOURCES

- 4.12.1 Paragraph 5.219 of the NPSNN recognises that during construction and operation, projects can lead to increased demand for water, and discharges of pollutants to water causing adverse ecological impacts. In turn, these could compromise environmental objectives established under the Water Framework Directive⁴¹. Activities that discharge to the water environment are subject to pollution control. For this reason, decisions under the PA 2008 should complement but not duplicate those taken under the relevant pollution control regime (NPSNN paragraph 4.50).

Assessment

- 4.12.2 Water quality and resources are addressed in the ES (APP-127, Doc 5.2 Chapter 8). The Highways Agency Water Risk Assessment Tool was used to assess the impacts of routine runoff on surface waters, while the specific impact of road drainage has been assessed using the DMRB.

⁴¹ Water Framework Directive (2000/60/EC)

- 4.12.3 A Water Framework Directive Assessment was carried out to review the potential impacts the development could have in relation to nearby water bodies (APP-558, Doc 5.2 Chapter 8 Appendix 8.3).
- 4.12.4 The main surface water receptors were identified as the Hemington and Lockington Brooks whose catchments lie in the SRFI site. These two brooks flow into the River Soar which then joins the River Trent. An overview of the water quality in these rivers is provided in the ES (APP-127, Doc 5.2 Chapter 8). All water bodies on the SRFI site flow through Lockington Marshes SSSI, and the impacts and mitigation proposed are discussed in section 4.9 of this chapter.
- 4.12.5 A description of ground water is given in the geology, soils and groundwater chapter of the ES (APP-126, Doc 5.2 Chapter 7). The analysis of the water did not identify any contaminants of concern. The applicant stated that there would be no exposure pathways present which would allow discharge to ground water as these would be controlled by environmental legislation and regulation. This is dealt with in section 4.16 of this chapter.
- 4.12.6 The possible impacts on surface water during construction include pollution spillages, increased runoff with high suspended solids concentrations, plant and wheel washing and disturbance of river banks or beds (APP-127, Doc 5.2 Chapter 8). The mitigation proposed by the applicant for construction impacts is set out in the CMFP (REP8-09 to 12, Doc 6.10). This is discussed in detail in section 4.15 of this chapter. R11 of the draft DCO requires, among other matters, the submission of details for storage of fuel, oil and other chemicals and also details of any temporary surface water management system for each phase of the scheme.
- 4.12.7 The proposed SuDS features included in the project should provide effective treatment to the surface water before its discharge to watercourses or sewers. As a consequence, residual impacts would be moderate/beneficial in significance. Runoff from the highways and car parking areas would require treatment before discharge to the local water bodies. Oil and sediment interceptors would also be used on site where appropriate. The applicant considers the residual impacts to be negligible (APP-127, Doc 5.2 Chapter 8).

Conclusions

- 4.12.8 The applicant appears to have carried out a comprehensive assessment of the possible impacts of the project on controlled waters and has proposed suitable mitigation measures. We have received no comments from the statutory authorities which would cause us to think otherwise. Further, impacts on water quality have not been raised as an issue by any IPs.

4.12.9 In our opinion, the proposed development would meet the requirements of the NPSNN. We conclude therefore that the impacts on water quality and resources from the proposed development would be broadly neutral.

4.13 CIVIL AVIATION

- 4.13.1 The NPSNN states that on the basis of their importance to the national air transport system, certain civil aerodromes are officially safeguarded to ensure that their operation is not inhibited by new development which could interfere with radar, and hence affect communications, navigation and surveillance (NPSNN paragraph 5.48).
- 4.13.2 Obstacle limitation surfaces (OLS) are described as areas of airspace around licensed UK aerodromes used by aircraft taking off or on approach and landing. These surfaces must not be penetrated by obstacles or other structures.
- 4.13.3 Legislative provisions for aerodrome safeguarding are set out in Circular 1/2003⁴². Aerodromes that are officially safeguarded will have a Civil Aviation Authority (CAA) certified safeguarding map showing the OLS. These maps and other criteria, such as minimising birdstrike hazards, are deposited with the relevant LPAs.
- 4.13.4 EMA confirmed that it is an officially safeguarded aerodrome, and has to meet the terms of its licence and international standards governed and regulated by the CAA (RR-067).
- 4.13.5 The application site is immediately adjacent to the EMA and the impacts during construction and operation on the airport are addressed in the Strategy for Safeguarding of East Midlands Airport (APP-643, Doc 6.12) which is a supplementary document to the CMFP (REP8-09 to 12, Doc 6.10). EMA stated that unmitigated, the SRFI development would result in an unacceptable risk to the safe operation of the airport (RR-067).
- 4.13.6 On the other hand, CAA was unable to find any indication of the height of any element of the proposed development, but assumed it would not exceed 50 metres above ground level, in which case it did not need to be involved further. The EIA would have to take into account the safeguarding requirements of the airport and any other aviation stakeholders (REP4-03). National Air Traffic Services (NATS) stated that it anticipated no impact from the proposal and had no comment to make (REP4-15).

⁴² Town and Country Planning (Safeguarding Aerodromes & Technical Sites and Military Explosive Storage Area) Direction 2002 (ODPM Circular 1/2003). Strictly speaking this does not apply to applications for development consent under the PA 2008, but the applicant has consulted EMA on the same basis

Impacts on airport operations

4.13.7 In our first written questions (PD-06), EMA was asked to set out the mitigation it was seeking, described in their response (REP4-06) as:

- protection of the aerodrome's OLS;
- bird hazard and bird strike risk;
- electromagnetic and communication interference; and
- air traffic control.

Protection of the aerodrome's Obstacle Limitation Surfaces

4.13.8 Initial discussions had taken place between EMA and the applicant assessing the buildings of the size and location shown on the Parameters Plans (APP-17 to 19, Doc 2.10A-C). EMA concluded that the buildings would not penetrate any of the aerodrome's protected surfaces. This was agreed in the Aviation SoCG (REP4-39, Doc 7.14).

4.13.9 The other risk to the OLS would be the use of cranes and tall construction plant during the construction phase of the development. EMA said (REP4-06) that these risks were addressed in part 5 of the Strategy for Safeguarding of East Midlands Airport (APP-643, Doc 6.12). However, a method of crane approval would need to be agreed between the applicant and EMA and a process for obstacle limitation survey analysis carried out by a qualified representative from EMA.

Bird hazard and bird strike risk

4.13.10 EMA stated that comprehensive and co-ordinated bird hazard management would be required as part of the construction phase of the development adjacent to the airport (REP4-06). The main elements would be:

- to remove features which attract birds;
- management of earthworks and elimination of standing water;
- passive measures to deter birds on site;
- control of ponding and surface water;
- design of landscaping, new habitats, site management and housekeeping; and
- active bird monitoring and dispersal.

- 4.13.11 EMA stated that this had formed the basis of the Strategy for Safeguarding of East Midlands Airport (APP-643, Doc 6.12), and a detailed risk assessment of various bird species had been provided to the applicant. A requirement or protective provision in the DCO would be needed to provide for the preparation of a detailed plan be agreed with EMA as the aerodrome safeguarding authority.
- 4.13.12 The applicant confirmed in its response to our first written questions (REP4-42, Doc 8.3) that the birdstrike risk assessment and avoidance strategy had been agreed with EMA in the Aviation SoCG (REP4-39, Doc 7.14). It also referred to a revised R11 and Schedule 16 in the draft DCO which contained the protective provisions for the airport.

Electromagnetic and communication interference

- 4.13.13 The proposed SRFI development would be in close proximity to the airport's essential navigation and communication aids. EMA stated therefore that a safeguarding assessment must be undertaken of all onsite electromagnetic sources. This assessment must be included in a requirement or protective provision in the DCO and agreed with EMA as the aerodrome safeguarding authority.

Air traffic control

- 4.13.14 EMA also stated that there would be other activities associated with the development that would require notification to the wider aviation community, including:

- crane operations;
- wildlife activity warnings;
- special lighting information;
- frequency amendments; and
- temporary operating instructions.

Other construction activities which may require safeguarding assessments include:

- site lighting;
- emergency response; and
- foreign object debris.

- 4.13.15 In common with the other mitigation matters, EMA stated that these would need to be included in a requirement or protective

provision in the DCO and agreed with EMA as the aerodrome safeguarding authority.

Assessment

- 4.13.16 We were concerned that all matters described in EMA's WR (REP4-06) had not been sufficiently secured in the draft DCO, and during the examination we identified further issues of construction and design, security and solar panels.
- 4.13.17 These points were put to the applicant and EMA in our second written questions (PD-08), and in particular, if EMA was content that the protective provisions in Schedule 16 of the draft DCO met the requirements set out in paragraph 1.7 of its WR (REP4-06).
- 4.13.18 Whilst the applicant was unaware of any outstanding safeguarding issues (REP6-08, Doc 8.6), EMA responded (REP6-04) that there should be requirements for:
- approval of details and proposed activity during construction;
 - approval of a construction management plan relating to bird control and detailed landscape proposals; and
 - consultation and prior approval by EMA of radio communication and radio survey equipment.
- 4.13.19 EMA stated that security control is carried out by the airport's security officers and Leicestershire Police. The proposed application site should not alter existing security fence lines and the clear areas around the fence required by the regulatory authorities. In addition, emergency access from the A453 to Crash Gate 7 must be maintained at all times.
- 4.13.20 Lockington cum Hemington Parish Council raised a concern about the proximity of a large workforce close to the critical part of the airport (REP7-03). However, this was not seen to be an impediment to the proposed development by either EMA (REP7-01) or the applicant (REP6-08, Doc 8.6).
- 4.13.21 Roof mounted solar panels were envisaged on the buildings as described in the Sustainability Report (APP-114, Doc 6.13) and the design of the panels would be controlled by R6 of the draft DCO. EMA stated in their response to our second written questions (REP6-04) that solar photovoltaic panels had the potential to have an effect on the safety of aircraft and air traffic operations, and a full solar glare assessment must be undertaken therefore.
- 4.13.22 Further discussions concerning these outstanding matters were held between the applicant and EMA. These resulted in an

amended form of Schedule 16 in the draft DCO (REP9-11, Doc 3.1D) and inclusion in renumbered R7, that EMA, as the statutory aerodrome safeguarding authority, should be consulted when relevant by the LPA.

Conclusion

- 4.13.23 The effects of the proposed development on civil aviation have been properly addressed in line with paragraph 5.59 of the NPSNN. The applicant and EMA have agreed that the protection of the airport authority is appropriately secured in the draft DCO.
- 4.13.24 We conclude therefore that the proposed development would not significantly impede or compromise the safe operation of the EMA, in compliance with paragraph 5.63 of the NPSNN.

4.14 SOCIO-ECONOMIC IMPACTS

- 4.14.1 The NPSNN states that the ExA and Secretary of State when considering any proposed development should *'take into account its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long term or wider developments'* (NPSNN paragraph 4.3). In addition, SRFIs have the potential to affect the health, wellbeing and quality of life of the population.
- 4.14.2 The ES describes the current employment and housing needs, estimates the likely employment requirements during construction and operation of the project, future housing requirements and the impacts on health of the local population (APP-121, Doc 5.2 Chapter 4). The study area for these assessments was derived from the AOI prepared for the TA. The AOI represents the principal area within which the majority of potential employees are likely to be resident. The map showing this study area was omitted from the ES and submitted in response to our first questions (REP4-54).
- 4.14.3 The scale of employment growth projected by the development and the consequences for labour supply and housing needs were identified by us as principal issues for the examination (PD-04).

Employment and training

- 4.14.4 There is little employment directly related to the existing site as it is mainly agricultural land. In the two wards of Castle Donington and Kegworth and Wheaton within which the proposed EMGRFI would be located, 82% of the population is in employment with 4% unemployed (APP-121, Doc 5.2 Chapter 4).
- 4.14.5 To estimate employment numbers during construction, the applicant used a total capital expenditure for the proposed

development and a 5 year⁴³ period of construction as the basis for its calculations. This, according to the applicant, would create an average of 688 construction jobs per year. It is considered that the construction phase of the proposed development would have a beneficial effect on employment levels within the sub-regional area, and as the effect would be temporary, the significance is considered to be minor beneficial.

- 4.14.6 The applicant used the Prologis Technical Note⁴⁴ on potential employment generation to calculate employment for the operational phase of the development and estimated that 7,272 new jobs could be created. A breakdown of the types of jobs and the part time and full time jobs was given in the ES (APP-121, Doc 5.1 Chapter 4).
- 4.14.7 The number of jobs would progressively increase in line with the phased completion of the warehousing. Assuming the first phase is of 186,000 m² of warehousing to be open in 2016/17, there would be approximately 2,294 jobs created at the initial stage, with the remainder becoming available over the subsequent years. Development would be taking place at the rate of between 70,000 m² and 93,000 m² per year (REP4-42, Doc 8.3), but economic circumstances could vary the rate at which companies take up available space and jobs thereby actually created. Overall however, the direct economic impacts of the proposed development are considered by the applicant to be major beneficial at the regional level, and therefore of major significance.
- 4.14.8 In order to support the potential workforce in accessing the employment to be created by the proposed development, additional skills training would need to be co-ordinated between training providers and the future occupiers. An employment and skills group would be set up to co-ordinate the extent and type of workforce training provision required.
- 4.14.9 A skills plan framework was also mentioned in the ES which would target training at schools and colleges. This framework was not submitted to the examination although the DCOB with NWLDC and LCC (REP4-31, Doc 6.4C) refers to an employment scheme to be submitted to NWLDC for approval before implementation of the development.
- 4.14.10 Employment and training issues were raised by a number of IPs. South Derbyshire District Council stated that clear targets for the extent of local procurement, local construction workforce

⁴³ Rather than 7 years as assumed in other application documents, for example the ES (APP-134, Doc 5.2 Chapter 13)

⁴⁴ Technical Note - Do Distribution Warehouse Deliver Jobs? Prologis, September 2011. Prologis collected empirical data in 2010 from the occupiers of 28 B8 units with a total GFA of 5.65 million square feet. This research found that B8 unit occupiers typically accommodate 1 employee per 77m²

and the number of apprenticeships should be set by the applicant (RR-290).

- 4.14.11 Castle Donington, Lockington cum Hemington and Long Whatton and Diseworth and Parish Councils stated that local unemployment was very low, there was no pressing need for employment opportunities in the area, there was a lack of evidence over the number of jobs which would actually be created, and that the influx of workers travelling to the site would add to the highway problems (RR-037, 161 and 162).
- 4.14.12 Other IPs stated that many of the people working at sites in Castle Donington came from elsewhere, so this proposed development is not a case of '*local jobs for local people*' and would have the effect of bringing more people into the area (RR-301). There was also the view that there was already a huge amount of employment opportunities in the area (RR-011) and that there are already empty warehouses nearby (RR-115).
- 4.14.13 The applicant's response to these RRs (REP3-06, Doc 8.1) stated that:
- the estimates had been undertaken using standard methods of calculation;
 - the figure of 7,000 related to both full and part time jobs in the operational stage; and
 - the assessment had been undertaken on a wider labour market catchment area beyond those villages closest to the proposed development and included communities and urban areas in Leicestershire, Derbyshire and Nottinghamshire.
- 4.14.14 In our first written questions (PD-06) the local authorities were asked if they agreed with the estimates of jobs to be provided during the construction and operation phases. Both LCC and NWLDC confirmed that they did (REP4-23 and REP4-24).
- 4.14.15 Employment needs from committed development had not been taken into account, as the assessment had shown that employees would be drawn from a wide area, so the committed development around the site was not considered to have a material effect on the wider labour market (REP4-42, Doc 8.3).
- 4.14.16 DCC in its LIR (REP4-18) stated that a significant number of job opportunities could be accessible to residents in Derbyshire and was supportive of the development. It stressed the need for the maximisation of job opportunities for the residents by positive recruitment and local advertising.
- 4.14.17 The LCC and NWLDC view in their joint LIR (REP4-19) was that the development would significantly benefit the economy of

Leicester and Leicestershire, and in the wider region including Derby and Nottingham and the southern parts of both Derbyshire and Nottinghamshire.

- 4.14.18 Further, they stated that the proposed employment scheme included in the draft DCOB, and to be agreed with NWLDC, would encourage local training providers to meet the needs of the proposed development in terms of skills supply and help maximise the proportion of local construction workers used in the construction phase. Even if non-local contractors were employed, they still believed there would be positive impacts on local businesses.

Housing provision

- 4.14.19 The analysis of housing need in the ES (APP-121, Doc 5.2 Chapter 4) was based on the withdrawn draft Core Strategy prepared by NWLDC⁴⁵, and on the early stages of SDDC's local plan with an aspiration to provide 13,454 houses by 2028. These plans covered the areas closest to the development. The applicant also considered the draft core strategies from Derby City Council, Nottingham City Council, Charnwood Borough Council and Rushcliffe Borough Council. Whilst it is recognised that not all proposed new housing developments will be located within the AOI, the applicant believes it is likely that by 2028 a minimum of 81,000 new dwellings will be created within the wider area, including some 9,700 within North West Leicestershire.
- 4.14.20 The applicant's view is that a significant proportion of the jobs would be taken by people already resident in the study area and this would limit additional demand for dwellings within commuting distance of the site. However, the applicant added that, with the number of jobs proposed, an increase in the demand for housing in the commuting area could be likely. Taking into account the proposed increase in housing supply, impact on housing demand was considered to be negligible (APP-121, Doc 5.2 Chapter 4).
- 4.14.21 Concerns were expressed by some IPs who are local residents, that further housing expansion in the area would be needed to accommodate the employment force and that there is no local infrastructure including schools and medical services to support the growth of the villages (RR-133, RR-288).
- 4.14.22 Charnwood Borough Council stated that there is a need for greater exploration of the relationship between the jobs to be created and the impact on the housing growth required in North West Leicestershire and in the AOI as a whole, as this could

⁴⁵ See paragraph 3.2.13 above

have an effect on strategic planning matters relating to the Strategic Housing Market Assessment (RR-040).

- 4.14.23 In its response to RRs (REP3-06, Doc 8.1), the applicant assumed that up to 20% of the future employees currently reside outside the area and estimated that 156 people might move to the North West Leicestershire and 183 to Charnwood. The build-up would be gradual and the number of new houses required for potential employees would be relatively small in relation to the housing requirements of the whole area, and therefore would have no significant impact.
- 4.14.24 Many IPs were concerned that house prices would be compromised by the development (RR-311, RR-229, RR-015 and others). The applicant responded with reference to the Consultation Report (APP-80, Doc 6.1) that concerns about house values are not material planning considerations (REP3-06, Doc 8.1).
- 4.14.25 In our first written questions (PD-06) we asked if the local authorities agreed with the applicant's assessment that the impact on housing demand would be negligible. LCC responded that it had no reason to disagree with the applicant's estimate of housing (REP4-23). NWLDC responded *'the housing requirement is not considered to be significant'* and that *'the relatively limited scope of the localised impact suggests that it is not of such material significance as to justify withholding planning permission, either on the ground of prematurity or any other ground'* (REP4-24).
- 4.14.26 DCC stated in their LIR (REP4-18) that the potential creation of over 7,000 jobs on the site *'could have significant implications on future housing provision requirements both in North West Leicestershire District and the wider area, including in Derbyshire, particularly in Derby City, Erewash Borough and South Derbyshire...'*
- 4.14.27 Following our second written questions (PD-08), NWLDC and DCC submitted a SoCG (REP6-07) stating that the AOI had been described appropriately, though it was not possible to quantify with any degree of confidence how many people wanting to work at the site would want to live in the AOI. The councils confirmed the NWLDC response to the first written questions and in addition, that the development would take a number of years to build out and any movement into the AOI would occur gradually. Both councils supported the need for an employment scheme as part of the DCOB.
- 4.14.28 The Junction 24 Action Group commented that if NWLDC and DCC considered that only a similar number of future employees as work at the airport (219 people) would require housing, then this implied that out of 7,000 forecast jobs at the EMGRFI,

around 6,800 people would need to commute over long distances to the site (REP7-02).

Health and wellbeing

- 4.14.29 The applicant showed in the ES that the health of the population in the study area generally reflected the wider region and national areas, with the majority being in good health and there being relatively little long term illness (APP-121, Doc 5.2 Chapter 4).
- 4.14.30 The ES considered that there could be an indirect minor beneficial effect on the health and wellbeing of those taking up the new jobs by the potential to help reduce deprivation in the AOI. It also suggested that the highway works would improve road safety, making cycling a more attractive option for trips to and from work and that this had the potential to maintain and improve health.
- 4.14.31 Some IPs were concerned that the increase of traffic would affect the health of residents and the quality of life in the surrounding villages in terms of increased noise and air pollution. They further stated that people would no longer be able to enjoy the health benefits of exercising in 'beautiful surroundings' and have the opportunity to explore wildlife (RR-078, RR-217, RR-071 and others).
- 4.14.32 Several IPs commented that they had chosen to live in a quiet village with attractive countryside and rural walks and that the villages would be greatly affected by the development (RR-020).
- 4.14.33 In terms of health and wellbeing impacts, there have been no submissions from the local authorities which either agree or disagree with any of the representations about this matter.

Conclusions

- 4.14.34 We are satisfied that the applicant's assessment of job generation during construction and operation is credible and based on relevant experience from similar major developments. We agree that the development would be likely to have a minor beneficial effect on employment during construction and a major beneficial effect at the regional level during operation, a view supported by the local authorities.
- 4.14.35 We see little evidence to support claims that the projected number of jobs which would be generated by the proposed SRFI would lead to substantial additional housing requirements in the locality beyond those expected to be provided for in local plans. The extent to which the projected new jobs would be taken by existing residents in the main, as argued by the applicant and supported by the local authorities, seems uncertain given the current low unemployment rate. The proposed development

would be in competition with EMA for labour in view of the plan to double the number of jobs at the airport from 7,000 in 2010 to 14,000 in 2016 (APP-121, Doc 5.2 Chapter 4). The most likely consequence therefore is a significant element of long distance commuting to the site. This has implications for the provision made for car parking and public transport, considered in paragraphs 4.4.51 to 4.4.57 above.

- 4.14.36 Overall, we conclude that there would be significant benefits from the proposed development in terms of potential employment creation, whilst the impacts on housing demand, health and wellbeing would appear to be broadly neutral.

4.15 CONSTRUCTION

- 4.15.1 Construction of the EMGRFI has the potential to give rise to a range of environmental impacts. At present, neither the construction companies for the different elements of the scheme nor the end users of the SRFI are known. However, it is clear that the proposed development would entail significant construction and earthworks that would take place in phases over a number of years. This is detailed in the indicative master programme contained as an appendix to the CMFP (REP8-09 to 12, Doc 6.10).

Construction Management Framework Plan

- 4.15.2 In order to provide a mechanism to mitigate environmental impacts, and a structure within which the construction activities are to take place, the applicant submitted a CMFP as part of the application (APP-641, Doc 6.10). This was superseded by an amended CMFP (REP8-09 to 12, Doc 6.10) that we requested at the second ISH dealing with the draft DCO (HG-15 and HG-16).
- 4.15.3 The CMFP *'sets out the overarching systems and controls to minimise any adverse environmental impacts in accordance with the conclusions of the Environmental Statement and Construction Good Practice'*. The CMFP splits the overall scheme into four 'key activities' which are:
- off-site highway improvements;
 - on-site earthworks, drainage, roads and landscaping;
 - the railway; and
 - new buildings.
- 4.15.4 These key activities are then further divided into 'components', although there was no indication that each of these 'components' equates to a specific phase of the development as envisaged by R2 of the draft DCO.

4.15.5 Although it is a framework, there are some important elements within the CMFP:

- the CMFP principles will be incorporated into all construction contracts, to be coordinated by the developer's appointed Project Manager;
- proposals are to be subject to internal and external auditing of compliance with the CMFP;
- appointment of an Environmental Manager for each contract; and
- construction work to take place only between 07:00 to 19:00 Monday to Friday, and 07:00 to 16:00 Saturday, with no works to be undertaken on Sundays or public holidays save in exceptional circumstances⁴⁶.

Construction Environmental Management Plan

4.15.6 The role of a CEMP for each phase of the proposed development is referred to by the applicant in both the first and amended versions of the CMFP and in the EM (REP 9-13, Doc 3.2C). R11 of the draft DCO requires a CEMP to be submitted to the LPA for its written approval for each phase of the development, or to the relevant highway authority for a CEMP in relation to the highway works. Furthermore, R11 makes reference to protective provisions in Schedules 19 (for HE) and 20 (for LCC) of the draft DCO (REP9-11, Doc 3.1D).

4.15.7 R11 secures a number of further details to be submitted and approved prior to the commencement of any phase of the proposed development. These include:

- methods to control noise;
- a Dust Management Plan (DMP);
- details of construction waste management in accordance with the Site Waste Management Framework Plan (SWMFP);
- details of any temporary surface water management system;
- a scheme for the routing of HGVs; and
- a traffic management plan.

⁴⁶ though see different hours set out in R20

4.15.8 As the CMFP provides only a framework of general principles, the mitigation of environmental impacts of construction activities relies on most of the details being provided within each CEMP. For this reason, we were keen to see a draft of a CEMP to be reassured of both the scope and content of the intended documents, and that they were understandable and acceptable to those IPs likely to have an interest in this matter (PD-08). In response, the applicant submitted a draft CEMP for the Enabling Earthworks phase of the proposed development (REP6-23, Doc 6.22). This was a draft document, not for certification, but was intended to demonstrate the level of information that would be provided in each CEMP. We were satisfied that it fulfilled this purpose.

Assessment of CMFP and CEMP issues

4.15.9 The various subject sections of the CMFP are generally expanded by the details listed within clauses (a) to (o) of R11 that each CEMP should include. However, there are some exceptions. Section 15 of the CMFP stipulates that the Landscape Designer will identify existing and newly planted landscaping that needs to be protected, and such details will be set out in each CEMP. There is no reference to landscaping details in R11 of the draft DCO, and for consistency and completeness therefore, we recommend this should be added.

4.15.10 Both LCC and NWLDC indicated at the second ISH dealing with the draft DCO that they were satisfied with the measures contained within the draft CEMP. Notwithstanding this, given our desire to be sure that the format and content of future CEMPs would be appropriate for those IPs involved (PD-08), we requested NWLDC, LCC, HE, EMA and Severn Trent Water to review the draft example CEMP (HG-17) and liaise with the applicant concerning its content and enforceability.

4.15.11 NWLDC found this draft CEMP acceptable and considered that its contents would be enforceable (REP8-08). LCC was generally satisfied, but noted that changes would be required in the final version, for example, to extend the proposed HGV routing scheme beyond just roads in Leicestershire. In addition, LCC considered that clause (2) of R11 of the draft DCO could be strengthened (REP8-06). HE responded that it was generally content with the draft CEMP (REP8-01). No response to our request was received from Severn Trent Water or EMA.

4.15.12 As the draft CEMP for the Enabling Earthworks phase of the proposed development (REP6-23, Doc 6.22) is not a certified document, we do not propose to cover in great detail the specific wording it contains as this will be a matter for the LPA upon the submission of each future CEMP. Nevertheless, as an observation we consider that the submitted draft CEMP does not contain sufficiently rigorous monitoring and mitigation proposals

for matters such as noise and dust. Furthermore we consider that the enforcement mechanisms for matters such as construction traffic routing are not adequately covered.

- 4.15.13 Overall, a significant level of detail would be required for inclusion within each CEMP for approval by the LPA. The construction operations would be complex and carried out over a number of years by different contractors. In requiring so much of the technical information to be submitted in each CEMP, rather than submitted in advance, there is the risk that an element of the development could commence before all of the details required within each CEMP have been submitted and agreed. This is exacerbated by the fact that each phase of the development has yet to be identified and the applicant has indicated even the phasing that is currently envisaged could alter as the development proceeds.

Conclusions

- 4.15.14 A significant amount of detail would be left to each CEMP and their future approval by the LPA, although the draft CEMP for the Enabling Earthworks phase (REP6-23, Doc 6.22) does provide us with the reassurance of how the commitments within the CMFP would be delivered. If undertaken correctly and in accordance with all the approved details within each CEMP, then the CMFP and future CEMPs can form an acceptable basis to mitigate the environmental impacts of the proposed construction activities.
- 4.15.15 The CMFP provides a framework for construction activities, and it is each CEMP that will play the key role in providing effective mitigation measures to ensure that the environmental impacts of construction activities are both acceptable and properly controlled. We consider that amendments to R11 of the draft DCO would assist in clarifying the purpose and scope of the matters in this requirement.

4.16 LAND INSTABILITY, GEOLOGY, SOILS, GROUNDWATER, EARTHWORKS AND CONTAMINATION

- 4.16.1 The NPSNN states that a preliminary assessment for land instability for the entire site should be carried out at the earliest possible stage before a detailed application for development consent is prepared. Furthermore, the NPSNN recommends that liaison with the Coal Authority should take place if necessary (NPSNN paragraphs 5.117 to 118).
- 4.16.2 Geology, soils and groundwater are covered in the submitted ES (APP-126, Doc 5.2 Chapter 7) through dividing the proposed development into four zones:
- the SRFI site including the major development plateaus and rail freight terminal (Zone 1);

- the rail line (Zone 2);
- the major trunk road improvements (Zone 3); and
- Kegworth Bypass (Zone 4).

4.16.3 The principal submitted reports were as follows:

- Preliminary Sources Study Report (APP-275 for Zone 1, APP-364 for Zone 2, APP-420 for Zone 3, and APP-477 for Zone 4); these reports are desk studies that contain preliminary assessments of contaminated land and geotechnical risks;
- Preliminary Factual Ground Investigation Reports (APP-242); this assessment consists of a series of boreholes, rotary core follow-on drillholes, permeability tests, groundwater monitoring and laboratory testing; and
- Preliminary Ground Investigation Interpretative Reports (APP-500 for Zone 1, APP-518 for Zone 2, APP-536 for Zone 3, and APP-554 for Zone 4); these reports evaluated the Preliminary Sources Study Reports (PSSR) and the Preliminary Factual Ground Investigation Reports (PFGIR) and, among other matters, provided recommendations for further assessment work.

4.16.4 The underlying geology for the application site consists primarily of interbedded clays, mudstones, siltstones and sandstones, and there is little or no made ground or drift deposits.

4.16.5 There is one licensed landfill site at Lockington Fields which is part of the Lafarge Tarmac aggregates site adjacent to Lockington Quarry. As the landfill is licensed for inert, non-biodegradable waste it is not considered to pose a significant risk of contamination or gas for the proposed new road infrastructure.

4.16.6 In terms of groundwater, the site is not located on a Source Protection Zone. The aquifer within the Bromsgrove Sandstone is classified as a Principal Aquifer, although this lies at a significant depth beneath the site.

Assessment

4.16.7 A SoCG on Geology, Soils and Groundwater between the applicant and LCC, NWLDC, EA and HE (APP-656, Doc 7.5) agreed that sufficient desk and ground-based assessments had been undertaken. These had not identified any significant abnormal ground conditions or geotechnical risks, nor any significant contamination risks affecting human health, controlled waters or the environment.

- 4.16.8 Whilst the new rail line would sterilise potential mineral resources, it was not considered sustainable or economically advantageous to undertake the prior removal of these deposits.
- 4.16.9 In their joint LIR (REP4-19) LCC and NWLDC considered that the requirements dealing with contamination, R25 and R26 of the original draft DCO (APP-06, Doc 3.1), adequately addressed general contamination issues across the site as a whole⁴⁷. However, as there remains the potential for localised contamination which has not yet been assessed, the joint LIR recommends that localised contamination reports are undertaken prior to the development of a particular phase, and R24 of the draft DCO is amended to that effect. We concur with this view and consider that localised contamination reports should be provided prior to the commencement of any phase of the development.
- 4.16.10 The Coal Authority confirmed that the site falls outside of a defined coalfield area, and as such had no comments to make (APP-257).

Earthworks

- 4.16.11 The proposed development, and in particular the construction of the SRFI, would entail significant earthworks being undertaken. The air quality section of the ES (APP-129, Doc 5.2 Chapter 10) refers to over 4 million m³ of earth being cut, and a similar amount being filled for the earthworks at the SRFI site. It was acknowledged in the Preliminary Sources Study Report for Zone 1 (PSSR Z1) (APP-275), the SRFI site, that to either import or export significant quantities of material for earthworks would give rise to excessive costs.
- 4.16.12 In addition, comment on the general principles for the earthworks for the SRFI is contained within the landscape and visual effects section of the submitted ES (APP-123, Doc 5.2 Chapter 5). Whilst the earthworks would entail both cut and fill operations, the development plateaus and the intermodal and rail freight terminal areas would include more cut areas. As a result of the earthworks, the southern edge of Zones A1 to A4 would sit some 10 to 15 metres below the existing ground levels, whilst the northern part of the development plateau would be sited on fill material of some 2 to 7 metres in depth.
- 4.16.13 The PSSR Z1 stated that significant cut slopes would be required, in order to form the development plateaus and the rail freight terminal. It was recommended that staged construction of the embankments was undertaken. For these reasons, further

⁴⁷ In the final draft DCO (REP9-11, Doc 3.1D) these requirements are numbered as R24 and R25 respectively

ground investigations to both confirm the underlying ground conditions beneath the footprints of the proposed embankments and to assess the classification and suitability of the cut materials for reuse in the proposed embankments was recommended.

- 4.16.14 The Preliminary Ground Investigation Interpretive Report for Zone 1 (PGIIRZ1) confirmed that clean soils would be available within the proposed cut areas and they should be suitable for reuse. However, these soils would need to be carefully selected and managed in accordance with a suitable earthworks specification that pays particular attention to the control of moisture content.
- 4.16.15 The Earthworks Strategy - Enabling Earthworks (REP6-24, Doc 6.23) relating just to the SRFI site stated that the proposed development has been designed so that the site wide earthworks balance would be neutral, and neither import nor export of material for the overall development is required. However, the Strategy acknowledges that there would not be necessarily a balance of materials within each of the 'component' elements. This would therefore entail moving materials between components in order to achieve an overall materials balance, and this would require careful planning.
- 4.16.16 We queried the accuracy of the applicant's estimate of 4 million m³ of material being moved around the site in our first written questions (PD-06). In response, the applicant confirmed that geotechnical assessments have demonstrated that there would be sufficient available material for structural fill so there would be no need to import or export any bulk materials (REP4-42, Doc 8.3). We questioned the accuracy of the earthworks modelling at the second ISH dealing with the draft DCO (HG-15 to HG-16). The applicant confirmed that the modelling software used was of a standard used by the industry and was considered to be accurate (REP8-30, Doc 8.10).

Assessment of earthworks issues

- 4.16.17 The scale of the earthworks during the construction phase of operations would be significant, as is acknowledged in the landscape and visual effects part of the ES (APP-122, Doc 5.2 Chapter 5). Plan NTH/209/SK167 Rev P2 submitted as an appendix to the Earthworks Strategy - Enabling Earthworks (REP6-24, Doc 6.23) contains details of the proposed phasing for the SRFI site: materials stockpiles, intermediate and temporary topsoil stockpiles and a 'lung' area in the south-eastern part of the SRFI site. This 'lung' area would be used to enable a materials balance by providing an area which could either be filled with surplus material or be excavated to provide additional material.

- 4.16.18 The geology, soils and groundwater part of the ES (APP-126, Doc 5.2 Chapter 7) contains details of work methods and phasing, and amongst other matters, indicates that an Earthworks Specification would be prepared for the construction works. This Earthworks Specification would work in a similar way to a Materials Management Plan and would define the geotechnical classification and properties of *in situ* materials, and would set out how and where they may be reused. Reference to the submission of an Earthworks Specification was also contained within the recommendations section of the PGIIRZ1.
- 4.16.19 R12 of the draft DCO requires the submission of an earthworks strategy for the LPA's approval⁴⁸. However, this would seem to be different to the Earthworks Specification that relates to an assessment of how the *in situ* material is to be used within the overall development. We consider R12 of the draft DCO to be lacking sufficient further details regarding the overall earthworks for the proposed development. Therefore, we recommend that R12 of the draft DCO also contains a requirement to submit the relevant details that would accord with the recommended Earthworks Specification and the detailed design information on cutting slopes and embankment design, as recommended in section 11 (Recommendations) of the PGIIRZ1 (APP-500, Doc 5.2).
- 4.16.20 We asked the applicant about the materials balance at the second ISH dealing with the draft DCO (HG-15 and HG-16). The applicant replied that they were confident in the results of the three dimensional modelling that had been undertaken to inform the earthworks strategy and that an overall materials balance could be achieved. Whilst we have no specific evidence to cast doubt on this modelling, it is imperative that these modelling calculations and the phasing regime are accurate in order that the proposed materials balance can be achieved. Should development consent be granted, the further earthworks information at the detailed design stage, as required by R12 of the draft DCO, would require careful assessment by the LPA in liaison with other statutory agencies.

Conclusions

- 4.16.21 We consider that the underlying geology, and in particular the lack of made ground, and the soils are suitable for the

⁴⁸ R12 of the draft DCO requires that no phase of the development, except for the highway works, is to commence until details of the earthworks strategy for that phase has been submitted to and approved in writing by the LPA. The highway works are governed by R4 and R5 and also Schedules 19 and 20 (protective provisions) of the draft DCO. Details of earthworks are required by both Schedules 19 and 20 as part of the 'Detailed Design Information'

development that is proposed⁴⁹. There is no evidence that the earthworks calculations and modelling are incorrect and that an overall materials balance could not be achieved. This is subject to recommendations for additional design information in R12.

- 4.16.22 The assessment work has so far not indicated the presence of any contamination. However, it would only be at the time of the actual construction works that any localised areas of contamination may be encountered. We consider that R24 and R25 of the draft DCO, with the additional provision of localised contamination reports, would deal adequately with the issue of any contamination being encountered.
- 4.16.23 For these reasons we conclude that the impacts on land instability, geology, soils, groundwater, earthworks and contamination environment are acceptable, and the proposal accords with paragraphs 5.117 and 5.118 of the NPSNN in terms of the applicant's assessment of the predicted impacts.

4.17 AIR QUALITY

- 4.17.1 The NPSNN advises that increases in emissions of pollutants during the construction or operation phases of projects on the national networks can result in the worsening of local air quality (NPSNN paragraph 5.3). We consider that this would also apply to the SRFI site. At the national level, Defra's Air Quality Strategy⁵⁰ provides air quality standards and objectives for key pollutants that can affect human health and the environment. The objectives are prescribed within the Air Quality (England) Regulations 2000, as amended.

Air quality impacts of the proposed development

- 4.17.2 An assessment of the air quality impacts of the proposed development in terms of nitrogen dioxide (NO₂), PM₁₀, PM_{2.5} and dust is contained within the air quality chapter of the ES (APP-129, Doc 5.2 Chapter 10). The issue of dust is, however, considered within the following section 4.18 of this report.
- 4.17.3 The assessment of traffic-related air quality impacts in the ES used 2012 as its baseline year, 2016 to represent the proposed first year of opening, and 2020 to represent all the elements of the scheme being operational. Concentrations of NO₂, PM₁₀ and PM_{2.5} were predicted at 53 receptor properties that are close to affected roads and thus represent worst-case exposure potential. In addition, modelling was undertaken for the two ecological receptors of Oakley Wood and Lount Meadows SSSIs.

⁴⁹The impact of a potential HS2 route has been raised in regard to land stability but as noted in paragraph 4.3.8 above, the route is not yet certain so we do not consider this point

⁵⁰ Defra (2007) The Air Quality Strategy for England, Scotland Wales and Northern Ireland

It was therefore considered by the applicant that the assessment methodology adopted in the ES accorded with the guidance contained within the NPSNN.

- 4.17.4 In terms of PM₁₀ and PM_{2.5} concentrations, the predicted results were imperceptible or small changes in concentrations that would result in negligible impacts on the SRFI site.
- 4.17.5 For NO₂ the impacts were negligible or beneficial at most receptors, including a worsening at a location near the existing A50 roundabout north of Hemington and Lockington, and improvements in NO₂ levels at locations within Kegworth.
- 4.17.6 Potentially adverse impacts were predicted in 2020 to be on a solitary property north of the A50, some properties close to the M1 in Long Whatton, at the Hilton Hotel staff accommodation, at some properties within the development at the western end of Kegworth closest to the M1, and at some properties along Church Road in Lockington.
- 4.17.7 However, the ES concluded that for 2020 the NO₂ concentrations would be above the Air Quality Regulations objective without the proposed development at two receptors, but at no receptors with the scheme in operation.
- 4.17.8 An Air Quality SoCG between the applicant and NWLDC (APP-660, Doc 7.8) covered the air quality impacts of dust arising during construction works, and the potential for changes in traffic flows and emissions from railway locomotives to affect human exposure and also ecosystems. Although NWLDC identified some inconsistencies in the traffic data, overall it considered the conclusions in air quality terms to be correct.
- 4.17.9 The joint LIR submitted by NWLDC and LCC (REP4-19) identified both potential positive and negative air quality impacts. In terms of positive impacts, the demolition of Mole Hill House in order to construct the Kegworth Bypass would remove the only receptor within the M1 Air Quality Management Area (AQMA) and therefore this AQMA could be revoked. Similarly, the beneficial effects on air quality for Kegworth as a result of the bypass would mean that the Kegworth AQMA could be revoked.
- 4.17.10 As regards potential negative impacts, the joint LIR contended that the statement contained within the ES that the Castle Donington AQMA could be rescinded is not correct. This was because its removal was predicated upon the construction of a relief road for Castle Donington. This in turn was dependent on the implementation of an outline planning application for residential development that has not yet been granted, pending the completion of a legal agreement.

- 4.17.11 The joint LIR did agree, as also stated in the Air Quality SoCG, that in principle the proposed development could lead to the removal of AQMAs for Kegworth and the M1 Mole Hill.

Assessment of air quality issues

- 4.17.12 Concerns were expressed regarding air quality impacts in a number of the representations, for example the Junction 24 Action Group (RR-137) and Castle Donington Parish Council (REP4-02). A number of other representations (for example RR-125) raised concerns about the potential impact on air quality through the loss of the existing farmland 'green lung.'
- 4.17.13 There is no doubt that the SRFI would bring built development closer to Castle Donington and to the villages of Hemington and Lockington on land that is currently farmland. However, the context for this proposal is that of an area with existing high levels of traffic on the surrounding road network, and which consequently already experiences air quality issues as exemplified by the three existing AQMAs. The NPSNN states that air quality considerations are likely to be particularly relevant where schemes are proposed within or adjacent to AQMAs (NPSNN paragraph 5.11). However, the NPSNN also states that the planning and pollution control systems are separate but complementary and the ExA should work on the assumption that the relevant pollution control regime will be properly applied and enforced (NPSNN paragraph 4.49).
- 4.17.14 The general concerns that have been raised about the likely worsening of air quality need to be balanced against the improvements to air quality that would arise as a result of the proposed development. The overall objective of the SRFI is to move some of the long distance freight journeys that are currently carried out by HGVs on to the rail network. If this modal shift occurs, there would be overall air quality benefits⁵¹.
- 4.17.15 The Air Quality SoCG (APP-660, Doc 7.8) recognised improvements to air quality in Castle Donington if the applicant makes contributions towards strengthening the enforcement of the existing weight restriction orders. However, whilst this is referred to by the applicant, it is not specifically included within the DCOB between the applicant and NWLDC and LCC (REP8-31, Doc 6.4E). Therefore we consider that it is questionable as to whether such payment could be relied upon as there is no method for ensuring it would be secured.

Conclusions

⁵¹ See also section 4.10 above

- 4.17.16 The assessment modelling demonstrated that there would not be any significant air quality impacts as a result of either the construction or operational phases of the proposed development. The CEMP for each phase of the development would be a significant factor in ensuring that construction air quality impacts are maintained at acceptable levels in accordance with both European and national legislation.
- 4.17.17 As regards the operational phase, although there are a few locations where the air quality would be worsened, this would not be to a degree that we consider to be unacceptable. In addition, any negative impacts would be outweighed by the air quality benefits elsewhere, both locally and nationally, that would arise as a result of the proposal. This is contingent however on the implementation of the rail line and the consequent modal shift of road freight to rail proposed by the application being achieved, a matter explored in section 4.10 of this report.
- 4.17.18 For these reasons we conclude that the applicant's assessment of the proposal accords with paragraphs 5.7 to 5.9 of the NPSNN, and the impacts on air quality are acceptable and comply with the decision-making requirements in paragraphs 5.10 to 5.13 of the NPSNN.

4.18 DUST AND OTHER POTENTIAL NUISANCE

- 4.18.1 The NPSNN advises that a range of matters - dust, odour, artificial light, smoke, steam and insect infestation - have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance under Part III of the Environmental Protection Act 1990 (NPSNN paragraph 5.81).

Impacts of the proposed development

- 4.18.2 The ES acknowledges that construction has the potential to give rise to dust-soiling impacts for existing off-site receptors. However, the CMFP (REP8-09 to 12, Doc 6.10) provides an overarching framework for construction operations at both the SRFI and the highway works, which are also controlled by the protective provisions contained within Schedules 19 and 20 of the draft DCO (REP9-11, Doc 3.1D).
- 4.18.3 The criteria within R11 setting out the contents required for each CEMP include the provision of a DMP. The ES considers that with the mitigation as provided in the CEMP, the dust impacts of the proposed development would be negligible.
- 4.18.4 An Air Quality SoCG between the applicant and NWLDC (APP-660, Doc 7.8) covered amongst other matters, the impacts of dust arising during construction works.

Assessment of dust issues

- 4.18.5 The overall proposed development, and in particular the construction of the SRFI site, would entail a significant amount of earth moving and other construction operations. In excessively dry periods, dust generation could become an issue that could only be remedied by the cessation of certain construction activities. However, overall it is unlikely that dust generation during construction operations would be such that it could not be mitigated to an acceptable level through the mechanism of the DMP as part of each CEMP.
- 4.18.6 In our first written questions (PD-06) we asked the local authorities about the potential cumulative dust impacts arising as a result of other committed developments nearby. NWLDC responded initially that only the Sawley Crossroads application⁵² had the potential to give rise to significant dust impacts during its construction phase (REP4-24). However, NWLDC later withdrew this comment (REP5-05) as it considered that even if both sites were progressed together there would not be a significant cumulative dust impact.
- 4.18.7 Once operational, the EMGRFI would be unlikely to give rise to significant additional levels of dust. However, any dust that could be generated from the site once operational would not be covered by the provision in the CEMP for that phase of the construction works. Only statutory nuisance would apply in terms of the LPA's ability to control dust emissions.

Assessment of other potential nuisance

- 4.18.8 The submitted ES did not contain an assessment of most of the other 'nuisance' matters that the NPSNN refers to such as odour, smoke, steam and insect infestation. The issue of mud and other material potentially being deposited on the highway was considered after we raised this at the second ISH dealing with the draft DCO (REP8-30, HG-15 and HG-16).
- 4.18.9 NWLDC considered that a road sweeper would be required on site rather than on-call at an hour's notice, as was originally proposed. We concur with this view. As a result of this the applicant has added a specific reference in part (i) of R11 to require within each CEMP details of measures to ensure that construction vehicles do not deposit mud or any other deleterious material on the public highway. We consider that this requirement should enable the LPA and highway authority to adequately control the issue.
- 4.18.10 Due to the nature of the construction operations proposed, which would primarily consist of earthworks, roadworks and the erection of warehousing units, it is considered unlikely these

⁵² See footnote 26

works would give rise to unacceptable levels of odour, smoke, steam or insect infestation. However, the presence of EMA nearby means such issues are of heightened concern to their operations. Whilst smoke is covered in the safeguarding strategy for the EMA (APP-643, Doc 6.12), the draft CEMP - Enabling Earthworks (REP6-23, Doc 6.22) submitted as an example CEMP does not contain any such references. We consider therefore specific reference should be made in R11 to control of smoke emissions within each CEMP.

- 4.18.11 Whilst the end users are not yet known, the proposed buildings on the SRFI site are intended to be occupied by warehousing and distribution companies rather than industrial concerns. Consequently, we consider it less likely that the operational impacts of the proposed development would give rise to significant impacts in terms of odour, smoke, steam or insect infestations.
- 4.18.12 As regards the matter of 'artificial light' referenced in paragraph 5.81 of the NPSNN, the ES did assess the issue of light pollution and this is covered in the landscape and visual impact section of this report, section 4.6. Artificial light impacts can also be caused through temporary lighting required during construction (APP-133, Doc 5.2 Chapter 12).
- 4.18.13 One of the matters required by R11 is for details of lighting arrangements for construction purposes. Indeed the draft CEMP - Enabling Earthworks (REP6-23, Doc 6.22) indicated that no works are planned in periods of darkness. However, should any task lighting be required to cover unforeseen circumstances then this lighting would be no more than 8 metres in height and with an average lux level of 50.

Conclusions

- 4.18.14 Whilst construction operations do have the potential to create dust and other emissions, appropriate mitigation would be covered through the submission of DMPs for each phase of the development. These are to be approved by the LPA as part of the CEMP approval under R11 of the draft DCO, amended as we recommend. R11 also covers the approval of construction lighting details.
- 4.18.15 Although other potential nuisances such as odour, steam and insect infestations are not covered in the information submitted by the applicant, the nature of the proposed construction and operational activities are such that we do not consider this to be a significant issue. We conclude that dust or other nuisance impacts during either the construction or operational phases of the proposed development would be broadly neutral, and the applicant's assessment of the proposal accords with paragraphs 5.84 to 5.86 of the NPSNN. In addition, the requirement for a

DMP contained in R11 complies with the decision-making and mitigation requirements contained in paragraphs 5.87 to 5.89 of the NPSNN.

4.19 WASTE MANAGEMENT

4.19.1 The NPSNN considers that large infrastructure projects may generate both hazardous and non-hazardous waste during both their construction and operational phases. The NPSNN refers to the implementation of sustainable waste management through the principles of the waste hierarchy and advises that the applicant should set out the arrangements for managing any waste that is produced (NPSNN paragraphs 5.40 to 41).

4.19.2 The ES does not contain a specific section relating to waste management. However, a SWMFP (APP-642, Doc 6.11) was submitted as part of the application.

Non-hazardous waste arisings during construction operations

4.19.3 The SWMFP states that the figures for waste arisings would be refined in the detailed design stage as the contractors become appointed. Nevertheless, the vast majority, some 13,300,000 tonnes are topsoils and subsoils which would be retained on site. Only 59,610 tonnes of waste would be sent off-site, of which it was estimated that 75% would be recovered with 25% of waste equating to 13,860 tonnes being sent to landfill.

4.19.4 An updated SWMFP has been provided as Appendix I of the CEMP - Enabling Earthworks (REP6-23, Doc 6.22) submitted as a draft in response to our second written questions (PD-08). Although this draft CEMP contains broadly the same forecasts of waste arisings as the previous SWMFP, the updated forecast is for only 4,110 tonnes of waste to be sent off-site, of which an estimated 3,075 tonnes would be recovered off-site.

4.19.5 In order to ensure that these indicative quantities of materials would be retained on the SRFI site, the SWMFP refers to space being provided within the site for recovering and storing waste from one component for use by other components. This is the reference to the construction 'lung' covered in paragraph 4.16.17 above.

Hazardous waste arisings during construction operations

4.19.6 Appendix 3 of the SWMFP also contains a forecast of the amount of hazardous waste that would need to be sent to landfill. It is estimated that 10 tonnes of asbestos and 100 tonnes of 'wet waste' would be landfilled and these amounts were included within the overall estimate of 13,860 tonnes of waste to landfill. However, in the updated SWMFP this estimate of hazardous

waste was refined down to only 10 tonnes of asbestos waste, with no wet waste anticipated.

- 4.19.7 As noted in paragraphs 4.9.34 to 4.9.37 above, the ES indicated that The Dumps woodland contains Japanese Knotweed and that Himalayan Balsam and New Zealand Pygmyweed are also present (APP-124, Doc 5.2 Chapter 6). Although these invasive species were present in areas that were to be retained, nevertheless construction operations could inadvertently result in their spread. These species are classified as 'controlled waste' and must be disposed of in a licensed landfill site. However, the SWMFP does not account for the landfilling of these wastes. To properly provide for dealing with such controlled wastes we recommend an addition to R11(e).

Assessment of waste management issues

- 4.19.8 Significant earthworks are proposed in order to create both the level plateaus for built development in the SRFI, to allow for the construction of the rail freight terminal at an appropriate level, and to provide significant bunding around the SRFI site. The forecast regarding the amount of waste that would be taken off the SRFI site and not re-used on site was based on the earthworks modelling considered in section 4.16 of this report.
- 4.19.9 However, it is worth noting that the SWMFP was based on an overall cut and fill balance being achieved. Due to the volumes of material involved in the overall earthworks, if the modelling is only marginally incorrect then this would necessitate large volumes of waste needing to be taken off-site. Furthermore, the indicative forecast contained within Appendix 3 of the SWMFP was based upon the assumption that sufficient space would be made available on the site to segregate and store the waste arising from one component for use in the next component.
- 4.19.10 As regards ongoing waste management in the operational stage of the proposed development, there is not surprisingly a lack of information regarding waste management as the companies that would operate from the site are unknown at present. This has not been raised as an issue by any of the parties and was not, for example, referred to in the joint LIR submitted by LCC and NWLDC. However, following the second ISH dealing with the draft DCO (HG-17), we asked the applicant to consider a mechanism to reflect certified environmental management systems in the CEMPs, but the applicant has not done so.
- 4.19.11 There is a reasonable likelihood that at least some of the end users of the site would operate under an environmental management system in which sustainable waste management for the ongoing operations would form a component. But, in order to provide some reassurance that waste management is controlled in the operational stages of the proposed

development at the SRFI site we recommend a new requirement (R26) within the draft DCO.

Conclusions

- 4.19.12 Waste management during the construction phase of the development would depend almost entirely on the accuracy of the earthworks modelling that has been undertaken. Matters concerning achieving a materials 'cut and fill' balance are addressed in section 4.16 of this report. To properly provide for dealing with controlled wastes we recommend an addition to R11(e).
- 4.19.13 The main outstanding issue is whether sustainable waste management during the operational stages of the proposed development is adequately covered in the draft DCO. We consider that an additional requirement for the submission of a scheme for waste management for all of the operators at the site would provide an appropriate future safeguard. Subject to the inclusion of this additional requirement, we conclude that the impacts on waste management are acceptable, and the proposal would accord with paragraphs 5.42 to 5.44 of the NPSNN.

4.20 UTILITIES

4.20.1 The ES does not contain a description of existing utilities present on the SRFI site nor the demands which constructing it would pose for electricity, gas, water supplies and foul water disposal.

4.20.2 National Grid set out (RR-223) that within the proposed Order limits National Grid Electricity Transmission Plc has the following electricity transmission lines:

- 4VA 400kV overhead line – Ratcliffe to Willington; and
- ZD 400kV overhead line – Coventry to Ratcliffe-on-Soar; Drakelow to Ratcliffe-on-Soar

and National Gas Grid Plc has low and medium pressure gas pipelines.

4.20.3 Berwin Leighton Paisner on behalf of National Grid Electricity Transmission Plc confirmed that it was satisfied with the protection of its interests set out in Schedule 15 of the draft DCO (REP9-11, Doc 3.1D) and on that basis withdrew any objection (REP9-06). As this Schedule also covers the interests of National Gas Grid Plc, we take this to satisfy their pipelines and related apparatus as well.

4.20.4 Western Power Distribution (WPD) has some 11kV lines and cables that are within the development boundary of the site. On the basis that WPD and the applicant enter into an agreement, WPD would not seek any further participation in the examination

(RR-310). No further representations were received from WPD, so we conclude there are no outstanding matters concerning WPD's interests.

- 4.20.5 A SoCG with Severn Trent Water (STW) concerning the Derwent Valley Aqueduct (DVA) was submitted (APP-657, Doc 7.6). A Construction Management Strategy (CMS) was prepared to address the safeguarding of DVA during the construction phase of the proposed development, and in particular during the highway improvements (APP-644, Doc 6.14).
- 4.20.6 Six interference zones were identified that could have impact on the DVA Water Main. The applicant stated that before commencement of any works an emergency action plan would be prepared in conjunction with STW. A FRA would also be undertaken to determine the impact of a burst at critical locations which would be agreed with STW.
- 4.20.7 STW stated in the Utilities SoCG (APP-657, Doc 7.6) that they have no objections in principle to the construction of the highway works as long as various requirements to safeguard the operation of DVA are met. They also stated that the CMS met their requirements.
- 4.20.8 The protection for STW is included in the protective provisions in Schedule 17 of the draft DCO where the undertaker will carry out the proposed development in accordance with the CMS for the DVA (REP9-11, Doc 3.1D).
- 4.20.9 There is no reference to an agreed method of foul drainage and there is no foul sewer in close proximity to the development site. The EA stated its preference for foul drainage to connect to the main foul sewer provided that it can be demonstrated that there is adequate capacity in the sewerage system and at the receiving sewage treatment works. Discharge of treated sewage effluent to ground or surface water will require a permit under the Environmental Permitting Regulations 2010 (RR-075).
- 4.20.10 Subsequently, the EA noted that foul drainage would be disposed to the main foul sewer and an application had been made to STW for a foul sewer capacity assessment. If the assessment showed that there would be an impact on the pumping station at Derby Road, Kegworth then it would need to see details of the proposed improvements (REP4-07).

Conclusions

- 4.20.11 Article 32 of the draft DCO covers apparatus and rights of statutory undertakers in stopped up streets and is discussed in paragraph 6.1.13 of this report.
- 4.20.12 In the light of these considerations, we consider that there would be no significant impact on existing utilities or difficulties

in providing for future demands arising from the proposed development.

5 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1.1 The statutory framework for deciding NSIP applications where there is a relevant designated NPS is set out in s104 of the PA 2008. The Secretary of State must decide the application in accordance with any relevant NPS, with exceptions. Paragraph 4.2 of the NPSNN states that:

'Subject to the detailed policies and protections in the NPS, and the legal constraints set out in the Planning Act, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in the NPS.'

5.1.2 Paragraph 4.3 of the NPSNN states that:

'In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the ExA and the Secretary of State should take into account:

- its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;*
- its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts'.*

5.1.3 Our conclusions on the case for granting development consent for this application are based on an assessment of those matters which we consider are both important and relevant to the decision, as well as the LIRs submitted to the examination as required by s104 of the PA 2008.

5.1.4 We set out the reasons for our conclusions on each of the matters in chapter 4, and these are summarised in the following paragraphs.

Policy justification for the development

5.1.5 We consider that the proposed application complies with the criteria for SRFIs as set out in paragraphs 4.83 to 4.89 of the NPSNN, with the exception of those set out in paragraphs 4.83 and 4.88. The conclusion we reach is that as the Secretary of State must decide the application in accordance with the NPSNN, in the light of the analysis in paragraphs 4.2.14 to 4.2.28 and 4.2.57 to 4.2.62 above, we recommend that the Order should not be confirmed on the grounds of non-compliance with paragraphs 4.83 and 4.88 of the NPSNN.

- 5.1.6 If the Secretary of State is minded to agree, before reaching his decision he may wish to satisfy himself about specific matters which we set out in paragraph 5.1.54 below.
- 5.1.7 However, the Secretary of State may conclude otherwise that either the application does comply with these specific criteria in the NPSNN, or that it is compliant with the spirit if not the letter. In this case, he would then proceed to the consideration of all the other matters under assessment which we set out in the report.
- 5.1.8 Whilst we have some doubts as to whether the highway NSIPs have been assessed strictly in accordance with the WebTAG guidance normally required for such projects by the NPSNN, we conclude that that the environmental analysis of the impacts of the highway NSIPs is adequately set out in the ES and is therefore consistent with the assessment requirements of the NPSNN.

Cumulative impacts with other development proposals

- 5.1.9 We are satisfied that the application has properly taken into account the impacts of other major committed development schemes in the vicinity; HS2 is not sufficiently far advanced or certain for in-combination impacts to be considered.

Transportation

- 5.1.10 There are no overriding impediments to the proposed SRFI development from the point of view of likely freight train paths being made available when required to accommodate forecast volumes of trains and containers as demand increases.
- 5.1.11 The TA is appropriate and acceptable. Overall, the strategic modelling demonstrates the package of highway proposals would more than mitigate the impact of the SRFI within the AOI. The highway proposals would provide a net benefit to the operation of the highway network, with average delays to vehicles improving by approximately 50% in all scenarios.
- 5.1.12 None of the specific transport matters considered, including changes to the existing road access to Lockington, junction arrangements on the Kegworth Bypass, and the egress from Lockington Quarry to Junction 24, present impediments to granting the Order.
- 5.1.13 The proposed arrangements for encouraging alternatives to car usage and balancing their success with vehicle parking provision on the SRFI site are acceptable.
- 5.1.14 The proposed changes to local access and PRowS would deal satisfactorily with the consequences of constructing the EMGRFI.

- 5.1.15 Construction traffic generated by both the SRFI and the highway works would not have a significant effect on the existing highway network, and there are appropriate measures in R11 and Schedules 19 and 20 of the draft DCO to control impacts of construction traffic on the existing highway network.
- 5.1.16 The benefits to the existing SRN from constructing the proposed transport improvements would be substantial, and therefore need to be accorded significant weight.

Land use

- 5.1.17 The loss of 91 ha of grade 2 and 134 ha of sub-grade 3a agricultural land quality within the development site boundary would be a major adverse effect on the availability of the best and most versatile land, in conflict with the policy position in the NPSNN, and reflected in the NPPF and saved Local Plan policies. We conclude therefore that this would be a significant disbenefit of the proposal.

Landscape and visual impacts

- 5.1.18 The SRFI would involve substantial built development and landform changes to an area of land that is currently farmland. The final designs for the proposed buildings are not yet settled.
- 5.1.19 The application site is not subject to any national or local landscape designations. The wider landscape context has several existing major physical developments which would reduce the impact on the landscape of the proposed development. The proposed earthworks and landscape planting for the SRFI site would screen views of the large warehouse buildings from the surrounding area.
- 5.1.20 Although the existing character and appearance of both the SRFI site and the Kegworth Bypass would clearly be altered, the landscape and visual impacts of the proposed development, including lighting, would be acceptable.

Historic environment

- 5.1.21 Apart from a listed milepost, there are no SAM or other heritage assets within the application site, and no significant archaeological remains have yet been discovered. Only a very small number of buildings on the application site would be lost, none of heritage importance.
- 5.1.22 Any substantial harm to the setting of Hemington and Lockington conservation areas and some of the listed buildings within these villages would be adequately mitigated by the proposed screening of the SRFI site, the change in land levels and the distances involved. R13 would require an appropriate level of further archaeological evaluation and mitigation to be

undertaken, which we recommend is strengthened with the inclusion in R2 of the schedule of archaeological works within the phasing programme.

Noise and vibration

- 5.1.23 The relatively high levels of existing and background noise make it unlikely that there would be any discernible changes as a result of the proposed EMGRFI development as a whole, either during construction or when operational.
- 5.1.24 The noise assessment predicts the impacts of the highway proposals, particularly the Kegworth Bypass, are likely to result in noise reductions in some areas which would experience considerably less traffic after the development than they do now. This would be an overall benefit of the proposed development.

Biodiversity, ecology and nature conservation

- 5.1.25 The proposed development would not be likely to give rise to a significant effect on the River Mease SAC or any other European designated site, and therefore no appropriate assessment of the plan/project would be required.
- 5.1.26 There are no statutory designated sites within the application site or immediately adjacent to it. The nearest such site is Lockington Marshes SSSI which is approximately 1 km north of Junction 24.
- 5.1.27 The measures in the draft DCO would be sufficient to prevent any changes to the quality or quantity of the water feeding the Lockington Marshes SSSI. Similarly, air pollution from increased traffic would not affect the condition of either Lount Meadows SSSI or Oakley Wood SSSI.
- 5.1.28 The impact of the proposed development on biodiversity, ecology and nature conservation is likely to be broadly neutral, but there would be disbenefits from the loss of veteran trees and calcareous grassland.

Climate change adaptation and carbon emissions

- 5.1.29 Climate change adaptation has been sufficiently addressed. The design approach for the proposed warehouses should lead to energy efficiency maximisation and a small reduction in CO₂ emissions.
- 5.1.30 The predicted carbon reductions arising from modal shifts are uncertain as they are contingent on the construction of the rail line and the extent of its use. This would be a disbenefit therefore to be weighed in whether the Order should be made.

Flood risk

- 5.1.31 The SRFI site and the Kegworth Bypass are located entirely within Flood Zone 1 (low probability of flooding). The proposed slip-road between Junctions 24A and 24, changes to the existing highways and the new rail line are in areas designated as Flood Zone 3a (high probability of flooding), associated with flooding from the River Soar to the east and River Trent to the north.
- 5.1.32 The risk of localised flooding in the villages of Hemington and Lockington would be unlikely to be worsened by the proposed development, and may be somewhat alleviated by the flood protection measures.
- 5.1.33 The EA confirmed that the proposed compensation measures for loss of flood plain were viable in principle, and there should be no impediment to issuing the necessary flood consents. Overall, there would be a benefit from the proposed development in terms of reducing risk from flooding.

Water quality and resources

- 5.1.34 The mitigation measures of the possible impacts of the project on controlled waters would be sufficient to maintain water quality, and overall such impacts would be neutral.

Civil aviation

- 5.1.35 EMA is a safeguarded aerodrome and has to meet the terms of its licence and international standards governed and regulated by the CAA.
- 5.1.36 The applicant and EMA have agreed that the protection of the airport would be appropriately secured by R7 and Schedule 16 of the draft DCO. The impacts on civil aviation from the proposed development would be broadly neutral.

Socio-economic impacts

- 5.1.37 Construction of the SRFI would create an average of 688 construction jobs per year. The proposed employment scheme included in the draft DCO and to be agreed with NWLDC would help maximise the proportion of local workers used in the construction phase.
- 5.1.38 Once operational, the development is expected to create 7,272 new jobs. Economic circumstances could vary the rate at which companies take up available space, and jobs are thereby actually created.
- 5.1.39 The assessment of job generation during construction and operation is credible and based on relevant experience from similar major developments.

- 5.1.40 There would be significant benefits from the proposed development in terms of potential employment creation. This would be unlikely to lead to substantial additional housing requirements in the locality beyond those expected to be provided for in local plans; similarly, health and wellbeing impacts would appear to be broadly neutral.

Construction

- 5.1.41 The CMFP provides a framework for construction activities, and a CEMP would be required for each phase of development of the proposed SRFI and highway works. The draft CEMP - Enabling Earthworks (REP6-23, Doc 6.22) provides an example of how the commitments within the CMFP would be delivered.
- 5.1.42 Subject to amendments to R11 of the draft DCO to ensure that all matters relating to construction activities are covered, the environmental impacts of construction would be acceptable.

Land instability, geology, soils, groundwater, earthworks and contamination

- 5.1.43 The underlying geology, and in particular the lack of made ground, and the soils are suitable for the proposed development. There is no evidence that the earthworks calculations and modelling are incorrect and that an overall materials balance could not be achieved. This is subject to recommendations for additional design information in R12.
- 5.1.44 With additional localised contamination reports, R24 and R25 of the draft DCO would deal adequately with the issue of any contamination being encountered.

Air quality

- 5.1.45 There would not be any significant air quality impacts as a result of either the construction or operational phases of the proposed development, provided the modal shift of freight from road to rail takes place as envisaged.
- 5.1.46 Air quality would be one of the matters covered in the CEMP for each phase of the development. Once operational, any negative impacts would be outweighed by the air quality benefits elsewhere, both locally and nationally.

Dust and other potential nuisance

- 5.1.47 Dust emissions during construction would be covered through the submission of DMPs for each phase of the development to be approved by the LPA as part of the CEMP approval under R11 of the draft DCO.

- 5.1.48 Other potential nuisances such as odour, smoke, steam and insect infestations are not considered to be a significant issue, given the particular strategy covering such matters at EMA and recommendations for the content of each CEMP.

Waste management

- 5.1.49 The extent of waste management during the construction phase of the development would be almost entirely dependent on the accuracy of the earthworks modelling that has been undertaken.
- 5.1.50 An additional requirement for the submission of a scheme for waste management applicable to the occupiers of the warehouse buildings on the SRFI site is recommended.

Utilities

- 5.1.51 There would be no significant impact on existing utilities or difficulties in providing for future demands arising from the proposed development.

CONCLUSION

- 5.1.52 Our conclusion is a two stage one. We consider in paragraphs 4.2.57 to 4.2.62 above that the SRFI elements of the application meet the requirements of paragraphs 4.83 to 4.89 of the NPSNN, with the exception of paragraphs 4.83 and 4.88. The criteria in these paragraphs are exacting, however, and go to the heart of the objectives SRFIs are expected to achieve in helping the transfer of freight from road to rail (paragraphs 2.42 to 2.58 of the NPSNN).
- 5.1.53 As the application must be determined in accordance with the NPS, we recommend that the Secretary of State should refuse development consent for this application on the grounds of non-compliance with paragraphs 4.83 and 4.88 of the NPSNN. The application contains two NSIPs covering the highway schemes together with associated development required for the construction and operation of the SRFI as the third NSIP, and as they are inseparable (APP-118, Doc 5.2 Chapter 2 and REP9-13, Doc 3.2C), it follows that such refusal must cover the application as a whole.
- 5.1.54 If the Secretary of State is minded to agree with this recommendation, before reaching a decision he may wish to satisfy himself about the following specific matters to confirm that:
- from the description of the proposed works in Schedule 1 of the draft DCO, the Works Plans (APP-33 to 38, Doc 2.2A to F), and the Illustrative Masterplan (APP-21 to 23, Doc 2.11a to c), none of the proposed warehousing units is intended to be directly rail connected;

- the earliest the rail link can be constructed and brought into use is 3 years after the start of construction, as this is governed by the earthworks programme contained in the CMFP as explained in paragraph 7.117 of the EM (REP9-13, Doc 3.2C); and
- the quantum of warehousing development which would be permitted by R2(2) is the minimum, as the basis for this is the earthworks programme.

5.1.55 In the light of the applicant's responses we refer to in paragraphs 4.2.59 and 4.2.60 above, we are confident of the position in relation to these specific matters leading to our conclusion and recommendation. But the Secretary of State may wish to afford the applicant (and indeed other IPs) a further opportunity to explain their reasoning why they consider this application is compliant (or not in the case of other IPs) with the requirements of paragraphs 4.83 and 4.88 of the NPSNN.

5.1.56 The Secretary of State may reach a different conclusion in relation to compliance of NSIP 1 with the NPSNN. In which case, we conclude that the application is broadly compliant with the other assessment principles and generic impacts set out in the NPSNN. The transportation, socio-economic, and noise impacts of the proposed development would offer significant benefits. The potential disbenefits would be the loss of high quality agricultural land, veteran trees, calcareous grassland and uncertainties over whether carbon reductions would be realised. With the mitigation proposed by the requirements in the draft DCO and some further amendments we suggest, all other impacts from the proposed development would be acceptable, and therefore of overall neutral significance in the balance of benefits and disbenefits.

5.1.57 In the circumstance the Secretary of State concludes the application is compliant with the policy requirements of the NPSNN, then balancing all the adverse impacts of the proposed development against the need for the project to be delivered and other benefits, we conclude there would be a clear justification in favour of granting development consent for the EMGRFI.

5.1.58 If the Secretary of State does conclude that development consent should be granted, then we propose several amendments to the final version of the draft DCO (REP9-11, Doc 3.1D) submitted by the applicant at the conclusion of the examination. These are discussed as they arise in the previous chapter and consolidated in chapter 7, and are reflected in our recommended DCO contained in Appendix D.

6 COMPULSORY ACQUISITION AND RELATED MATTERS

Introduction

- 6.1.1 The draft DCO contains powers of CA of land and rights, and these are set out in Part 5 of the draft Order in articles 24 to 32. These articles also provide for temporary use of land for carrying out the authorised development.
- 6.1.2 The application was accompanied by the appropriate Land Plans showing the Order Land to be subject to CA and temporary use powers (APP-10 to 15, Doc 2.1A-F). Amendments to some of these plans were submitted by the applicant in December 2014 to reflect the updated title of the Secretary of State which had been registered since the submission of the application. Following the removal of the freehold interest in land owned by East Midlands International Airport Ltd from the land proposed for CA⁵³, a revised version of sheet 4 of the Land Plans was submitted in July 2015 (REP9-10, Doc 2.1D).
- 6.1.3 Similarly, Crown Land plans were submitted with the application and revised during the course of the examination to reflect the updated title of the Secretary of State for Transport registered since submission of the application (APP-72 to 74, Doc 2.8A-C). Following the transfer of land owned by the Secretary of State for Transport to HE on 1 April 2015, such land is no longer Crown Land. Accordingly, these Crown land plans have been withdrawn and a new plan was submitted in June 2015 showing just the extent of manorial rights over land owned by HE (REP 8-16, Doc 2.8).
- 6.1.4 The Book of Reference (BoR) was revised on three occasions since the submitted version to reflect these various changes to the title of particular plots, and these were accompanied by documents explaining the various amendments (AS-026, Doc 4.4 and REP8-20, Doc 4.4A). The final version of the BoR therefore consolidates all the changes during the examination (REP9-16, Doc 4.3C). The application was also accompanied by the required Statement of Reasons (APP-77, Doc 4.1) and Funding Statement (APP-78, Doc 4.2).

Proposed powers of acquisition in the draft DCO

- 6.1.5 Article 7 of the draft DCO restricts the powers of acquisition to just Roxhill Developments Group Ltd, Roxhill Developments Ltd and Roxhill (Kegworth) Ltd unless the Secretary of State consents to the transfer of the benefit of these powers. These

⁵³ See paragraph 6.1.41 below

companies are therefore the undertaker for the purposes of the proposed powers of acquisition.

- 6.1.6 Turning to the articles relating to the powers of acquisition in Part 5 of the draft DCO, the guarantees to be provided in respect of payment of compensation in article 24 are discussed in paragraphs 7.1.27 and 7.1.28 of the following chapter with our recommendation that these should be approved by the Secretary of State.
- 6.1.7 Article 25 provides for the CA of land and rights, but which in practice are largely concerned with rights, given the applicant's control over the vast majority of the freehold land required for the proposed development. This article allows for the extinguishment of certain rights of entry onto the land as this may take place before the vesting of the land, and provides a general power to extinguish rights where they are inconsistent with the carrying out and use of the authorised development.
- 6.1.8 Together with Schedule 14, article 25 ensures that compensation is available following the creation of new rights in circumstances such as material detriment. Schedule 14 also incorporates other modifications to compensation and CA enactments which are ordinarily included in DCOs.
- 6.1.9 The purpose of article 26 is to ensure that if land is required pursuant to the power in the draft Order, then it will be acquired free from restrictions. These will be compensatable, but will not prevent the development taking place. Article 27 incorporates the 'mineral code' into the draft Order.
- 6.1.10 Article 28 provides a time limit of 5 years for the exercise of CA powers from the day the Order is made. Article 29 provides for the Compulsory Purchase (Vesting Declarations) Act 1981 to have effect, subject to modifications.
- 6.1.11 Article 30 allows the undertaker, with the agreement of the relevant street authority, to enter on to and appropriate any of the subsoil under or airspace over any street within the Order limits for the purposes of the authorised development.
- 6.1.12 Article 31 allows the undertaker to take temporary possession of the land set out in Schedule 12 for the specified purpose in connection with the carrying out of the authorised development. This article also makes provision for the time limit for return of the land, restoration of the land and payment of compensation. Paragraph (10) incorporates section 13 of the Compulsory Purchase Act 1965 and applies it to the temporary use of the land specified in Schedule 12 of the draft DCO and shown coloured yellow on the Land Plans (APP-10 to 15, Doc 2.1A to F).

6.1.13 Article 32 covers apparatus and rights of statutory undertakers in stopped up streets and is included as the authorised development requires the stopping up of streets. The definition of 'statutory utility' refers to the 1990 Town and Country Planning Act rather than 1980 Highways Act as the applicant argues this interpretation better reflects the utilities whose apparatus may be under the streets. The protective provisions for National Grid also deal with apparatus in stopped up streets (Schedule 15 of the draft DCO). These provisions are complementary to this article and provide more detail which National Grid requires. Following the second ISH dealing with the draft DCO on 2 June 2015 (HG-15 to HG-16), an addition to the protective provision (Schedule 15 paragraph 6(6)) was added to make this clear.

What the Planning Act 2008 (as amended) requires

- 6.1.14 CA powers can only be granted if the conditions set out in s122 and s123 of the PA 2008 are complied with.
- 6.1.15 Section 122(2) requires that the land must be required for the development to which the DCO relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.
- 6.1.16 Section 123 requires that one of three conditions is met by the proposal. We are satisfied that the condition in s123(2) is met because the application for the DCO included a request for CA of the land to be authorised.
- 6.1.17 Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from the CA must outweigh the private loss which would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. But this does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project, and there will be some overlap. There must be a need for the project to be carried out and consistency and coherency in the decision-making process.
- 6.1.18 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:
- all reasonable alternatives to CA must be explored;
 - the applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and

- the purposes stated for the CA are legitimate and sufficiently justify the interference with the human rights of those affected.

The applicant's justification for seeking powers of acquisition

- 6.1.19 As set out in the Statement of Reasons (APP-77, Doc 4.1), the land required for the development, as illustrated on the Land Plans and described in the BoR, extends to approximately 336 ha. The undertaker has secured by agreement the vast majority of the land required for the development. CA powers are sought over some of the land due to the number of third party and unknown interests as set out in Part 3 of the BoR.
- 6.1.20 The applicant states it has followed general compulsory purchase guidance in seeking to acquire interests by agreement before seeking powers of CA. The applicant is committed to seeking to acquire all interests in the Order Land necessary for the delivery of the development through private agreement with land owners and continues to negotiate with land owners to achieve that objective. However, CA powers are sought to ensure that the remaining interests can be acquired in the event that negotiations with any or all of the remaining land owners are unsuccessful. In any event, CA powers will still be required due to the number of unknown interests in the Order Land.
- 6.1.21 The undertaker requires the rights over the areas of land which are set out in the BoR and shown on the Land Plans. When the application was submitted, there were a number of Crown interests in the Order lands relating to the SRN. The HA confirmed that on behalf of the Secretary of State for Transport, it consented to the provision in the draft DCO of the proposed highway works (APP-648, Doc 7.2). However, as noted in paragraph 6.1.3 above, these Crown Land interests no longer exist.
- 6.1.22 A summary table setting out the parcels of land proposed to be subject to powers of acquisition and the respective purposes for which the land/rights are required is set out in the Statement of Reasons (APP-77, Doc 4.1).
- 6.1.23 The proposed acquisition as detailed in the BoR is required in order to carry out the development to which the draft DCO relates. No more land (or rights over land) than is necessary is proposed to be taken. Section 122(2) is therefore complied with.
- 6.1.24 In order to comply with the condition contained in s122(3), it must be shown that there is a compelling case in the public interest for the CA. In this regard, the undertaker relies on the public benefits of the proposal which are identified and detailed in the Planning Statement (APP-638, Doc 6.6).

- 6.1.25 The applicant has considered all reasonable alternatives to CA (including modifications to the scheme) and believes that the application documentation demonstrates that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and that it is necessary and proportionate. The Funding Statement confirms that the undertaker has the means with which to fund the proposed CA.
- 6.1.26 Regard has been had to the provisions of Article 1 of the First Protocol to the European Convention of Human Rights which protects the rights of everyone to the *'peaceful enjoyment of possessions except in the public interest and subject to the conditions provided for by law'*. Any interference with possessions must therefore be proportionate and in determining whether a particular measure is proportionate, a *'fair balance'* should be struck between the demands of the general interest and the protection of the individual's rights.
- 6.1.27 Whilst the beneficiaries of the interests in the Order Land will be deprived of their interest if the draft DCO is confirmed, this will be done in accordance with the law. The Order is being pursued in the public interest as required by Article 1 of the First Protocol.
- 6.1.28 Accordingly, the applicant is satisfied that although the Convention rights are likely to be engaged, the proposed development does not conflict with those rights. It will be proportionate because there is a compelling case in the public interest of the proposals which outweighs in this instance the impact on individual rights.

Objections

- 6.1.29 The only formal objection to the proposed powers of acquisition was received on behalf of Lafarge Tarmac (RR-150) as follows:
- the applicant intends to acquire compulsorily plots 2/11, 2/12, 2/14, 2/17, 2/18 and 2/19, being land leased by Lafarge Tarmac; the applicant has not clearly justified why these plots should be permanently acquired;
 - the temporary use for construction access involving plots 2/15, 2/16 and 2/22 should result in no unreasonable impact on Lockington Quarry and the land appropriately restored;
 - the stopping up of footpath FP73, and the rights required for its diversion over plots 2/20 and 2/21, should not impact on the quarry operations; and
 - the land proposed to be acquired compulsorily includes parts of the quarry which are regulated by environmental

permits for waste operation; should CA occur, Lafarge Tarmac requires an agreement for the applicant to transfer or surrender the relevant part(s) of the permit(s) at their own cost and/or to indemnify Lafarge Tarmac against all costs associated with all subsequent obligations and management of such parts.

- 6.1.30 Nabarro LLP, acting for Lafarge Tarmac, reaffirmed a general objection to CA powers in article 24 (now article 25) in a representation (REP3-03) and again in a more detailed representation covering their interests in specific plots (REP4-13). In their view, the applicant had not clearly justified why each specific plot is needed for the project to progress, or why such large areas of land should be permanently acquired. There was insufficient information as to what specific uses are being proposed on those plots as part of the applicant's scheme to enable the company to make a proper assessment of the potential impacts.
- 6.1.31 The applicant's response was to simply reject these arguments and rely on the Statement of Reasons as setting out the justification for the proposed CA of each plot (REP5-06, Doc 8.5).
- 6.1.32 In view of the formal objection submitted by Lafarge Tarmac, we decided to hold a CAH on 2 June 2015 in order to enable us to consider objections made by affected persons, and to hear the response of the applicant. We invited Lafarge Tarmac as an affected person to attend, but were notified just before the hearing that it would not do so given that discussions were still underway with the applicant (AS-044).
- 6.1.33 The applicant's view was that the recently submitted protective provisions contained in Schedule 21 to the draft Order would deal with the issues raised by Lafarge Tarmac. However, given that the formal objection remained, we advised the applicant to provide a plot by plot justification and this is set out in the applicant's response (REP8-22, Doc 8.9 Appendix 1).
- 6.1.34 Just before the close of the examination, we invited Lafarge Tarmac to confirm the status of their objections to CA powers concerning their land interests. These were maintained, pending approval by the Lafarge Board to final agreement of the terms of a settlement agreement being negotiated with the applicant. Such approval was not yet forthcoming (R17-003).
- 6.1.35 In relation to EMA, some parts of the application site are within the airport company's ownership (RR-067), and the Aviation SoCG (REP4-39, Doc 7.14) states that discussions have been taking place in relation to this land.

6.1.36 We were therefore unsure as to whether EMA actually had a formal objection to CA of their interests, principally plot 4.5 and temporary use of plots 4.4, 5.1, 5.2 and 5.7. However, immediately prior to the CAH on 2 June 2015, a letter was received from Eversheds, on behalf of EMA, stating that agreement had been reached on a range of matters including CA such that EMA also would not be attending the CAH (AS-046).

Conclusions on the case for powers of acquisition

6.1.37 The majority of the application site is the subject of a request for CA powers in one form or another. The main parts of the Order Land excluded from such powers are the existing M1, Junction 24, A50 and A453 all of which are in the ownership of HE.

6.1.38 We consider that alternatives to the proposed development have been satisfactorily considered in relation to the:

- SRFI through the AECOM report (APP-115, Doc 6.15) and our conclusions on this in paragraph 4.2.40 above;
- highway works NSIPs 2 and 3 through responses to our first round of questions (REP-4-44, Doc 8.3 Appendix 2); and
- Kegworth Bypass in the TA (APP-583 and 590, Doc 5.2 Appendix 13.1).

6.1.39 We raised with the applicant questions concerning drafting issues, the BoR, Crown Land, statutory undertakers' interests and the various companies involved as the undertaker (PD-06). In subsequent questions we sought evidence of the financial strength of the applicant to meet the estimated compensation arising from outstanding CA (PD-08).

6.1.40 We ascertained from our first written questions that at March 2015, the applicant already controlled a substantial amount of the Order Land required to carry out the development, both the SRFI and the Kegworth Bypass (REP4-52, Doc 8.3 Appendix 6).

6.1.41 Towards the close of the examination, the applicant confirmed agreement with East Midlands International Airport Ltd in relation to the acquisition of its freehold interest of just over 26ha in plot 4/5 of the Order Land (REP9-19).

6.1.42 As a consequence, such powers of CA are no longer included within the Order (with the consequential amendments to the BoR and the Land Plans covered in paragraph 6.1.2 above). This means that the balance of freehold land remaining to be acquired is 25 mostly very small plots totalling just under 11.5 ha. The request for CA powers in the Order is therefore largely for rights over third party and unknown interests, together with

powers for the temporary use of land for construction purposes and access and rights of way purposes.

- 6.1.43 This in turn has a bearing on the financial resources needed by the applicant to meet the obligations arising from powers of acquisition, if granted. We asked for further evidence of the applicant's financial strength to supplement the somewhat thin financial statement, and the applicant responded that it had access to capital of £105m (REP4-42, Doc 8.3), supported by a letter from the applicant's lawyers (REP4-53, Doc 8.3 Appendix 7).
- 6.1.44 In addition, we asked for an estimate of the total costs of meeting the likely compensation required. The response is that this would be of the order of £5m (REP4-42, Doc 8.3). We sought independent confirmation of this which was provided by a letter from Savills (REP6-21, Doc 8.6 Appendix 11). This is a relatively modest sum in relation to the total costs of carrying out the development, and was before the agreement with East Midlands International Airport Ltd. So our judgement is that the outstanding compensation sum at the end of the examination is likely to be less than this estimate.
- 6.1.45 In the situation where the applicant is a private sector organisation without the fall back resources usually available to a public sector applicant, there would be a risk that the compensation liabilities could not be met. In this case, the likely modest level of compensation payments, coupled particularly with the provisions of article 24 of the draft DCO requiring a guarantee to be in place prior to the exercise of CA powers, we consider is sufficient reassurance that this risk is relatively low.
- 6.1.46 Given that Lafarge Tarmac provided no further evidence for their objections to the proposed CA powers following their representations of 13 February and 5 March 2015 (REP3-03 and REP4-13), and declined to appear at the CAH arranged for the purpose, we are reliant on the applicant's detailed justification for the proposed CA of each plot as identified above (REP8-22, Doc 8.9 Appendix 1). We find this a convincing justification for the proposed CA of each of the plots identified in the objection submitted by Lafarge Tarmac.
- 6.1.47 The draft DCO does not propose powers of CA in respect of any Crown Land, or of any land or rights over Special Category Land. S127 of the PA 2008 was not engaged as no statutory undertakers made any representations about their interests. We are satisfied that the s138 tests are met, i.e. that the extinguishment/interference with any right or removal of apparatus is necessary. Article 7 of the draft DCO would restrict the CA powers to the undertaker only as defined as (a) in article 2 (although the Secretary of State can consent to transfer of these powers).

- 6.1.48 We therefore return to consideration of the application documents and the CA and related matters in the light of s122 and s123 of the PA 2008, relevant guidance, the Regulations⁵⁴ and the Human Rights Act 1998.
- 6.1.49 In this case, s123 of the PA 2008 is satisfied because a request for the CA of land and rights was included in the application for development consent.
- 6.1.50 Section 122 of the PA 2008 requires that the Secretary of State must be satisfied the land is required for the development to which the development consent relates, and that a compelling case in the public interest has been made for CA. In determining whether that compelling case exists, the public interest must be balanced against private loss.
- 6.1.51 In order to conclude that a compelling case has been made for CA, we must be of the view that development consent should be granted for the proposal because the powers are required to bring about that development.
- 6.1.52 In this case, we have concluded that development consent should not be granted for the reasons set out in chapters 4 and 5, which turn on the compliance of the application with paragraphs 4.83 and 4.88 of the NPSNN. In this circumstance, it follows therefore that the request for CA powers in the draft DCO should not be agreed.
- 6.1.53 The Secretary of State may however conclude that this application is consistent with the NPS, and so we set out in chapter 5 that taking all the other issues considered in the examination into account, the benefits of the proposal would outweigh the disbenefits and we recommend that development consent should be granted.
- 6.1.54 In that situation, we are satisfied that all of the rights subject to the proposed powers of acquisition are required to carry out the development. This is having considered in particular the Land Plans (AS-015 to 018, APP-12 and REP9-10, Doc 2.1A to F), the Statement of Reasons (APP-77, Doc 4.1), the BoR (REP9-16, Doc 4.3C) the description of the authorised development in Schedule 1 of the draft DCO, and the Works Plans (APP-33 to 38, Doc 2.2A to F).
- 6.1.55 We are clear that whilst agreements for outstanding land and rights might be in place in due course, this does not take away the need for the CA powers in the draft Order. This is because the project must be planned and carried out without risk of one

⁵⁴The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010

or more parties holding it up or preventing it from being delivered.

- 6.1.56 If therefore the Secretary of State decides that development consent should be granted, we conclude that the compelling case in the public interest has been made under s122 and s123 of the PA 2008 and so recommend that the CA powers in the draft DCO should be granted.

Human Rights Act considerations

- 6.1.57 We have considered the rights under the Human Rights Act 1998. In the Statement of Reasons the applicant considers that Article 1 of the First Protocol to the European Convention of Human Rights is applicable. We have also taken into account Articles 6 and 8 in terms of those affected by the proposed CA and temporary use of land:

- Article 1 covers the rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with;
- Article 8 protects the rights of the individual to respect for private and family life; and
- Article 6 entitles those affected by the project to a fair and public hearing by an independent and impartial tribunal.

- 6.1.58 As set out above at paragraph 6.1.28, the applicant is satisfied that although the Convention rights are likely to be engaged, there is a compelling case in the public interest for the proposals which outweighs in this instance the impact on individual rights.

- 6.1.59 We are satisfied that in relation to Article 1 of the First Protocol and Article 8 the proposed interference with the individuals' rights would be lawful, necessary, proportionate and justified in the public interest.

- 6.1.60 In relation to Article 6 we are satisfied that all objections which have been made have either been resolved by the applicant with the objectors or they have had the opportunity to present their cases before us at the CAH.

Recommendation on including compulsory acquisition powers in the Order

- 6.1.61 For the reasons set out in this chapter, we are satisfied that the case has been made that all of the land included in the BoR and Land Plans is required either for the development, or to facilitate it, or as incidental to it.

- 6.1.62 We have concluded that development consent should not be granted for the reasons set out in chapters 4 and 5. It follows

therefore that the request for CA powers in the draft DCO should not be agreed.

- 6.1.63 If, however, the Secretary of State decides that development consent should be granted, its delivery would be jeopardised in the absence of the CA powers, and the temporary use of land intended as set out in article 31 and Schedule 12 of the draft DCO. Interference with persons and affected land interests is proportionate to the benefits that would be brought about by the development. In this situation, we conclude that the compelling case in the public interest has been made out.
- 6.1.64 In relation to the objections referred to above, we do not consider that the private losses suffered are such as to outweigh the public benefits that would accrue from the grant of the CA powers which are sought.
- 6.1.65 With regard to the incorporation of other statutory powers pursuant to s120(5)(a) we are satisfied that as required by s117(4) the DCO has been drafted in the form of a statutory instrument, and that no provision of the draft DCO contravenes the provisions of s126 which preclude the modification of compensation provisions.

7 DRAFT DEVELOPMENT CONSENT ORDER

Evolution of the draft Order

- 7.1.1 The application included a draft Order (APP-06, Doc 3.1), accompanying EM (APP-07, Doc 3.2), and Heads of Terms for draft DCOs (APP-635, Doc 6.4).
- 7.1.2 The draft DCO is unusual in that it contains three NSIPs as well as a range of works comprising associated development. NSIP 1 is the proposed SRFI itself (Works Nos. 1 to 6), accompanied by NSIPs 2 (Work No. 7) and 3 (Work No. 8), which are construction and alteration of the highways. Associated development includes the proposed Kegworth Bypass, other highway alterations, landscaping and flood alleviation works (Works Nos. 9 to 13). The draft DCO provides for CA powers and a range of protective provisions for various organisations whose interests are affected by the proposed Order.
- 7.1.3 Heads of Terms for draft DCOs to accompany the DCO were a unilateral undertaking offered by the applicant to Nottinghamshire County Council, and an agreement between the applicant, the principal landowner, NWLDC and LCC.
- 7.1.4 Following the acceptance of the application on 19 September 2014, the applicant submitted a number of documents in November and December 2014 as set out in paragraphs 2.1.23 and 2.1.24 above. These comprised some additional and amended plans, explanations to clarify matters relating to European sites and the BoR (including a revised version), additional SoCGs, a revised draft DCO, and draft DCOs and s278 agreements.
- 7.1.5 We decided to accept all these documents and a number of other documents from other parties (AS-037 to 042), all of which were published and available to all IPs prior to the PM.
- 7.1.6 We decided to hold an ISH very early in the examination programme to deal with the draft DCO. We tabled a number of questions concerning various articles and Schedules in the draft DCO with our first written questions issued on 19 January (PD-06), and these together with a large number of detailed points we had provided in advance (HG-03) were discussed with the applicant at the first ISH dealing with the draft DCO on 4 February 2015 (HG-04 to HG-06). In the light of that, we asked for a revised draft DCO (REP4-28, Doc 3.1B) and EM (REP4-30, Doc 3.2A) to be submitted to us for deadline IV on 6 March 2015.
- 7.1.7 We put several further questions about this revised draft DCO in our second written questions issued on 17 April 2015 (PD-08),

and in a similar way brought these together at the second ISH dealing with the draft DCO on 2 June 2015 (HG-15 to HG-16).

- 7.1.8 For that hearing, the applicant submitted a schedule of proposed changes to the draft DCO and the DCOB with NWLDC and LCC, including drafts of protective provisions which to that date had not been supplied (AS-045, Doc 8.7). We provided to the applicant a detailed schedule of minor amendments and more substantive comments in the form of an annotated version of the draft DCO (HG-14), and these matters were then discussed in detail at the hearing.
- 7.1.9 Subsequently, we issued a schedule of proposed action points (HG-17) for consideration by the applicant in submitting a revised draft DCO (REP8-18, Doc 3.1C) and revised EM (REP8-15, Doc 3.2B) by deadline VIII on 19 June 2015. This was in readiness for a third and final ISH to deal with matters relating to the draft DCO on 1 July 2015 (HG-29 to HG-30).
- 7.1.10 Following the ISH, we issued a further schedule of action points (HG-31) and the applicant submitted the final version of the appropriate documents for deadline IX on 9 July 2015. These included the final draft DCO (REP9-11, Doc 3.1D), revised EM (REP9-13, Doc 3.2C) and the BoR (REP9-16, Doc 4.3C).
- 7.1.11 The applicant also submitted a version of the draft DCO containing all the changes from the version submitted with the application to the final version (REP9-08). This is a testimony to the substantial changes made to the draft DCO during the course of the examination as a result of discussions at the three ISH, and the willingness of the applicant to respond to the many suggestions and comments we raised.

General matters

- 7.1.12 In the light of the detailed attention given to the draft DCO between ourselves and the applicant, together with the IPs principally concerned (LCC, NWLDC and HE), the final version of the draft DCO (REP9-11, Doc 3.1D) represents the outcome of the of the examination process. Many matters were agreed, including with various parties whose assets may be affected by the authorised development. These are reflected in Schedules 15 to 21.
- 7.1.13 These agreed matters are contained in this final version of the draft DCO and the accompanying revised EM which means that no further comment about them in this report is necessary. If we have made no mention of particular articles or other draft Order provisions the Secretary of State can be clear we are satisfied they are appropriate, and the reasons for seeking the powers have been adequately explained in the version of the EM

updated and submitted at the end of the examination (REP9-13, Doc 3.2C)

- 7.1.14 However, several matters are of sufficient significance to warrant a brief explanation, and those few remaining matters which were not agreed require a discussion and recommendation from us as the ExA.
- 7.1.15 We are satisfied that the description of the proposed authorised development in Schedule 1 of the draft DCO and in the EM is accurate in terms of the 3 NSIPs (Works Nos. 1 to 8), associated development (Works Nos. 9 to 13) and further works. It is notable that some elements of associated development are substantial works in their own right (particularly the Kegworth Bypass, Works No. 11), but we conclude these are legitimately subordinate to the principal development and therefore meet the tests of s115(2) of the PA 2008.
- 7.1.16 In terms of overall structure, the draft DCO consists of 42 articles which provide the principal powers for carrying out the authorised development, including CA powers. There are 21 Schedules including the range of works comprising the authorised development in Schedule 1, the requirements controlling the authorised development in Schedule 2, and protective provisions for a range of organisations in Schedules 15 to 21.
- 7.1.17 The most significant structural change to the draft DCO during the examination was bringing into the Schedules (19 and 20) matters concerning the construction of the highways. When the application was first submitted, these were intended to be dealt with as separate s278 agreements. In our view, to leave them for subsequent or in parallel agreement between the parties would mean they would not be subject to approval as part of the Order. At the first ISH dealing with the draft DCO (HG-04 to HG-06), we expressed to the applicant, the HA and LCC that given the significance to the integrity and implementation of the Order, our strong preference was for these matters to be contained within the DCO. This approach was agreed, and all subsequent revisions of the draft DCO have proceeded on this basis (see paragraph 2.20 of the EM REP9-13, Doc 3.2C).
- 7.1.18 The next general matter is the balance to be struck between providing sufficient certainty as to what is being approved by the Order, and the applicant's desire for flexibility during implementation to meet the commercial requirements of occupiers of the SRFI who are not yet known at this stage. The principal plans showing the highways and railway works are the

Regulation 6(2)⁵⁵ plans (APP-46 to 59, Doc 2.4A to N). Those showing the proposals for the warehousing are the Parameters Plans pursuant to Regulation 5(2). They provide the 'Rochdale Envelope' for the purposes of the SRFI site by setting out the maxima for the number of warehousing units, floorspace, building heights and the plateau level for each development zone (AS-006 to 008, Docs 2.10A to C).

- 7.1.19 The subsequent control of detailed development is secured through articles 4 and 42, the description of the works in Schedule 1, the requirements in Schedule 2 and, in relation to the highway works, Schedules 19 and 20. We had considerable discussion with the applicant in the three ISH dealing with the draft DCO about these matters, including the drafting of tailpiece provisions in many of the requirements.
- 7.1.20 We are satisfied that the final draft of article 42 would ensure that the approval of subsequent details or plans under the requirements or Schedules 19 and 20 must be within the authorised development, whilst allowing for the amendment of such details. Nonetheless, where requirements contain tailpiece type provisions which we consider are not appropriate in the context of the final version of article 42, we recommend in paragraph 7.1.37 below that these should be removed from the DCO.

Specific elements of the draft DCO

Articles

- 7.1.21 Turning to specific elements of the draft DCO, our understanding of the purpose of article 5(2) as originally drafted was to provide for any future planning permission on the EMGRFI site granted under TCPA 1990, such as housing or hotels, outside the range of development possible under the PA 2008 to be secure from risk of a breach of the Order⁵⁶. The final version of this article also now effectively provides for permitted development, previously specifically set out in article 8.
- 7.1.22 During the course of the third ISH dealing with the draft DCO, the applicant confirmed that permitted development would not be actioned if it led to likely significant environmental impacts (REP9-15, Doc 8.11)⁵⁷. We consider, however, that any permitted development should be explicitly within the parameters of authorised development, for example the maxima set out in the Parameters Plans, and not in addition.

⁵⁵ The Infrastructure Planning (Applications Prescribed Forms and Procedure) Regulations 2009

⁵⁶ Such a breach is a criminal offence under s161 of the PA 2008

⁵⁷ Such development would not be permitted by virtue of article 3 (10) of the GPDO 2015

- 7.1.23 For this reason, we propose that article 5(2) should be amended by the addition of the words '**subject to article 4**' at the end of the sub-paragraph.
- 7.1.24 In article 8(3), the applicant seeks to disapply s174(3) of the PA 2008 which provides that the Secretary of State shall be the appropriate authority for approving any changes to a development consent obligation. We reminded the applicant that the Secretary of State has not accepted this provision sought in a recent Order⁵⁸.
- 7.1.25 The applicant's response is that as the Secretary of State would not be involved in the determination of a DCO, which is a matter of agreement between the local authorities and the applicant, to require the consent of the Secretary of State to any subsequent changes seems unnecessary (REP4-42, Doc 8.3, REP8-30, Doc 8.10 and REP9-13, Doc 3.2C). We are inclined to agree with the applicant's argument, and therefore recommend that article 8(3) is approved as drafted.
- 7.1.26 We were somewhat doubtful of the justification for the inclusion of article 21, given that its purposes appear to provide for circumstances which are not known at this stage, and it is therefore included on a contingent basis. However, in view of the discussion at the third ISH dealing with the draft DCO, and the reasoning in paragraphs 7.58 to 60 of the EM (REP9-13, Doc 3.2C), we are content that this article should remain in the draft Order.
- 7.1.27 We were content with the introduction of article 24 by the applicant during the examination concerning the requirement to provide guarantees in advance of implementing CA powers. In our view, it is important to be sure to whom the guarantee is provided and is being asked to give approval.
- 7.1.28 Following discussion at the third ISH dealing with the draft DCO with both the applicant and NWLDC as recorded at paragraph 7.65 of the EM (REP9-13, Doc 3.2C), we propose that this responsibility should rest with the Secretary of State rather than the LPA. This is because:
- (a) the exercise of CA powers is a serious interference with the rights of those with interests in the Order Land; and
 - (b) article 7 of the draft DCO already requires that any change to those who would have the benefit of these powers would require the consent of the Secretary of State.

⁵⁸ Daventry International Rail Freight Interchange Alteration Order 2014, S.I. 2014 1796

Accordingly, we recommend that the words '**the local planning authority or**' should be deleted from article 24(1)(a) and (b).

Schedule 1

- 7.1.29 During the examination the applicant revised the approach to 'further works development' at both the SRFI itself and the main highway works set out in the draft DCO following Works No. 13. We remain concerned about the wide range of possible development which would be authorised without knowing clearly what is envisaged, and which would only need to fall within the parameters of the authorised development set by article 4. Plainly, at this stage of the process some flexibility is required to provide for unforeseen elements of construction, but the phrase used we consider is too broad.
- 7.1.30 We recommend therefore the insertion of the word '**minor**' before 'works' in sub-paragraphs '(1)(d), 2(l) and (3)(r)' following Works No. 13.

Schedule 2

- 7.1.31 As set out in paragraph 4.7.23 above, LCC argued that R2(1) should be amended to include archaeology (REP9-02). We agree, and therefore recommend that the words '**and the schedule of archaeological works (Document 6.24)**' should be added after the reference to 'the CMFP (Document 6.10)' in R2(1).
- 7.1.32 Further to paragraph 4.18.10 above, in order to ensure that smoke emissions are controlled during the construction phase, from burning of materials on site for example, we recommend adding '**including smoke**' after other 'emissions' in R11(b).
- 7.1.33 As noted above paragraphs 4.9.35 and 4.19.7 above, invasive species are classified as 'controlled waste' and must be disposed of in a licensed landfill site. To properly provide for dealing with such controlled wastes we recommend '**including controlled wastes**' after 'construction waste management' in R11(e).
- 7.1.34 There is no reference to landscaping details in R11 of the draft DCO. For the sake of consistency and completeness therefore, we recommend '**details of existing and proposed landscaping which need to be protected during construction**' is added the list of matters as R11(p).
- 7.1.35 The amendments to R11 of the draft DCO as recommended by LCC would assist in clarifying the purpose of the R11 criteria and therefore we propose insertion of the words '**to address unacceptable impacts arising from construction works. Each CEMP must be submitted...**' after 'if necessary' in the first line of clause (2) of R11.

7.1.36 We consider R12 of the draft DCO to be lacking in requiring sufficient further details regarding the overall earthworks for the scheme. Therefore, we recommend that R12 of the draft DCO also contains a requirement to submit the relevant details that would accord with the recommended Earthworks Specification and the detailed design information on cutting slopes and embankment design. In order to improve the clarity of this amended requirement and make it less unwieldy, we propose it is redrafted as follows:

'12-No phase of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)) is to commence until details of:

- (i) the earthworks strategy relating to that phase of development including the management and protection of soils;***
- (ii) an Earthworks Specification for each phase of the development;***
- (iii) cutting slopes and embankment design that would accord with the approved Earthworks Specification;***
- (iv) the extent of any material to be temporarily stored within the site; and***
- (v) any surplus material to be removed from the site for disposal or material to be imported to the site***

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

7.1.37 We propose the tailpiece is removed from R14(2) of the draft DCO by the deletion of ***'from time to time'*** in line 2.

7.1.38 We recommend that the first clause of R24 of the draft DCO should be amended by the insertion of an additional first sentence to read as follows:

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

7.1.39 The second clause of R24 of the draft DCO should be amended by the insertion of ***'detailed'*** after 'contamination (as...)' in line 2.

7.1.40 In order to provide some reassurance that waste management is controlled in the operational stages of the proposed development at the SRFI site we recommend a new requirement (R26) within the draft DCO:

'26-Waste management during the operational phase

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

7.1.41 Finally, we suggest a number of minor corrections to the draft Order to achieve consistency and style, and these are indicated in the text.

Obligations

7.1.42 A development consent obligation by unilateral undertaking was completed with Nottinghamshire County Council, providing for a contribution by the applicant to minor highway works at Kingston Crossroads (REP8-28, Doc 6.4D).

7.1.43 An obligation by agreement with North West Leicestershire District Council and Leicestershire County Council was completed (REP8-31, Doc 6.4E), providing for:

- financial contributions to secure a implementation of the SWTP;
- a community fund of £300,000 for community facilities in the parishes of Kegworth, Lockington cum Hemington and Castle Donington;
- financial contributions towards footpaths and archaeological management;
- a local employment scheme; and
- participation in an economic partnership to realise the development opportunities of the proposed development.

7.1.44 Whilst these are not for approval by the Secretary of State, we consider they meet the tests set out in paragraph 204 of the NPPF, and as they are agreed and signed should be accorded appropriate weight in reaching a decision about whether the Order should be confirmed.

Recommendation concerning the Order

7.1.45 We are satisfied that the description of the authorised development in Schedule 1 of the draft Order comprises development falling within the terms of s14, s22, s26 and s115 of the PA 2008 and further that the provisions and requirements in the draft DCO fall within the terms of s120 of the PA 2008.

7.1.46 We recommend that development consent should not be granted by the Secretary of State for the East Midlands Gateway Rail Freight Interchange, but if he disagrees then the final form of the Development Consent Order we recommend is that in Appendix D.

8 CONCLUSIONS AND RECOMMENDATIONS

- 8.1.1 In coming to our overall conclusions, we have had regard to the matters listed in s104 of the PA 2008 as amended, including the NPSNN and the LIRs submitted by LCC, NWLDC and DCC.
- 8.1.2 We have considered all important and relevant matters and conclude, for the reasons stated in this report, that the Secretary of State should refuse development consent for this application as a whole on the grounds of non-compliance of NSIP 1 with paragraphs 4.83 and 4.88 of the NPSNN. If the Secretary of State is minded to agree with this, before reaching a decision he may wish to satisfy himself about certain matters we suggest in paragraph 5.1.54 above.
- 8.1.3 Should the Secretary of State reach a different conclusion in relation to compliance of NSIP 1 with the NPSNN, then subject to the modifications to the draft Order that we propose, the adverse impacts of the proposed development in the application for the EMGRFI as a whole would not outweigh its benefits.
- 8.1.4 We have also considered the request for powers of CA to be included in any Order that is made. We conclude that in the situation where development consent for the application is granted, a compelling case is justified in the public interest for the grant of the CA powers sought by the applicant in respect of the land and rights shown on the Land Plans and described in the BoR.

RECOMMENDATION

- 8.1.5 As the Examining Authority under s74 of the Planning Act 2008, we recommend that development consent for the East Midlands Gateway Rail Freight Interchange should not be granted on the grounds of non-compliance with the relevant National Policy Statement. If, however, the Secretary of State decides to grant development consent, we recommend an Order is made under s114 of the Planning Act 2008 in the form at Appendix D.

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APPENDIX A - THE EXAMINATION

The table below lists the main events occurring during the examination:

	Event	Dates
1	Preliminary Meeting	12 January 2015
2	Issue by Examining Authority (ExA) of: <ul style="list-style-type: none"> • Examination timetable • ExA's first written questions 	19 January
3	Deadline I Deadline for receipt by ExA of: <ul style="list-style-type: none"> • Notification of wish by interested parties to make oral representations at the issue specific hearing on the draft Development Consent Order (draft DCO) to be held on 4 February 2015 • Written notification by statutory parties of wish to be considered as an interested party • Suggestions from interested parties recommending particular locations the ExA should visit during the accompanied site inspection on 3 February 	12 noon 23 January
4	First accompanied site inspection	3 February
5	First issue specific hearing dealing with matters relating to the draft DCO	4 February
6	DEADLINE II Deadline for receipt by ExA of: <ul style="list-style-type: none"> • Notification of wish to speak at a compulsory acquisition hearing • Notification of wish to speak at an open floor hearing 	12 noon 11 February

7	<p>DEADLINE III</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Written summaries of oral submissions put at issue specific dealing with matters relating to the draft DCO held on 4 February 2015 • Comments by the applicant and any other interested parties on relevant representations (RRs) already submitted • Summaries of all RRs exceeding 1500 words 	12 noon 13 February
8	<p>DEADLINE IV</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Comments on additional documents submitted by the applicant on 10 November and 19 December 2014 • Written representations (WRs) by all interested parties • Summaries of all WRs exceeding 1500 words • Responses to ExA's first written questions • Local Impact Reports (LIRs) from local authorities • Statements of Common Ground (SoCGs) requested by the ExA – see Annex D • Updated draft DCO and Explanatory Memorandum from the applicant 	12 noon 6 March
9	<p>DEADLINE V</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on Local Impact Reports 	12 noon 7 April

	<ul style="list-style-type: none"> Comments on responses to ExA's first written questions 	
10	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> Second written questions 	17 April
11	<p>DEADLINE VI</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> Responses to ExA's second written questions 	12 noon 8 May
12	<p>DEADLINE VII</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> Comments on responses to ExA's second written questions 	12 noon 29 May
13	Second issue specific hearing dealing with matters relating to the draft DCO	2 June (am)
14	Compulsory acquisition hearing	2 June (pm)
15	Issue specific hearing dealing with matters relating to traffic and transportation	3 June
16	Open floor hearing (in morning, afternoon and evening sessions)	10 June
17	Second accompanied site inspection	11 June
18	<p>DEADLINE VIII</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> Written summaries of oral submissions put at any hearings held between 2 and 12 June 2015 	12 noon 19 June
19	Third issue specific hearing dealing with matters relating to the draft DCO	1 July 2015
20	<p>DEADLINE IX</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> Written summaries of oral submissions put at any hearings held on 1 and 2 	12 noon 9 July

	<p>July 2015</p> <ul style="list-style-type: none"> Any further information requested by the ExA 	
21	<p>DEADLINE X</p> <p>The ExA was under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.</p> <p>The examination was closed on 12 July 2015.</p>	12 July 2015

APPENDIX B – EXAMINATION LIBRARY

This document library relates to the East Midlands Gateway Rail Freight Interchange application by Roxhill (Kegworth) Ltd. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate.

The documents within the library are categorised either by document type or by the deadline to which they are submitted. A unique reference is given to each document and these references are used in the report as explained in paragraph 1.1.4.

All documents listed have been published to the Planning Inspectorate's website and a hyperlink is provided for each document. They are all available to view [here](#).

Please note the following:

- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate is published on the Planning Inspectorate's website but is not included within the document library as such advice is not an examination document.
- The order of documents within each sub-section is chronological, numerical or alphabetical and confers no priority or higher status on those that have been listed first.

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Project Document Library – Index**

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Preliminary Meeting	PM-xx
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Accompanied Site Inspections	ASI-xx
Rule 17 - issued on 15 April 2015	REP-xx
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APP-616	Appendix O1: TMR3 Development Assessment Report
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Environmental Statement (Doc 5.3)	
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Other documents submitted with the application	
APP-633	Doc 6.2 Section relating to section 79(1) Environmental Protection Act 1990
APP-634	Doc 6.3 Report on European Sites
APP-635	Doc 6.4 Draft Development Consent Obligations - Heads of Terms
APP-636	Doc 6.5A Short Document – Summary of the EMG Proposals - January 14
APP-637	Doc 6.5B Short Document – Summary of the EMG Proposals - May 2014
APP-638	Doc 6.6 Planning Statement
APP-639	Doc 6.9 Design and Access Statement (Part 1)
APP-640	Doc 6.9 Design and Access Statement (Part 2)
APP-641	Doc 6.10 Construction Management Framework Plan (Superseded – see REP8-09 to 12)
APP-642	Doc 6.11 Site Waste Management Framework Plan

APP-643	Doc 6.12 Strategy for Safeguarding East Midlands Airport
APP-644	Doc 6.14 Construction Management Strategy Derwent Valley Aqueduct
APP-645	Doc 6.16 Mitigation Tracker
APP-646	Doc 6.17 Existing Highway Orders
APP-647	Doc 7.1 Planning SoCG - North West Leicestershire DC, Leicestershire CC
APP-648	Doc 7.2 Transport SoCG – Highways Agency
APP-649	Doc 7.2A Transport SoCG – Derbyshire County Council
APP-650	Doc 7.2B Transport SoCG – Nottinghamshire County Council
APP-651	Doc 7.2C Transport SoCG – Leicestershire County Council
APP-652	Doc 7.2D Transport SoCG – Nottingham City Council
APP-653	Doc 7.2E Transport SoCG – Derby City Council
APP-654	Doc 7.3 Rail SoCG – Network Rail
APP-655	Doc 7.4 Flood Risk SoCG – Environment Agency
APP-656	Doc 7.5 Geology SoCG - Environment Agency, North West Leicestershire DC, Leicestershire CC and Highways Agency
APP-657	Doc 7.6 Utilities SoCG – Severn Trent Water
APP-658	Doc 7.7 Heritage SoCG – Leicestershire County Council
APP-659	Doc 7.7A Heritage SoCG – English Heritage
APP-660	Doc 7.8 Air Quality SoCG – North West Leicestershire District Council
Additional Submissions	
Pre-examination	
Revised application documents related to section 51 advice (November 2014)	
AS-001	Applicant’s Response to s51 Advice
AS-002	Doc 1.5A Highway NSIP Component Plans - November 2014
AS-003	Doc 1.6A Revised Document List - November 2014
AS-004	Doc 2.8A Replacement (Crown-Manorial) (Withdrawn – see REP8-16)
AS-005	Doc 2.10 Parameters Plan - Key Layout

AS-006	Doc 2.10A Parameters Plan - Sheet 1
AS-007	Doc 2.10B Parameters Plan - Sheet 2
AS-008	Doc 2.10C Parameters Plan - Sheet 3
AS-009	Doc 6.3A Supplementary Note on European Sites
AS-010	Doc 6.18 Other Reports - Category 3 Note
AS-011	Doc 7.9 Ecology SoCG - Natural England
Revised application documents submitted in December 2014	
AS-012	Applicant seeking permission to submit other information
AS-013	Covering Letter
AS-014	Doc 1.6B Document List
AS-015	Doc 2.1A Land Plan - Sheet 1
AS-016	Doc 2.1B Land Plan - Sheet 2
AS-017	Doc 2.1E Land Plan - Sheet 5
AS-018	Doc 2.1F Land Plan - Sheet 6
AS-019	Doc 2.4A General Arrangement Plan - J24A & J24
AS-020	Doc 2.8A Crown Land Plan - Sheet 1 (Withdrawn – see REP8-16)
AS-021	Doc 3.1A Draft DCO (Clean)
AS-022	Doc 3.1A Draft DCO (Tracked)
AS-023	Doc 3.3 Draft DCO (Tracker)
AS-024	Doc 4.3A Book of Reference (Clean)
AS-025	Doc 4.3A Book of Reference (Tracked)
AS-026	Doc 4.4 Book of Reference - Amendments Explained
AS-027	Doc 5.4 Noise (Errata Note)
AS-028	Doc 6.4A Draft Development Consent Obligation - Unilateral Undertaking: Nottinghamshire County Council
AS-029	Doc 6.4B Draft Development Consent Obligation - North West Leicestershire DC, Leicestershire CC

AS-030	Doc 6.19 Section 38 and 278 Agreement Leicestershire County Council
AS-031	Doc 6.20 Section 278 Agreement SoS for Transport
AS-032	Doc 6.21 Explanatory Note - Amended Regulation 6(2) - Plan (Doc 2.4A)
AS-033	Doc 7.9A Ecology SoCG - Leicestershire County Council
AS-034	Doc 7.10 Noise SoCG - North West Leicestershire County Council
AS-035	Doc 7.11 Archaeology SoCG - Leicestershire County Council
AS-036	Submission of New Material - Table
Other documents received following acceptance	
AS-037	Alison Faleiro
AS-038	Andrew Bridgen MP
AS-039	Derbyshire County Council
AS-040	Derbyshire County Council
AS-041	Julie McCarthy
AS-042	Contact Details Correction Letter to the Applicant
Additional and late representations, and other documents received during examination	
AS-043	Royal Mail - Late WR - 21 May 2015
AS-044	Lafarge Tarmac Trading Ltd - Email confirming position on compulsory acquisition matters received on 26 May 2015
AS-045	Doc 8.7 Applicant's Schedule of Proposed Changes to the Draft DCO and Draft Development Consent Obligation - 27 May 2015
AS-046	East Midlands Airport - Email confirming position on Compulsory Acquisition matters - 1 June 2015
Adequacy of Consultation Representations	
AoC-01	Charnwood Borough Council
AoC-02	Leicestershire County Council
AoC-03	Lincolnshire County Council
AoC-04	North Warwickshire Borough Council
AoC-05	North West Leicestershire District Council

AoC-06	Nottinghamshire County Council
AoC-07	Rutland County Council
AoC-08	Staffordshire County Council
Procedural Decisions and Notifications	
PD-01	Notification of Decision to Accept Application
PD-02	Post-Acceptance s51 Advice
PD-03	Section 55 Acceptance of Applications Checklist
PD-04	Rule 6 (and Rule 4) Letter
PD-05	Rule 8 Letter
PD-06	Examining Authority's First Written Questions
PD-07	Rule 17 Letter - Request for further information - 1 April 2015
PD-08	Examining Authority's Second Written Questions
PD-09	Rule 9 - Notification to Interested Parties informing of the Examining Authority's response to Nabarro LLP re request for CA Hearing in July 2015
PD-10	Rule 9 - Examining Authority's response to Nabarro LLP regarding a request for a Compulsory Acquisition Hearing in July 2015
PD-11	Rule 17 Letter – Request for further information - 2 July 2015
PD-12	Section 99 Letter - Notification of Completion of the Examination
Relevant Representations	
RR-001	A R Pegg & Others (Nigel Kirk representing)
RR-002	Adrian Connor
RR-003	Adrian Keane
RR-004	Alison Green
RR-005	Alison Moore
RR-006	Alison Smith
RR-007	Alistair R Smith
RR-008	Allison Bourke
RR-009	Amanda Barlow

RR-010	Amanda Keane
RR-011	Andrew Cawdell
RR-012	Andrew Fielden
RR-013	Andrew Hunt
RR-014	Andrew McWilliam
RR-015	Andrew Swift
RR-016	Andrew Walsh
RR-017	Angela M Ward
RR-018	Anita Howells
RR-019	Anne Meadows
RR-020	Anne Riches
RR-021	Anthony Hill
RR-022	Anthony Richardson
RR-023	Archie Mitcheson
RR-024	Arthur Walsh
RR-025	Barbara Lees
RR-026	Barnett Jones
RR-027	Barry Cooper
RR-028	Barry Travers
RR-029	Beth Cole
RR-030	Beth Green
RR-031	Bev Holmes
RR-032	C Dawson
RR-033	Campaign to Protect Rural England
RR-034	Caroline Maley
RR-035	Carolyn Thraves

RR-036	Carolyn Woods
RR-037	Castle Donington Parish Council
RR-038	Charles Grimshaw
RR-039	Charles Grist
RR-040	Charnwood Borough Council
RR-041	Chris Hills
RR-042	Christine Sleight
RR-043	Christopher Mark Dakin
RR-044	Claire Higgins
RR-045	Colin Burton
RR-046	Colin Derrett
RR-047	Dagmar Basquill
RR-048	Danielle Ward
RR-049	Darren Smith
RR-050	Dave Richards
RR-051	Dave Snedker
RR-052	David Bamford
RR-053	David Clarke
RR-054	David Evans
RR-055	David Farmer
RR-056	David Hooper
RR-057	David Lobb
RR-058	David Mark Singleton
RR-059	David Tuck
RR-060	Dean Westmoreland
RR-061	Debbie Saunders

RR-062	Deborah Swift
RR-063	Denise Boulton
RR-064	Derek Plucknett
RR-065	Dr Michael Bainbridge
RR-066	Dr W L Lim
RR-067	East Midlands Airport
RR-068	Edward C Willmott
RR-069	Elaine P Hall
RR-070	Elizabeth Marsden
RR-071	Elizabeth Wood
RR-072	Elizabeth Yeomans
RR-073	Emma Clowes
RR-074	English Heritage (The Historic Buildings and Monuments Commission for England)
RR-075	Environment Agency
RR-076	F Blackburn
RR-077	Fiona Hennessy
RR-078	Fiona Thompson
RR-079	Frank Riley
RR-080	Fraser Thompson
RR-081	Gabriel Ward
RR-082	Gareth Clowes
RR-083	Garry Mosley
RR-084	Geoff Harrison
RR-085	Goodman Shepherd (UK) Limited (Toni Weston representing)
RR-086	Graeme Mitcheson

RR-087	Graham Cameron
RR-088	Graham Coulton
RR-089	Greg Booth
RR-090	Grenville Morris
RR-091	Hannah Allen
RR-092	Hazel Norwell
RR-093	Heather Wakefield
RR-094	Helen Dakin
RR-095	Helen Forman
RR-096	Helen Jones
RR-097	Helene Smith
RR-098	Highways Agency
RR-099	Hilary Tansley
RR-100	Ian Beard
RR-101	Ian Earley
RR-102	Ian Forman
RR-103	Ian Ward
RR-104	Iris Plucknett
RR-105	Isaac Mitcheson
RR-106	J Chambers
RR-107	J N Aust
RR-108	Jackie Richards
RR-109	Jacob Swift
RR-110	James Carter
RR-111	James Evan Proffitt
RR-112	Jamie Wheldon

RR-113	Jane Ann Oldfield
RR-114	Jane Hawkins
RR-115	Janice Evans
RR-116	Jayne Mitchell
RR-117	Jean Eckersley
RR-118	Joanne Boshell
RR-119	Joanne Cooper
RR-120	Joanne Crockett
RR-121	John Hallam
RR-122	John Hurley
RR-123	John McEntee
RR-124	John McLelland
RR-125	John Mitchell
RR-126	John Morgan
RR-127	John Rutter
RR-128	John Scutter
RR-129	John Smith
RR-130	John Whitmarsh
RR-131	John Wisher
RR-132	John Worsley
RR-133	Jon Culley
RR-134	Jonathan Ibbotson
RR-135	Jonathan Layton
RR-136	Joyce Starkie
RR-137	Junction 24 Action Group (Emma Clowes representing)
RR-138	Karen Dayman

RR-139	Karen Riley
RR-140	Karen Whiting
RR-141	Kate Tolson
RR-142	Katy Thompson
RR-143	Kay Stevens
RR-144	Kegworth Parish Council
RR-145	Keith Sumner
RR-146	Kelly Ryan
RR-147	Kevin Ault
RR-148	Kevin Hall
RR-149	Kirstie Eager
RR-150	Lafarge Tarmac Trading Ltd
RR-151	Laura Hawkins
RR-152	Laura McEntee
RR-153	Laura Travers
RR-154	Lavinia Travers
RR-155	Leanne Scaysbrook
RR-156	Lee Pearsall
RR-157	Leicestershire Local Access Forum
RR-158	Lindsa Parry
RR-159	Lockington and Hemington Parish Council
RR-160	Lockington cum Hemington Parish Council
RR-161	Lockington cum Hemington Parish Council
RR-162	Long Whatton and Diseworth Parish Council
RR-163	Lorraine Clarke
RR-164	Lorraine Missin

RR-165	Louise Mosley
RR-166	Lynne Olsson
RR-167	Malcolm Graham
RR-168	Malcolm T Taylor C.Phys
RR-169	Margaret Holland
RR-170	Marie Messer
RR-171	Mark Goodge
RR-172	Mark Gosling
RR-173	Mark Henderson
RR-174	Mark Payne
RR-175	Mark Ryan
RR-176	Martin Wells
RR-177	Martin Wetton
RR-178	Melonie Anderson
RR-179	Melvin Kenyon
RR-180	Michael Davies
RR-181	Michael Osborne
RR-182	Michael Sleight
RR-183	Michaela Ward
RR-184	Mick Adcock
RR-185	Mike Doyle
RR-186	Miss Justine Westbrook
RR-187	Moirá O'Flynn
RR-188	Mr Adrian Saxelby
RR-189	Mr Courtney Vaughan
RR-190	Mr David Harrison

RR-191	Mr David Tarrant
RR-192	Mr GW Cox
RR-193	Mr Ian Morris
RR-194	Mr John E Collins
RR-195	Mr Keith Barker
RR-196	Mr Mike Thomas
RR-197	Mr P D Beddoe
RR-198	Mr Paul Hawksworth
RR-199	Mr Paul Parry
RR-200	Mr R P Shelton
RR-201	Mr Richard A Haigh
RR-202	Mr Richard Simmons
RR-203	Mr Robert Sandham
RR-204	Mr S Kirk
RR-205	Mr Terence Dakin
RR-206	Mr J Potter
RR-207	Mrs Christianne Harrison
RR-208	Mrs Christine Westbrook
RR-209	Mrs Delia Astle-Haigh
RR-210	Mrs Diane Hooper
RR-211	Mrs F Thomas
RR-212	Mrs Jane Parry
RR-213	Mrs Karen Dakin
RR-214	Mrs Linda Kirk
RR-215	Mrs Louise McLelland
RR-216	Mrs Paula Antoinette Harrington

RR-217	Mrs Rhiannon Lowater
RR-218	Mrs Susan Coulton
RR-219	Mrs Susan Hurley
RR-220	Mrs Susan Simmons
RR-221	Ms Hallam
RR-222	Ms P Hazzledine
RR-223	National Grid
RR-224	Natural England
RR-225	Neal David Riches
RR-226	Network Rail Infrastructure Limited
RR-227	Nichola Miller
RR-228	Nicholas Burton
RR-229	Nicola Singleton
RR-230	Nigel Heaps`
RR-231	Nigel Tatlock
RR-232	Nora Grammer
RR-233	Nottingham City Council
RR-234	Nottinghamshire County Council, Environment and Resources Department
RR-235	Pamela Walsh
RR-236	Patricia Kershaw
RR-237	Patricia Whitehead
RR-238	Patrick John Parkes
RR-239	Paul Andrew Yeomans
RR-240	Paul Missin
RR-241	Paul Missin
RR-242	Paul Roscoe

RR-243	Paul Williamson
RR-244	Peggy Beddoe
RR-245	Penny Earley
RR-246	Peter Foster
RR-247	Peter Harrington
RR-248	Peter Hill
RR-249	Peter Miller
RR-250	Peter Stevenson
RR-251	Pg Whieldon
RR-252	Philip Button
RR-253	Philip S Whitehead
RR-254	Philippa Khaw
RR-255	Philippe Salaunain
RR-256	Professor Geoffrey Boulton
RR-257	Professor Terence Hope
RR-258	Public Health England
RR-259	Rachel Hallam
RR-260	Rachel Ibbotson
RR-261	Ramblers Association, Leicestershire & Rutland Area
RR-262	Rebecca Lovern
RR-263	Richard Hennessy
RR-264	Richard Laxton
RR-265	Richard Worley
RR-266	Rob Mitchell
RR-267	Robert Bruce Kent
RR-268	Robert Dewhurst

RR-269	Royal Mail Group Limited
RR-270	Russell Brown
RR-271	Russell Gray
RR-272	Ruth Atkinson
RR-273	Ruth Mitcheson
RR-274	S Jones
RR-275	Sally Barker
RR-276	Sally Gant
RR-277	Sarah Gibson
RR-278	Sarah Widdowson
RR-279	Scott Lowater
RR-280	Sean Burns
RR-281	Sebastian Foster
RR-282	Shardlow & Great Wilne Parish Council
RR-283	Shelly Geeson-Mitchell
RR-284	Shirley Whieldon
RR-285	Simon Anderson
RR-286	Simon G Gibson
RR-287	Simon Kerry
RR-288	Simon Marsden
RR-289	Sophie Whiting
RR-290	South Derbyshire District Council
RR-291	St Nicholas' Church, Lockington
RR-292	Steve Haberfield
RR-293	Steve Haberfield
RR-294	Steve West

RR-295	Sue Carr
RR-296	Sue Hill
RR-297	Susan Roberts
RR-298	Susan Salaun
RR-299	Susan Treece
RR-300	Suzanne Coulton
RR-301	Tim Oaten
RR-302	Tina Whiting
RR-303	Tony Saffell
RR-304	Tracey Pearsall
RR-305	Trevor Beale
RR-306	Valerie Teffahi
RR-307	Vanessa Green
RR-308	Vicki Thumpston
RR-309	Vikki Walsh
RR-310	Western Power Distribution
RR-311	Barbara Barlow
Deadline I and Deadline II - Not applicable for purposes of the library	
Deadline III – 13 February 2015	
<ul style="list-style-type: none"> • Written summaries (WRS) of oral submissions put at issue specific dealing with matters relating to the draft DCO held on 4 February 2015 • Comments by the applicant and any other interested parties on relevant representations (CRRs) already submitted • Summaries of all RRs (SRS) exceeding 1500 words 	
REP3-01	Castle Donington Parish Council (WRS)
REP3-02	Long Whatton & Diseworth Parish Council (WRS)
REP3-03	Lafarge Tarmac Trading Ltd (WRS)
REP3-04	Network Rail (WRS)

REP3-05	Applicant's Covering Letter
REP3-06	Doc 8.1 Applicant's CRRs
REP3-07	Doc 8.2 Applicant's WRS
Deadline IV – 6 March 2015	
<ul style="list-style-type: none"> • Comments on additional documents submitted by the Applicant on 10 November and 19 December 2014 • Written representations (WRs) by all interested parties • Summaries of all WRs (SWRs) exceeding 1500 words • Responses to Examining Authority's first written questions (R1Qs) • Local Impact Reports (LIR) from local authorities • Statements of Common Ground (SoCG) requested by the Examining Authority – see Annex D of the Rule 8 Letter • Updated draft Development Consent Order (draft DCO) and Explanatory Memorandum (EM) from the Applicant 	
REP4-01	Campaign to Protect Rural England East Midlands (WR)
REP4-02	Castle Donington Parish Council (WR)
REP4-03	Civil Aviation Authority (WR)
REP4-04	David Pitt (WR)
REP4-05	Derbyshire County Council (SWRs, WR with Appendices 1-12)
REP4-06	East Midlands Airport (WR and R1Qs)
REP4-07	Environment Agency (WR)
REP4-08	Goodman Shepherd (UK) Limited (WR)
REP4-09	Highways Agency (Late WR)
REP4-10	Junction 24 Action Group (WR)
REP4-11	Kegworth Parish Council (WR)
REP4-12	Long Whatton and Diseworth Parish Council (WR)
REP4-13	Lafarge Tarmac Trading Limited (SWR, WR with Appendix 1)
REP4-14	National Grid (Late WR)
REP4-15	NATS Safeguarding Office (WR)
REP4-16	Natural England (WR and R1Qs)

REP4-17	Roger Shelton (WR)
REP4-18	Derbyshire County Council (LIR)
REP4-19	Leicestershire County Council and North West Leicestershire District Council (Joint LIR)
REP4-20	North West Leicestershire District Council - Supporting representation to Joint LIR (REP4-18)
REP4-21	English Heritage (R1Qs)
REP4-22	Environment Agency (R1Qs)
REP4-23	Leicestershire County Council (R1Qs)
REP4-24	North West Leicestershire District Council (R1Qs and response to Rule 17 issued 19 January 2015)
REP4-25	North West Leicestershire District Council. Response to actions arising from Issue Specific Hearing in relation to draft DCO held on 4 February 2015
REP4-26	Applicant's Covering Letter
REP4-27	Doc 1.6C Document List
REP4-28	Doc 3.1B Draft DCO (Clean)
REP4-29	Doc 3.1B Draft DCO (Tracked)
REP4-30	Doc 3.2A Explanatory Memorandum
REP4-31	Doc 6.4C Draft Development Consent Obligation - Leicestershire County Council and North West Leicestershire District Council
REP4-32	Doc 7.12 Transport Addendum (TA) SoCG - Highways England
REP4-33	Doc 7.12A TA SoCG - Derbyshire County Council
REP4-34	Doc 7.12B TA SoCG - Nottinghamshire County Council
REP4-35	Doc 7.12C TA SoCG - Leicestershire County Council
REP4-36	Doc 7.12D TA SoCG - Nottingham City Council
REP4-37	Doc 7.12E TA SoCG - Derby City Council
REP4-38	Doc 7.13 Agricultural Land SoCG - Natural England
REP4-39	Doc 7.14 Aviation SoCG - East Midlands Airport
REP4-40	Doc 7.15 Flood Risk Addendum SoCG - Environment Agency

REP4-41	Doc 7.16 Archaeology and Cultural Heritage Addendum SoCG - English Heritage and Leicestershire County Council
REP4-42	Doc 8.3 (R1Qs)
REP4-43	Appendix 1
REP4-44	Appendix 2 (Part 1) NSIP 2&3 Highway Works: Summary of Highway Options Report
REP4-45	Appendix 2 (Part 2) - Appendix B - Department for Transport - 1994 Scheme Leaflet
REP4-46	Appendix 3 – Responses to Transportation Questions 2.3 to 2.6
REP4-47	Appendix 4A - Agricultural Land Quality Report
REP4-48	Appendix 4B – Soil Resources and Agricultural Use and Quality
REP4-49	Appendix 4C1 – Additional Soil and ALC Survey Observations (2013)
REP4-50	Appendix 4C2 - Figure 14.4 - Source of Survey Information
REP4-51	Appendix 5 - Land within Parcel 1/1 Subject to Manorial Rights in favour of Mr Curzon Coaker
REP4-52	Appendix 6 – Freehold Land under the Control of The Applicant as at March 2015
REP4-53	Appendix 7 - Letter
REP4-54	Appendix 8 - Figure 4.1 Local Authorities within AOI
REP4-55	Appendix 8 - Figure 4.9 Lowest quartile employment deprivation LSOA
REP4-56	Appendix 9 - Sections A - E
REP4-57	Appendix 9 - Sections F - I
REP4-58	Appendix 9 - Sections J - N
REP4-59	Appendix 10 – Noise Links Plan
REP4-60	Appendix 10 - Table D3 – Traffic Flows and Change in Basic Noise Level
REP4-61	Appendix 11 - Illustrative Masterplan (with HS2 Route)
REP4-62	Appendix 12 - Illustrative Masterplan (Ecological Areas)
REP4-63	Appendix 13 - Archaeological Assessment of Significance
REP4-64	Appendix 13 (Part 1)

REP4-65	Appendix 13 (Part 2)
REP4-66	Appendix 13 (Part 3)
REP4-67	Appendix 13 (Part 4)
REP4-68	Appendix 13 (Part 5)
REP4-69	Doc 8.4 Response Tracker from 4 February 2015 Hearing
Deadline V – 12 April 2015	
<ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs (CWRs & RCRRs) • Comments on Local Impact Reports (CLIRs) • Comments on responses to Examining Authority's first written questions (CR1Qs) 	
REP5-01	Goodman Shepherd (UK) Ltd (CLIRs, CWRs and RCRRs)
REP5-02	Junction 24 Action Group - CLIRs and comments on additional submissions
REP5-03	Lockington cum Hemington Parish Council (RCRRs)
REP5-04	Long Whatton and Diseworth Parish Council (CLIRs)
REP5-05	North West Leicestershire District Council (CR1Qs)
REP5-06	Doc 8.5 Applicant's Comments for Deadline V
REP5-07	Doc 8.5 Appendix 1 - UK Aviation Forecasts
REP5-08	Doc 8.5 Appendix 2 - Technical Note 11 - Airport Sensitivity Test – June 2014
REP5-09	Doc 8.5 Appendix 3 - Technical Note 11 - Further Airport Sensitivity Test – March 2015
REP5-10	Doc 8.5 Appendix 4 - Response to WYG Transport Appraisal contained within WR from Lafarge Tarmac Trading Ltd
REP5-11	Junction 24 Action Group - Late representation including CR1Qs
Deadline VI – 8 May 2015	
<ul style="list-style-type: none"> • Responses to Examining Authority's second written questions (R2Qs) 	
REP6-01	Environment Agency (R2Qs)
REP6-02	Highways England (R2Qs)

REP6-03	Natural England (R2Qs)
REP6-04	East Midlands Airport - R2Qs and late response to R17 dated 1 April 2015
REP6-05	Leicestershire County Council (RQ2)
REP6-06	North West Leicestershire Council (R2Qs)
REP6-07	North West Leicestershire Council (SoCG between NWLC and DCC)
REP6-08	Doc 8.6 Responses to Examining Authority's Second Written Questions - List of Appendices and Covering Letter to Deadline VI
REP6-09	Appendix 1A Summary of suggested revised titles
REP6-10	Appendix 1B Annex 1 - Updated to Reflect Suggested Revised Titles
REP6-11	Appendix 2 Illustrative Masterplan
REP6-12	Appendix 3 Figure 4.9 Lowest Quartile Employment Deprivation LSOA
REP6-13	Appendix 4 Note on specific effects of committed development
REP6-14	Appendix 5 Development Site Formation Level Isopachytes
REP6-15	Appendix 6 Sections on East West alignment across J24 and J24A (Rev A)
REP6-16	Appendix 6 Landscape and Cross Section Locations and Photomontage Viewpoints – Figure 5.15 (Rev E)
REP6-17	Appendix 7 Amended Explanatory Memorandum Table Following 7.102
REP6-18	Appendix 8 Flood Risk Assessment - Supplementary Information: Lockington Brook Flood Risk
REP6-19	Appendix 9 Weather Data Set
REP6-20	Appendix 10 Technical Note on Climate Change
REP6-21	Appendix 11 Savills Letter
REP6-22	Appendix 12 Section 106 Plan
REP6-23	Doc 6.22 Construction Environmental Management Plan (Parts 1-8)
REP6-24	Doc 6.23 Earthworks Strategy - Enabling Earthworks
REP6-25	Doc 6.24 Schedule of Archaeological Works
REP6-26	Derbyshire County Council (Late submission, SoCG between NWLC and DCC)
REP6-27	Derbyshire County Council (Late R2Qs)

REP6-28	Historic England (Late R2Qs)
Deadline VII – 29 May 2015	
<ul style="list-style-type: none"> Comments on responses to Examining Authority’s second written questions (CR2Qs) 	
REP7-01	East Midlands Airport – Response to R13 and R16 letter 1 May 2015 and update on discussions with the applicant
REP7-02	Junction 24 Action Group (CR2Qs)
REP7-03	Lockington cum Hemington Parish Council (CR2Qs)
REP7-04	Doc 8.8 Applicant’s CR2Qs
Deadline VIII - 19 June 2015	
<ul style="list-style-type: none"> Written summaries of oral submissions (WSUM) put at any hearings held between 2 to 12 June 2015 and responses to actions (RAs) raised at the hearings 	
REP8-01	Highways England (RAs arising from the second ISH of draft DCO)
REP8-02	J Potter (WSUM put at the OFH)
REP8-03	John Chambers (submission to Deadline VIII)
REP8-04	Junction 24 Action Group (WSUM put at the ISH on traffic and transportation matters) Part 1
REP8-05	Junction 24 Action Group (WSUM put at the ISH on traffic and transportation matters) Part 2
REP8-06	Leicestershire County Council (RAs arising from the second ISH on draft DCO)
REP8-07	Network Rail (WSUM of oral submission put at the hearings held on 2 and 3 June 2015)
REP8-08	North West Leicestershire District Council (RAs arising from the second ISH on draft DCO)
REP8-09	Doc 6.10 Construction Management Framework Plan (Part 1)
REP8-10	Doc 6.10 Construction Management Framework Plan (Part 2)
REP8-11	Doc 6.10 Construction Management Framework Plan (Part 3)
REP8-12	Doc 6.10 Construction Management Framework Plan (Part 4)

REP8-13	Doc 3.1C Draft DCO (Tracked)
REP8-14	Doc 1.6D Document List
REP8-15	Doc 3.2B Explanatory Memorandum
REP8-16	Doc 2.8 Highways England Land subject to Manorial Rights Plan
REP8-17	Applicant's Covering Letter
REP8-18	Doc 3.1C Draft DCO (Clean)
REP8-19	Doc 4.3B Book of Reference (Clean)
REP8-20	Doc 4.4A Book of Reference (Amendments Explained)
REP8-21	Doc 4.3B Book of Reference (Tracked)
REP8-22	Doc 8.9 Appendix 1: Justification for compulsory acquisition over plots in which Lafarge Tarmac Trading Limited have an interest
REP8-23	Doc 8.9 (RAs arising from Hearings held on 2 and 3 June 2015)
REP8-24	Doc 8.9 Appendix 2: Comparison of Traffic Flows
REP8-25	Doc 6.26 Quarry Exit at Junction 24
REP8-26	Doc 8.9 Appendix 3 Revised Appendices 1A and 1B of Document 8.6
REP8-27	Doc 8.9 Appendix 4 Applicant's Response to Royal Mail Submission dated 20 May 2015
REP8-28	Doc 6.4D Development Consent Obligation (Unilateral Undertaking) Nottinghamshire County Council
REP8-29	Not in use
REP8-30	Doc 8.10 WSUM of oral submissions put at the second ISH on draft DCO and CA Hearing
REP8-31	Doc 6.4E Development Consent Obligation (Agreement) between the Applicant, affected person and North West Leicestershire District Council and Leicestershire County Council
REP8-32	Response to the agenda for ISH on transportation matters held on 3 June 2015
REP8-33	Doc 6.25 Site Wide Travel Plan
Deadline IX – 9 July 2015	

	<ul style="list-style-type: none"> Written summaries (WSUM) of oral submissions put at hearings held on 1 July Any further information requested by the Examining Authority
REP9-01	Lafarge Tarmac Trading Limited – Submission confirming extant objection
REP9-02	Leicestershire County Council
REP9-03	Lockington cum Hemington Parish Council
REP9-04	Junction 24 Action Group
REP9-05	Network Rail - Submission confirming Agreement of Protective Provisions
REP9-06	National Grid Electricity Transmission Plc - Submission confirming withdrawal of objection
REP9-07	Doc 4.3C Book of Reference (Tracked)
REP9-08	Applicant’s Comparite Draft DCO - August 2014
REP9-09	Doc 3.1D Draft DCO (Tracked)
REP9-10	Doc 2.1D Land Plan - Sheet 4
REP9-11	Doc 3.1D Draft DCO (Clean)
REP9-12	Doc 8.12 Response to J24 Action Group
REP9-13	Doc 3.2C Explanatory Memorandum, submission to Deadline IX
REP9-14	Doc 1.6E Document List, submission to Deadline IX
REP9-15	Doc 8.11 Summary of Applicants Oral Submissions, submission to Deadline IX
REP9-16	Doc 4.3C Book of Reference (Clean), submission to Deadline IX
REP9-17	Applicant’s Comparite Explanatory Memorandum (Final - 19 June)
REP9-18	Applicant’s Covering Letter
REP9-19	Applicant’s submission comprising confirmation of agreement with East Midlands Airport
CLOSE OF EXAMINATION – 12 July 2015	
Responses to Examining Authority’s Rule 17 Letters	
Rule 17 Letter issued on 1 April 2015 – Deadline for submissions 15 April 2015	
R17-001	Roxhill (Kegworth) Limited

R17-002	Jane Oldfield
Rule 17 Letter issued on 2 July 2015 – Deadline for submissions 9 July 2015	
R17-003	Lafarge Tarmac Trading Limited
Preliminary Meeting, Hearings and Accompanied Site Inspections	
Preliminary Meeting	
PM-01	Preliminary Meeting - Audio Recording
PM-02	Preliminary Meeting - Note
Issue Specific Hearing 1 - 4 February 2015	
HG-01	Rule 13 - Applicant's Hearing Notification
HG-02	Rule 13 and Rule 16 - Hearing and Accompanied Site Inspection Notification
HG-03	Hearing Agenda - Draft DCO Hearing - 4 February 2015
HG-04	Audio Recording - Part 1
HG-05	Audio Recording - Part 2
HG-06	Audio Recording - Part 3
HG-07	Action Points - Draft DCO Hearing - 4 February 2015
Issue Specific Hearings 2 to 5 - June and 1 July 2015 (including CA and OFH)	
HG-08	Rule 13 and Rule 16 - Hearing and Accompanied Site Inspection Notification
HG-09	Rule 13 - Applicant's Hearing Notification - June 2015
HG-10	Rule 13 - Applicant's Hearing Notification - July 2015
HG-11	Hearing Agenda - Compulsory Acquisition Hearing - June 2015
HG-12	Audio Recording - Compulsory Acquisition Hearing
HG-13	Action Points - Compulsory Acquisition Hearing
HG-14	Hearing Agenda - Second Draft DCO Hearing - 2 June 2015
HG-15	Audio Recording - Second Draft DCO Hearing - 2 June 2015 (Part 1)
HG-16	Audio Recording - Second Draft DCO Hearing - 2 June 2015 (Part 2)
HG-17	Action Points - Second Draft DCO Hearing - 2 June 2015
HG-18	Hearing Agenda - ISH on Transportation Matters - 3 June 2015

HG-19	Audio Recording - ISH on Transportation - 3 June 2015 (Part 1)
HG-20	Audio Recording – ISH on Transportation - 3 June 2015 (Part 2)
HG-21	Audio Recording - ISH on Transportation - 3 June 2015 (Part 3)
HG-22	Action Points - ISH on Transportation Matters - 3 June 2015
HG-23	Open floor hearing - Audio Recording (am)
HG-24	Open floor hearing - Audio Recording (noon)
HG-25	Open floor hearing - Audio Recording (pm)
HG-27	Notification of cancellation of Hearing - 2 July 2015
HG-28	Hearing Agenda – Third Draft DCO Hearing -1 July 2015)
HG-29	Audio Recording – Third Draft DCO Hearing - 1 July 2015 (Part 1)
HG-30	Audio Recording – Third Draft DCO Hearing - 1 July 2015 (Part 2)
HG-31	Action Points – Third Draft DCO Hearing - 1 July 2015
Accompanied Site Inspection	
ASI-01	Accompanied Site Inspection 1: Itinerary - 3 February 2015
ASI-02	Accompanied Site Inspection 2: Itinerary - 11 June 2015
Other Documents	
OD-01	Certificates of Compliance
OD-02	Transboundary Screening Matrix

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AADT	Annual average weekday traffic
AAWT	Annual average daily traffic
AOD	Above ordnance datum
AOI	Area of Influence
AP	Affected person
AQMA	Air Quality Management Area
BoR	Book of Reference
CO ₂	Carbon dioxide
CA	Compulsory acquisition
CAA	Civil Aviation Authority
CAH	Compulsory acquisition hearing
CEMP	Construction Environmental Management Plan
cLWS	Candidate local wildlife site
CMS	Construction Management Strategy
CPRE	Campaign to Protect Rural England
CMFP	Construction Management Framework Plan
D2N2 LEP	Derby and Derbyshire, Nottingham and Nottinghamshire Local Enterprise Partnership
DAS	Design and Access Statement
DCC	Derbyshire County Council
CDCA	Castle Donington Conservation Area
DCLG	Department for Communities and Local Government
DCLG compulsory acquisition guidance	'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land', Department of Communities and Local Government, September 2013
Defra	Department for Environment, Food and Rural Affairs
DMP	Dust Management Plan
DMRB	Design Manual for Roads and Bridges
draft DCO	draft Development Consent Order (made or proposed to be made under the Planning Act 2008 (as amended))
draft DCOb	draft Development Consent Obligation
draft Order	draft Development Consent Order (made or proposed to be made under the Planning Act 2008 (as amended))
DVA	Derwent Valley Aqueduct
EA	Environment Agency
EH	English Heritage
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EMA	East Midlands Airport
EMDC	East Midlands Distribution Centre

Abbreviation or usage	Reference
EMGRFI	East Midlands Gateway Rail Freight Interchange
EMIP	East Midlands Intermodal Park
ES	Environmental Statement
ExA	Examining Authority
FRA	Flood risk assessment
ha	Hectare
HA	Highways Agency (until 31 March 2015)
HE	Highways England (from 1 April 2015)
HGV	Heavy goods vehicle
IP	Interested party
ISH	Issue specific hearing
Joint LIR	The LIR submitted jointly by North West Leicestershire District Council and Leicestershire County Council
Lafarge Tarmac	Lafarge Tarmac Trading Ltd
LA	Local authority
LAeq	The sound pressure level in decibels, equivalent to the total sound energy over a given period of time.
LAeq,t	A-weighted equivalent sound pressure level in decibels measured over a period of time.
LCC	Leicestershire County Council
LEP	Local Enterprise Partnership
LIR	Local Impact Report
LLLEP	Leicester and Leicestershire Local Enterprise Partnership
Local Plan	North West Leicestershire District Local Plan
LPA	Local Planning Authority
LTP	Local Transport Plan
NO ₂	Nitrogen dioxide
NATS	National Air Traffic Services
NE	Natural England
NERC	The Natural Environment and Rural Communities Act
NIP	National Infrastructure Plan
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NPSNN	National Policy Statement for National Networks
NR	Network Rail
NSIP	Nationally significant infrastructure project
NWLDC	North West Leicestershire District Council
OFH	Open floor hearing
OLS	Obstacle limitation surfaces
PA 2008	Planning Act 2008

Abbreviation or usage	Reference
PFGIR	Preliminary Factual Ground Investigation Report
PM	Preliminary Meeting
PRoW	Public rights of way
PSSR	Preliminary Sources Study Report
RIS	Road investment strategy for the 2015 to 2020 road period
RR	Relevant representation
RSS	Regional Spatial Strategy
SAC	Special Area of Conservation
SAM	Scheduled Ancient Monument
SoCG	Statement of Common Ground
(S)RFI	(Strategic) rail freight interchange
SRN	Strategic road network
SSSI	Sites of Special Scientific Interest
STW	Severn Trent Water
SuDS	Sustainable urban drainage system
SWMFP	Site Waste Management Framework Plan
SWTP	Site Wide Travel Plan
TA	Transport Assessment
TCM	Three Counties Model
TCPA	Town and Country Planning Act 1990
UKCP09	UK Climate Change Projections
WPD	Western Power Distribution
WR	Written representation

APPENDIX D - RECOMMENDED DCO

201[] No. []

INFRASTRUCTURE PLANNING

**The East Midlands Gateway Rail Freight Interchange and
Highway Order 201X**

Made - - - - - [] 201X

Coming into force - - [] 201X

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an order under sections 37, 114, 115, 117(4), 120 and 125 of the Planning Act 2008(b);

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

The panel, having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section 83 of the 2008 Act has reported to the Secretary of State;

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

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The Secretary of State in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 21, 23, 24, 33, 34, 36 and 37 of Part 1 of Schedule 5, to the 2008 Act, makes the following Order:

PART 1

Preliminary

Citation and Commencement

1. This Order may be cited as the East Midlands Rail Freight Interchange and Highway Order 201X and comes into force on [] 201X.

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Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(d);
- “the 1965 Act” means the Compulsory Purchase Act 1965(e);
- “the 1980 Act” means the Highways Act 1980(f);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(g);
- “the 1988 Act” means the Road Traffic Act 1988(h);
- “the 1990 Act” means the Town and Country Planning Act 1990(i);
- “the 1991 Act” means the New Roads and Street Works Act 1991(j);

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732 and S.I. 2013/522.

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

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c.33.

(e) 1965 c.56.

(f) 1980 c.66.

(g) 1984 c.27.

(h) 1988 c.52.

(i) 1990 c.8.

(j) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(3) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

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“the 2008 Act” means the Planning Act 2008;

“the 2009 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(a);

“abnormal load vehicle” means a vehicle whose use on roads is authorised by the Secretary of State by an order made under ~~section 44 of the 1988 Act~~ except that where such use is authorised by the Road Vehicles (Authorisation of Special Types) (General) Order 2003(b) the vehicle ~~is~~ an abnormal indivisible load vehicle within the meaning given in paragraph 3 of Schedule 1 to that Order;

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“access and rights of way plans” means the access and rights of way plans (Documents 2.3A–2.3F) certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“airport” means the airport known as East Midlands Airport;

“airport operator” means East Midlands International Airport Limited or any successor operator;

“apparatus” for the purposes of articles 10 (highway works) and 32 (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;

“authorised activity” means for the purpose of article 26 (power to override easements and other rights):

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

“authorised buildings” means any building erected as part of the authorised development;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of ~~section 32 of the 2008 Act~~ and any works carried out ~~under~~ the requirements;

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“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order (Document 4.3C);

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

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

“bus” has the same meaning as in Regulation 22 of the Traffic Signs Regulations and General Directions;

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

“commence” means the carrying out of any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations (under requirement 13(1)), investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or erection of any temporary means of enclosure and the temporary display of site notices or advertisements and “commencement” ~~is~~ construed accordingly;

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“construction management framework plan” means the document certified by the Secretary of State as the construction management framework plan for the purposes of this Order (Document 6.10);

“construction management strategy for safeguarding the Derwent Valley Aqueduct” means the document certified by the Secretary of State as the construction management strategy for safeguarding the Derwent Valley Aqueduct for the purposes of this Order (Document 6.14);

(a) S.I.2009/2263, as amended by S.I. 2011/98, 2011/1043, S.I. 2012/635 and S.I. 2012/787.
(b) S.I. 2003/1998.

“cycle track” has the same meaning as in the 1980 Act^(a);

“the design and access statement” means the document certified by the Secretary of State as the design and access statement for the purposes of this Order (Document 6.9);

“development consent obligation” means the development consent obligation entered into by agreement under section 106 (planning obligations) of the 1990 Act ^(b) dated 19 June 2015 in respect of the authorised development and any subsequent amendment to the obligations;

“the environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order (Document 5.2);

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

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

“highway classifications plans” means the highway classifications plans (Documents 2.5A and 2.5B) certified as highway classifications plans by the Secretary of State for the purposes of this Order;

“Highways England” means the company responsible for operating, maintaining and improving the strategic road network in England on behalf of the Secretary of State for Transport or successor in function;

“highway works” means the works comprised in Works Nos. 7, 8, 10, 11, 12 and 13;

“the highway works components plans” means the document certified by the Secretary of State as the highway works components plans for the purposes of this Order (Documents 2.13a-c);

“illustrative rail interchange drawings” means the document certified by the Secretary of State as the illustrative rail interchange drawings for the purposes of this Order (Documents 2.12A-C);

“the land plans” means the Land Plans (Documents 2.1A–2.1F) certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means Leicestershire County Council;

“local highway authority” means Leicestershire County Council;

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

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

“main site” means that part of the land within the Order limits comprising the areas of land to which Works Nos. 2 – 5 apply;

“management strategy for the safeguarding of the East Midlands Airport” means the document certified by the Secretary of State as the management strategy for the safeguarding of the airport for the purposes of this Order (Document 6.12);

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

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

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

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

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

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

“Order land” means the land shown on the land plans which is within the Order limits in respect of which rights are to be acquired as described in the book of reference;

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

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

“the parameters plans” means the parameters plans, certified as the parameters plans by the Secretary of State for the purposes of this Order (Documents 2.10A–C);

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

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

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

“regulation 6(2) plans” means the Regulation 6(2) plans and drawings certified as the regulation 6(2) plans by the Secretary of State for the purposes of this Order (Documents 2.4A – N);

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

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

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

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

“relevant traffic authority” has the meaning as in section 121A of the 1984 Act;

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

“requirements” means the requirements set out in Schedule 2 to this Order;

“schedule of archaeological works” means the document certified by the Secretary of State as the schedule of archaeological works for the purposes of this Order (Document 6.24);

“site waste management framework plan” means the document certified by the Secretary of State as the site waste management framework plan for the purposes of this Order (Document 6.11);

“site wide travel plan” means the document certified by the Secretary of State as the site wide travel plan for the purposes of this Order (Document 6.25);

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

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

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

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

(b) 2003 c.21.

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“speed limit plans” means the document certified by the Secretary of State as the speed limit plans for the purposes of this Order (Document 2.7A-B);

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

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

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

“traffic officer” means an individual designated under section 2 (Designation of Traffic Officers) of the Traffic Management Act 2004^(a);

“traffic regulation plans” means the document certified by the Secretary of State as the traffic regulation plans for the purposes of this Order (Document 2.6A-D);

“undertaker” means (a) Roxhill Developments Group Limited (company number 07436264); Roxhill Developments Limited (company number 07070462) and Roxhill (Kegworth) Limited (company number 07567544) all registered at Lumonics House Valley Drive Swift Valley Rugby Warwickshire CV21 1TQ; and (b) subject to article 7 (Benefit of Order) any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person;

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

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

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

“works area” means the area of land shown on the works plans within which a numbered work is to be carried out; and

“the works plans” means the Works Plans (Documents 2.2A-2.2F) certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References to expressions in article 22 (discharge of water), excluding watercourse, which are used both in article 22 and in the Water Resources Act 1991^(b) have the same meaning as in that Act.

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

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

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

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

PART 2

Principal powers

Development consent granted by the Order

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

(a) 2004 c.18.

(b) 1991 c.57.

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Parameters of authorised development

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

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown or noted on those plans;
- (b) in respect of the highways deviate vertically from the levels shown on the regulation 6(2) plans to any extent not exceeding 1.5 metres upwards or downwards;
- (c) in respect of the rail deviate vertically from the levels shown on the regulation 6(2) plans to any extent not exceeding 1.5 metres upwards or 2.5 metres downwards; and
- (d) in respect of any boundary between the areas of two Works Numbers deviate laterally by 20 metres either side of the boundary as noted on the works plans.

Authorisation of use

5.—(1) Subject to the provisions of this Order including the requirements, the undertaker and any persons authorised by them may operate and use that part of the authorised development comprised in Works ~~Nos. 1 to 6 inclusive for the purposes of a rail freight terminal and warehousing and any purposes ancillary to those purposes.~~

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(2) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits under planning permission granted under the 1990 Act ~~subject to article 4.~~

Maintenance of authorised development

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

Benefit of Order

7.—(1) Roxhill Developments Group Limited, Roxhill Developments Limited and Roxhill (Kegworth) Limited have the sole benefit of articles 24-32 ~~in Part 5~~ (powers of acquisition) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(2) Roxhill Developments Group Limited, Roxhill Developments Limited and Roxhill (Kegworth) Limited have the sole benefit of the power to carry out the highway works in accordance with the provisions of Schedules 19 and 20 ~~(protection of interests)~~ unless the Secretary of State consents to the transfer of the benefit of those provisions.

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Application and modification of legislative provisions

8.—(1) Where an application is made to the local planning authority, relevant highway authority, environment agency, lead local flood authority or the SuDS approving body for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

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- (a) sections 78 (right of appeal in relation to planning decisions) and 79 (determination of appeals) of the 1990 Act(a);

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

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(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

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

(3) Where a development consent obligation related to this Order is to be modified or discharged then the appropriate authority ~~under~~ section 106A (11) of the 1990 Act ~~is~~ the local planning authority or local highway authority by whom it is enforceable and the reference to the “Secretary of State” in ~~section~~ 106A (11)(aa) for the purpose of this provision ~~is~~ replaced by “the local planning authority and/or local highway authority by which it is enforceable”.

(4) When advertisements are erected in the location and in accordance with the parameters shown on the parameters plans as S1 and S2 (Document 2.10B) then Regulation 4 of the Town & Country Planning (Control of Advertisements) (England) Regulations 2007(a) ~~does~~ not apply to such advertisements and there ~~is~~ no requirement for either deemed consent or express consent as referred to in that regulation in respect of such advertisements.

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

(6) The legislative provisions referred to in ~~articles~~ 17, 18, 24, 27, 29 and Schedules 9 (amendments to existing orders) and 13 (land to which powers to extinguish rights do not apply) ~~must~~ be applied or modified as provided ~~within those articles~~.

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PART 3

Streets

Power to alter layout, etc., of streets

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

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

(2) The powers conferred by paragraph (1) cannot be exercised without the consent of the local highway authority but such consent may not be unreasonably withheld.

Highway works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;

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

- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) construct bridges and tunnels;
- (f) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (g) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (h) reduce the width of the carriageway of the street;
- (i) make and maintain crossovers and passing places; and
- (j) execute any works required for or incidental to any works referred to in sub-paragraphs (1)(a) to (i).

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

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Stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (streets to be permanently stopped up) to the extent specified, by reference to the letters shown on the access and rights of way plan, in column (3) of those Parts of that Schedule.

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

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the relevant street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (streets for which no substitute is to be provided) may be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

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

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

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

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(7) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

(8) Any stopping up carried out under this article must be carried out in accordance with any relevant provisions of Schedules 19 and 20 (protection of interests).

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Public rights of way – creation, diversion and stopping up

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

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

(2) No public right of way specified in columns (1) and (2) of Part 1 of Schedule 5 or columns (1) and (2) of Part 2 of Schedule 5 may be wholly or partly stopped up under this article unless the permanent or temporary diversion routes agreed by the local highway authority have first been provided by the undertaker, to the reasonable satisfaction of the local highway authority.

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

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

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

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Temporary stopping up of streets

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

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

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

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

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Accesses

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

(2) The agreement of the relevant highway authority or street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Schedules 19 and 20 (protection of interests).

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

(4) The private means of access as set out in column (2) of Part 2 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker without a substitute being provided.

(5) The undertaker must provide the private means of access as set out in column (2) of Part 3 of Schedule 6 (new private means of access created).

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Maintenance of highway works

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

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Classification of roads

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

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

(2) From the date on which the undertaker notifies the Secretary of State that the new roads described in Part 1 of Schedule 7 have been completed and are open for through traffic—

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

(3) The existing roads described in Part 2 of Schedule 7 (existing roads) are to cease to have the classification and be the responsibility of the relevant highway authority set out in column (3) of Part 2 of Schedule 7 and from the occurrence of the event set out in column (4) are to be—

- (a) classified as set out in column (5) of Part 2 of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such;
- (b) provided for the use of the classes of traffic defined in Schedule 4 to the 1980 Act as set out in column (6) of Part 2 of Schedule 7; and
- (c) the responsibility of the relevant highway authority set out in column (7) of Part 2 of Schedule 7
- (d) as if such classification had been made under sections 10(2) and 12(3) of the 1980 Act.

Speed limits

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

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

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

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

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(a) ~~have~~ the same effect; and

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(b) may be varied by the relevant traffic authority in the like manner;

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

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

Amendments to Traffic Regulation Orders

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

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Clearways and No Waiting

19.—(1) Subject to paragraphs (4) and (5) following the event specified in column (4) of Part 1 of Schedule 10 (clearways) no person ~~must~~, except upon the direction or with the permission of a police officer or traffic officer in uniform, cause or permit any vehicle to wait on any part of a carriageway specified in columns (1) and (2) of Part 1 of Schedule 10, ~~other than a lay-by~~.

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(2) Subject to paragraphs (4) and (6) following the event specified in column (4) of Part 1 of Schedule 10 no person ~~must~~, except upon the direction or with the permission of a police officer or traffic officer in uniform, cause or permit any vehicle to wait on any verge adjacent to any part of a carriageway specified in columns (1) and (2) of Part 1 of Schedule 10 where such prohibition is indicated as applying in column (3) of Part 1 of Schedule 10.

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(3) Subject to paragraph (4) following the event specified in column (3) of Part 2 of Schedule 10 (no waiting at any time) no person ~~must~~, except upon the direction or with the permission of a police officer or traffic officer in uniform, cause or permit any vehicle to wait at any time on any day, on the sides of the carriageway specified in columns (1) and (2) of Part 2 of Schedule 10 or its adjacent verge at any time.

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(4) Nothing in paragraphs (1), (2) or (3) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(a) S.I. 2011/935.

- (ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984(b); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
- (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, Highways England, a safety camera partnership or the Vehicle and Operator Services Agency in pursuance of statutory powers or duties;
 - (iii) in the service of water or sewerage undertaker within the meaning of the Water Industry Act 1991(c); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(d); or
- (c) in relation to a vehicle waiting when the person in control of it is—
- (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person’s control.

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

(6) Nothing in paragraph (2) applies—

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

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

Motor vehicle restrictions

20.—(1) No person must, except upon the direction or with the permission of a police officer or traffic officer in uniform, cause or permit any vehicle to proceed along any part of a road specified

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in Part 1 of Schedule 11 (motor vehicle access only restrictions) except for the purpose of access or egress.

(2) No person must, except upon the direction or with the permission of a police officer or traffic officer in uniform, cause or permit any vehicle to proceed along the parts of road specified in columns (1) and (2) of Part 2 of Schedule 11 (one way streets) in a direction other than that specified in relation to that road in column (3) of Part 2 of Schedule 11 (one way streets).

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

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

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

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

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

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

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

(a) 1984 c.12.

Agreements with highway authorities

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

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

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

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

PART 4

Supplemental powers

Discharge of water

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

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

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

(4) The undertaker may not make any opening into any public sewer or drain except—

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

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

(a) 1991 c.56. section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43) and, sections 36(2) and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.

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

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

Authority to survey and investigate the land

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

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner, who is not the undertaker, and occupier of the land.

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

- (a) must, if so required, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
- (b) in a private street without the consent of the relevant street authority;

but such consent cannot be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

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PART 5

Powers of acquisition

Guarantees in respect of payment of compensation

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

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

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(a) S.I.2010/675.

(b) an alternative form of security for that purpose which has been approved by the Secretary of State.

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

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

Compulsory acquisition of land and rights

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

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

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

whichever is the earliest.

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

(4) Subject to section 8 of the 1965 Act where the undertaker acquires an existing right over land under paragraph (1), the undertaker cannot be required to acquire a greater interest in that land.

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

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

Power to override easements and other rights

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

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

(2) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(3) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—

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

- (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

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

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

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

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

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

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

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

the liability is enforceable against the undertaker.

Compulsory acquisition of land – incorporation of the mineral code

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

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

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

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

(2) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) ~~must~~ cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph ~~prevents~~ the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period subject always to the limitation in article 31(3) (temporary use of land for carrying out the authorised development).

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(a) 1981 c.66.

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Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, ~~has~~ effect with the following modifications:

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

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

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

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

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

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

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

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

(a) in subsection (1), after “publication” ~~insert~~ “in a local newspaper circulating in the area in which the land is situated”; and

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(b) subsection (2) is omitted.

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

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

Rights under or over streets

30.—(1) The undertaker may with the agreement of the relevant street authority enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, may be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

- (a) enter into and take temporary possession of the land specified in columns (1) and (2) of Schedule 12 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct and use temporary works (including the provision of means of access) and buildings on that land.

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

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(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 12.

(4) Before giving possession of land of which temporary possession has been taken under this article, the undertaker ~~must~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker ~~is not~~ required to replace a building removed under this article.

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

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

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(7) Nothing in this article ~~affects~~ any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

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

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

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Apparatus and rights of statutory undertakers in stopped up streets

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

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

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

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

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

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

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or laid at the same depth as the existing apparatus, then the amount payable to the statutory utility is to be reduced by a sum equivalent to those additional costs.

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

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

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

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

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

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PART 6

Miscellaneous and general

Operation and use of railways

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

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, ~~must~~ prejudice or affect the operation of Part 1 of the Railways Act 1993(a) (the provision of railway services).

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Operational land for the purposes of the 1990 Act

34. Development consent granted by this Order within that part of the Order limits upon which the highway works are to be carried out is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Charges

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

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(b) (summary proceedings by persons aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974(c); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

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(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent of registered noise level to be exceeded), does not apply

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

(b) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(c) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

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where the consent relates to the use of the premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Felling or lopping of trees

37.—(1) Subject to sub-paragraph (4) the undertaker may fell or lop any tree shrub or hedgerow near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker **must** do no unnecessary damage to any tree, shrub or hedgerow and **must** pay compensation to any person for any loss or damage arising from such activity.

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

(4) The provisions of this article do not apply without the agreement of the local planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved **under** requirement 8 (provision of landscaping and ecological mitigation).

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

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Protection of Interests

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

Certification of plans etc.

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

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

- (r) site wide travel plan (Document 6.25);
- (s) the traffic regulation plans (Document 2.6A-D); and
- (t) the works plans (Document 2.2A-F)

for certification that they are true copies of the documents referred to in this Order.

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

Service of Notices

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

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

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

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

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

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

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

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

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

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

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(a) 1978 c.30.

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

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

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

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(9) This article may not be taken to exclude the employment of any method of service not expressly provided for by it.

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

Arbitration

41. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the Lands Chambers of the Upper Tribunal.

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Governance of requirements and protection of interests relating to highway works

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42.—(1) When in any requirement or in Schedules 19 or 20 (protection of interests) approval or agreement is required of, or with, any body in relation to the content, carrying out or use of the authorised works (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would give rise to development outside the parameters of the authorised development referred to in article 4 (parameters of authorised development).

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(2) When any details, plans or other matters have been agreed or approved by the local planning authority under a requirement or the relevant highway authority under Schedules 19 or 20 then they may subsequently be amended by agreement with the local planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments might permit development outside the scope of the authorised development or development which might give rise to any significant adverse environmental effects that have not been assessed in the environmental statement (Document 5.2) or any updated environmental information supplied under the 2009 EIA Regulations.

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

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Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULES

SCHEDULE 1 AUTHORISED DEVELOPMENT

Article 3

PART 1

NSIP 1: The construction of a Rail Freight Interchange to provide:-

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

Works No. 1

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

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

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

Works No. 2

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

The construction of a rail freight terminal and rail tracks to connect with the rail tracks described in Works No. 1 the general arrangement of which is shown on the Illustrative Rail Interchange Drawings (Document 2.12A) including: (a) the construction of an intermodal rail freight loading/unloading terminal including but not exclusively:

- (i) rail sidings to load/unload freight;
- (ii) freight storage areas; and
- (iii) gantry cranes and reach stackers;
- (b) earthworks to achieve a terminal plateau;
- (c) railtracks and associated rail infrastructure;
- (d) security fencing;
- (e) cripple sidings, rail freight terminal refuelling and maintenance areas;
- (f) terminal entry and exit barriers, loading lanes, internal roads, gatehouses and parking areas;
- (g) rail freight terminal administrative building including staff and visitor welfare facilities;
- (h) storage and workshop buildings; and
- (i) fuelling facility.

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Works No. 3

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

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

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

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

Works No. 4

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

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

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

Works No. 5

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

(1) The construction of on site infrastructure including:

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

(2) The construction of a bus interchange including:

- (a) bus stops and bus stands;
- (b) bus interchange buildings; and
- (c) ancillary infrastructure to serve the bus interchange.

(3) Advertisements located within the areas indicated and in accordance with the parameters and locations shown (as S1 and S2) on the parameters plans (Document 2.10B).

Works No. 6

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

(1) The provision of landscaping including:

- (a) soft landscaping surrounding the development comprising Works No. 1 (part), 2, 3 and 4;
- (b) earthworks (including retaining structures) to create screening bunds;
- (c) basins for surface water attenuation (including flood alleviation related drainage infrastructure);
- (d) physical works for the provision of new and diverted footpaths, bridleways, and permissive cycle tracks;
- (e) boundary treatments (including fencing);
- (f) habitat creation; and
- (g) retention of existing woodland.

(2) Alterations to emergency accesses to the airport.

(3) Advertisements located within the areas indicated and in accordance with the parameters and locations shown (as S1 and S2), on the parameters plans (Document 2.10B).

PART 2

NSIP 2: The construction of a new highway to provide:-

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

Works No. 7

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

(1) The provision of the A50 (eastbound) to M1 (southbound) and Junction 24 interchange works the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4 A) and including:

- (a) construction of new A50 to M1 southbound/Junction 24 interchange link roads (part);
- (b) a new private access / haul route from the existing quarry to Junction 24 and an adjacent cycle track;
- (c) construction of new bridges and retaining walls; and
- (d) construction of surface water attenuation basins.

(2) The alteration of Warren Lane north of the A50 referred to in paragraph (1).

(3) The siting of a stock piling area for topsoil and subsoil material.

(4) The construction of temporary haul roads.

PART 3

NSIP 3: The alteration of existing highways to provide:-

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

Works No. 8

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

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

- (a) removal of the existing roundabout on the A50;
- (b) site clearance and excavation works;

(c) new highway to connect the existing highway A50 with (i) the new highway described in Works No. 7 and (ii) the existing M1 southbound diverging at Junction 24A as described in Works No 13(2) ; and

(d) realignment of existing kerblines over the existing M1 Warren Lane overbridge.

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

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

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

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

(4) Works to the existing A453 / Ashby Road junction to create a signalised roundabout providing access to the main site and the proposed A6 Kegworth Bypass (Works No.11) the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4B) including the removal of the existing carriageway and construction of new carriageway and the stopping up of public footpath L45 as shown on the access and rights of way plan (Document 2.3E).

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

PART 4

ASSOCIATED DEVELOPMENT

Associated development within the meaning of [section 115\(2\)](#) (development for which consent may be granted) of the 2008 Act comprising:-

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

Works No. 9

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

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

Works No. 10

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

- (1) Alterations to Diseworth Lane the general arrangement of which is shown on regulation 6(2) plan (Document 2.4A).
- (2) Alterations to Church Street the general arrangement of which is shown on regulation 6(2) plan (Document 2.4A) including the construction of a vehicle turning head.
- (3) The carrying out of the Main Street realignment works underneath and to the south of the new railway line (Works No. 1) the general arrangement of which is shown on regulation 6(2) plan (Document 2.4A) including:
 - (a) lowering of the existing former Main Street / Rookery Lane carriageway to provide a local highway to provide access to Lockington; and
 - (b) the construction of footways and cycle track.
- (4) The construction of a diversion to public footpath L73 as shown on the access and rights of way plans (Document 2.3A) to join the proposed footway / cycleway link to be constructed within Works No.7.

Works No. 11

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

- (1) The construction of a new highway linking the A453 to the A6, bypassing the village of Kegworth, (to be known as the Kegworth Bypass) the general arrangement of which is shown on regulation 6(2) plan (Document 2.4C) and including:
 - (a) the provision of a new roundabout on the existing A6 highway;
 - (b) new junction to connect with Whatton Road;
 - (c) drainage swales;
 - (d) a new bridge over the M1 motorway;
 - (e) a cattle creep;
 - (f) the alteration and diversion of existing public footpaths L45A, L54 and L64 as shown the access and rights of way plans (Document 2.3E and 2.3F); and
 - (g) the construction of a shared use footway/cycle track.
- (2) Realignment of Whatton Road to the north and south of the Kegworth Bypass.
- (3) The carrying out of the Kegworth Bypass (west) highway drainage works the general arrangement of which is shown on regulation 6(2) plan (Document 2.4C) and including:
 - (a) construction of highway drainage conveyance systems connecting the western part of Kegworth Bypass (Works No. 11(1)) to a watercourse immediately south of Kegworth village; and
 - (b) the clearing of and making good to the existing watercourse.

(4) The carrying out of the Kegworth Bypass (east) highway drainage works the general arrangement of which is shown on regulation 6(2) plan (Document 2.4C) and including:

- (a) construction of an attenuation basin and conveyance system to take highway drainage from the eastern part of the proposed Kegworth Bypass (Works No. 11(1)) to the River Soar.

(5) The provision of the Kegworth Bypass accommodation works including:

- (a) removal of existing hedgerows and making good;
- (b) minor regrading and adjustments to ground levels; and
- (c) construction of new farm tracks.

(6) The construction of a new bus and cycle only link road from the Kegworth Bypass to Ashby Road (to be known as the Ashby Road Bus Link) the general arrangement of which is shown on the regulation 6(2) plan (Document 2.4C) and including the formation of a new cycle track from the A453 to Ashby Road following the route of the original road and utilising the existing M1 Ashby Road overbridge.

(7) The demolition of existing dwelling and outbuildings.

Works No. 12

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

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

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

Works No. 13

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

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

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

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

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

Further works

(1) Within the area of land described on the works plans as Works Nos. 1 to 5 the provision of:

- (a) weighbridges;

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- (b) internal estate roads, maintenance accesses and footways;
- (c) cycle parking facilities; and
- (d) such other minor works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.

(2) Within the area of land described on the works plans as Works Nos. 1 to 6 and 9 the provision of:

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

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

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

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

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SCHEDULE 2 REQUIREMENTS

Article 3

Time Limit

1. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Phases of development

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

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

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

(2) The rail terminal constructed as part of Works No. 2 must be constructed and available for use prior to the occupation of more than 260,000m² of the rail served warehousing.

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Sustainable transport

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

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Design and phasing of highways works

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

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

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Highway Works

(1)	(2)	(3)	(4)
Item	as Description	Stage	of Relevant Body

<i>identified on the highway works components plans (Document 2.13)</i>	<i>Development</i>	
A453 site access and Kegworth Bypass Junction (not including the bypass itself)	To be completed prior to the occupation of first warehouse to be occupied	Highways England
A50 eastbound to M1 southbound and Junction 24 interchange links; M1 southbound to A50 interchange link; improvements to M1 southbound from Junction 24A to Junction 24; and alterations to Junction 24 roundabout east of M1	To be completed prior to the occupation of first warehouse to be occupied	Highways England
Construction of local access road to Lockington	To be completed prior to the occupation of first warehouse to be occupied	Leicestershire County Council
Diseworth Lane alterations	To be completed prior to the occupation of the first warehouse to be occupied	Leicestershire County Council
Church Street works	To be completed prior to the occupation of the first warehouse to be occupied	Leicestershire County Council
Alterations to Junction 24 roundabout west of M1; improvements to A50 and A453 west of M1; and alterations to M1 northbound exit slip road	To be completed prior to the occupation of more than 185,800 square metres (gross internal area) of warehouse floorspace	Highways England
Kegworth Bypass including alterations to Ashby Road and Whatton Road	To be completed prior to the occupation of more than 185,800 square metres (gross internal area) of warehouse floorspace	Leicestershire County Council
M1 overbridges from Ashby Road to A453 and from Kegworth Bypass to A453	To be completed prior to the occupation of the first warehouse to be occupied	(1) Highways England (bridge structures) Leicestershire County Council (highway)

Warren Lane access and public footpath/cycleway adjacent to A50 interchange links connecting Warren Lane and A453 eastbound

To be completed prior to the occupation of the first warehouse to be occupied

Leicestershire County Council

Detailed design approval

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

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

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

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

Provision of landscaping and ecological mitigation

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

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Chapter 5 of the environmental statement and must include details of all proposed soft landscaping works, including—

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

Implementation and maintenance of landscaping

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

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(2) Any tree or shrub planted as part of an approved landscape scheme that, within a period of 10 years after planting is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the local planning authority gives consent to any variation.

Ecological Management Plan

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

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

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

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(3) The ecological management plan approved under (1) must include an implementation timetable and must be carried out as approved in writing by the local planning authority.

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Construction Environmental Management Plan

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

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

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

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Earthworks

12. ~~No phase of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)) is to commence until details of:~~

- ~~(i) the earthworks strategy relating to that phase of development including the management and protection of soils;~~
- ~~(ii) an Earthworks Specification for each phase of the development;~~
- ~~(iii) cutting slopes and embankment design that would accord with the approved Earthworks Specification;~~
- ~~(iv) the extent of any material to be temporarily stored within the site; and~~
- ~~(v) any surplus material to be removed from the site for disposal or material to be imported to the site~~

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

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Archaeology

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

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

- (a) mitigation fieldwork;
- (b) post-mitigation fieldwork and analysis;
- (c) reporting and dissemination of findings; and
- (d) preparation of site archive, arrangements for deposition and sustainable management at a store approved in writing by the relevant planning authority.

(3) The approved mitigation measures must be carried out in accordance with the relevant written scheme of mitigation measures for that phase of the authorised development unless otherwise approved in writing by the local planning authority.

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Lighting details

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

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

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

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Building sustainability

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

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

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Flood risk and surface water drainage

16. The authorised development must be carried out in accordance with the mitigation measures detailed within section 3.0 and 4.0 of the Flood Risk Assessment and section 5.0 of the Water Framework Direction Assessment submitted with the application as part of the environmental statement (Document 5.2) or be carried out in accordance with any variation to the above agreed in writing with the Environment Agency, the Lead Local Flood Authority or the SuDS Approving Body whichever of these is the body having jurisdiction over the watercourse in question.

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17.—(1) No phase of the authorised development (with the exception of the highway works which are governed by requirements 4 and 5 and Schedules 19 and 20 (protection of interests)) may commence until a surface water drainage scheme for that phase based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development in accordance with the Surface Water Drainage Strategy in Chapter 8 of the environmental statement (Document 5.2) has been submitted to and approved in writing by the local planning authority or such other approval process that is put in place under The Flood and Water Management Act 2010. The scheme **must** include:

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

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

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

scheme or within any other period as may subsequently be agreed in writing by the local planning authority.

Foul water drainage

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

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Construction hours

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

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

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

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

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Construction noise

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

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

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

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Noise during the operational phase

22.—(1) No part of the authorised development may be brought into use until a written scheme has been submitted to and approved in writing by the local planning authority, for the monitoring of noise generated during the operational phases of the development to establish baseline noise conditions and maximum noise levels to be observed. The scheme must specify the locations from where noise **must** be monitored, the method of noise measurement (which must be in accordance

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with BS4142:2014 for fixed plant noise and Calculation of Railway Noise 1995, equivalent successor standards or other agreed measurement methodologies appropriate to the circumstances). The written scheme must also specify the periods within which monitoring of operational noise must take place. The written scheme must be implemented and the maximum noise levels identified thereafter be complied with. This monitoring must be subject to annual reviews to establish the frequency of noise monitoring and the need for continued monitoring.

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

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

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Monitoring of complaints

23. In the event that justified complaints for noise nuisance are received by the local planning authority, the undertaker must, unless otherwise agreed with the local planning authority, at its own expense, employ a consultant approved by the local planning authority to carry out an assessment of noise from the authorised development, whether relating to noise from construction or operation of the site. The assessment must be carried out to an appropriate methodology agreed with the local planning authority and the results of the assessment must be submitted to the local planning authority within 28 days of the assessment along with suggested remedial measures if considered necessary. The assessment must include a comparison of measured data with the maximum noise levels specified in the scheme approved under requirement 22 (noise during the operational phase) and also include all data which was collected for the purposes of the assessment and certificates of the measuring instrument's calibration. Any remedial measures considered necessary to comply with the maximum noise levels must be implemented in accordance with a programme agreed in writing by the local planning authority.

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Contamination risk

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

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

- (i) BS10175:2011+A1:2013 Investigation Of Potentially Contaminated Sites Code of Practice;
- (ii) BS8576:2013 Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs);
- (iii) BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and
- (iv) CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

(3) Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the local planning authority. The Remedial Scheme must be prepared in accordance with the requirements of CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004. The Verification Plan must be prepared in accordance with the requirements of:

- (i) Evidence Report on the Verification of Remediation of Land Contamination Report SC030114/R1, published by The Environment Agency 2010; and
- (ii) CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

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

25. Prior to the commencement of use of any part of the completed development either:

- (a) if no remediation scheme or verification was required under requirement 24 (contamination risk) a statement from the undertaker, or their approved agent, must be provided to the local planning authority, stating that no previously unidentified contamination was discovered during the course of development; or
- (b) if a remediation scheme and verification plan were agreed under requirement 24 (contamination risk), a Verification Investigation must be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to either the whole development or that part of the development must be submitted to and approved in writing by the local planning authority.
- (c) The Verification Investigation Report must:
 - (i) contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
 - (ii) contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
 - (iii) contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
 - (iv) contain Test Certificates of imported material to show that it is suitable for its proposed use;
 - (v) demonstrate the effectiveness of the approved Remedial Scheme; and
 - (vi) include a statement signed by the undertaker, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

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Waste management during the operational phase

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

SCHEDULE 3

Article 10

STREETS SUBJECT TO HIGHWAY WORKS

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to highway works</i>
District of North West Leicestershire	M1 motorway – length within the Order limits.

District of North West Leicestershire
 District of North West Leicestershire
 District of North West Leicestershire
 District of North West Leicestershire

A50 – length within the Order limits.
 A453 – length within the Order limits.
 A6 – length within the Order limits.
 Diseworth Lane – length within the Order limits.
 Main Street – length within the Order limits.
 C8211 Ashby Road – length within the Order limits.
 East Midlands Airport Access Road – length within the Order limits.
 C8206 Whatton Road – length within the Order limits.
 Church Street – length within the Order limits.

District of North West Leicestershire
 District of North West Leicestershire

District of North West Leicestershire

District of North West Leicestershire

District of North West Leicestershire

SCHEDULE 4

Article 11

STREETS TO BE PERMANENTLY STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New street to be substituted</i>
District of North West Leicestershire	A50 highway.	The existing highway within the area marked i on the access and rights of way plans (Document 2.3B) shown by red and white hatching.	(i) Proposed new highway A50 within the area marked vii on the access and rights of way plans (Document 2.3A) shown by blue hatching; (ii) Proposed new highway A50 within the areas marked iii, v and vi on the access and rights of way plans (Documents 2.3A and C) shown by green hatching; (iii) Proposed new highway M1 within the area marked vii on the access and rights of way plans (Documents 2.3A and C) shown by blue hatching.
District of North West Leicestershire	M1 Motorway.	The existing highway within the area marked viii on the access and rights of way plans (Document 2.3C) shown by red	(i) Proposed new highway M1 within the area marked ix on the access and rights of way plans (Documents 2.3A and

Deleted: motorway

		and white hatching.	C) shown by blue hatching; and (ii) Proposed new highway A50 within the area marked vi on the access and rights of way plans (Document 2.3C) shown by green hatching.
District of North West Leicestershire	Warren Lane.	The existing highway within the area marked x on the access and rights of way plans (Document 2.3B) shown by red and white hatching.	(i) Proposed new highway A50 within the area marked iii on the access and rights of way plans (Document 2.3A) shown by green hatching; (ii) Proposed local highway within the area marked iv on the access and rights of way plans (Document 2.3A) shown by orange hatching; and (iii) Proposed cycle track between the points marked 8-9 on the access and rights of way plan (Document 2.3A) shown by a dashed pink line on a detailed alignment to be agreed by the relevant highway authority.
District of North West Leicestershire	Main Street.	The existing highway within the area marked xi on the access and rights of way plans (Document 2.3B) shown by red and white hatching.	Proposed local highway within the areas marked xii and xiii on the access and rights of way plans (Document 2.3A) shown by orange hatching.
District of North West Leicestershire	Rookery Lane.	The existing highway within the area marked xiv on the access and rights of way plans (Document 2.3B) shown by red and white hatching.	Proposed local highway within the area marked xii on the access and rights of way plans (Document 2.3A) shown by orange hatching.
District of North West Leicestershire	A50 cycle track.	The existing highway within the area marked xv and xvi on the access and rights of way plans (Document 2.3B)	Proposed cycle track between the points marked 40 -39 on the access and rights of way plans (Document 2.3A) shown by a

		shown by red and white hatching.	dashed pink line on a detailed alignment to be agreed by the relevant highway authority.
District of North West Leicestershire	A453.	The existing highway within the area marked xix on the access and rights of way plans (Document 2.3E) shown by red and white hatching.	Proposed new highway A453 within the area marked xx on the access and rights of way plans (Document 2.3E) shown by green hatching.
District of North West Leicestershire	C8211 Ashby Road.	The existing highway within the area marked xxi on the access and rights of way plans (Document 2.3E) shown by red and white hatching.	(i) Proposed new highway A6 within the area marked xxii on the access and rights of way plans (Document 2.3E) shown by orange hatching; (ii) Proposed new highway C8211 within the area marked xxiii on the access and rights of way plans (Document 2.3E) shown by orange hatching; and (iii) Proposed cycle track between the points marked 54 - 55 on the access and rights of way plans (Document 2.3E) shown by a dashed pink line.
District of North West Leicestershire	C8206 Whatton Road.	The existing highway within the areas marked xxiv and xxv on the access and rights of way plans (Document 2.3F) shown by red and white hatching.	(i) Proposed new highway C8206 within the areas marked xxvi and xxviii on the access and rights of way plans (Document 2.3F) shown by orange hatching; (ii) Proposed new highway A6 within the area marked xxvii on the access and rights of way plans (Document 2.3F) shown by orange hatching; and (iii) Proposed local highway within the area marked xxix on

			the access and rights of way plans (Document 2.3F) shown by orange hatching.
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PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>
District of North West Leicestershire	M1 southbound Junction 24A earthworks to exit slip road.	The length of street shown hatched red and white and numbered xvii on the access and rights of way plans (Document 2.3B).
District of North West Leicestershire	Church Street.	The length of street shown hatched red and white and numbered xviii on the access and rights of way plans (Document 2.3C).

SCHEDULE 5

Article 12

PUBLIC RIGHTS OF WAY TO BE STOPPED UP

PART 1

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

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

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

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

PART 2

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

(1)	(2)	(3)
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<i>Area</i>	<i>Public right of way to be stopped up</i>	<i>Extent of stopping up</i>
Parish of Kegworth	Public footpath L45 (part).	The existing footpath between the points marked 41-42 on the access and rights of way plans (Document 2.3E) shown with a dashed red line.
Parish of Kegworth	Public footpath L64 (part).	The existing footpath between the points marked 46-47 on the access and rights of way plans (Document 2.3F) shown with a dashed red line.

PART 3

NEW PUBLIC RIGHTS OF WAY TO BE CREATED

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

SCHEDULE 6

Article 14

PRIVATE MEANS OF ACCESS

PART 1

PRIVATE MEANS OF ACCESS TO BE REPLACED

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

	and rights of way plans (Document 2.3E) shown shaded purple.	and rights of way plans (Document 2.3E) shown hatched turquoise.
District of North West Leicestershire	The existing private means of access between the points marked AJ-AL on the access and rights of way plans (Document 2.3E) shown shaded purple.	Replacement private means of access between the points marked AO-AL on the access and rights of way plans (Document 2.3E) shown hatched turquoise.
District of North West Leicestershire	The existing private means of access marked AR on the access and rights of way plans (Document 2.3F) shown shaded purple.	Replacement private means of access marked AU on the access and rights of way plans (Document 2.3F) shown hatched turquoise.
District of North West Leicestershire	The existing private means of access marked AZ on the access and rights of way plans (Document 2.3F) shown shaded purple.	Replacement private means of access marked BA on the access and rights of way plans (Document 2.3F) shown hatched turquoise.

PART 2

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

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

PART 3
NEW PRIVATE MEANS OF ACCESS CREATED

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

SCHEDULE 7

Articles 15 and 16

CLASSIFICATION OF ROADS

PART 1

NEW AND DIVERTED ROADS

(1) <i>Area</i>	(2) <i>Extent of Street</i>	(3) <i>Classification</i>	(4) <i>Classes of Traffic</i>	(5) <i>Relevant Highway Authority</i>
In the District of North West Leicestershire	The length of road shown coloured light blue and between the points 2 and 3 on the highway classifications plans (Document 2.5A).	Special Road	Class I and Class II	Highways England
In the District of North West Leicestershire	The length of road shown coloured light blue and between the points 4 and 5 on the highway classifications plans (Document 2.5A).	Special Road	Class I and Class II	Highways England
In the District of North West Leicestershire	The length of road shown coloured light blue and between the points 6 and 7 on the highway classifications plans (Document 2.5A).	Special Road	Class I and Class II	Highways England
In the District of North West Leicestershire	The length of road shown coloured green and between the points 8 and 9 on the highway classifications plans (Document 2.5A).	Trunk Road	All purpose	Highways England
In the District of North West Leicestershire	The length of road shown coloured green and between the points 10 and 11 on the highway classifications plans (Document 2.5A).	Trunk Road	All purpose	Highways England
In the District of North West Leicestershire	The length of road shown coloured green and between the points 12 and 13 on the highway classifications plans (Document 2.5A).	Trunk Road	All purpose	Highways England

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In the District of North West Leicestershire	The length of road shown coloured green and between the points 14, 15, 16 and 17 on the highway classifications plans (Document 2.5B).	Trunk Road	All purpose	Highways England	Deleted: d
In the District of North West Leicestershire	The length of road shown coloured green and between the points 16 and 19 on the highway classifications plans (Document 2.5B).	Trunk Road	All purpose	Highways England	Deleted: d
In the District of North West Leicestershire	The length of road shown coloured green and between the points 15 and 18 on the highway classifications plans (Document 2.3B).	Trunk Road	All purpose	Highways England	Deleted: d
In the District of North West Leicestershire	The length of road shown coloured green and between the points 30, 18, 19 and 29 on the highway classifications plans (Document 2.5B).	Trunk Road	All purpose	Highways England	Deleted: d
In the District of North West Leicestershire	The length of road shown coloured green and between the points 18, 37 and 19 on the highway classifications plans (Document 2.5B).	Trunk Road	All purpose	Highways England	Deleted: d
In the District of North West Leicestershire	The length of road shown coloured green and between the points 37 and 38 on the highway classifications plans (Document 2.5B).	Principal	All purpose	Leicestershire County Council	Deleted: d
In the District of North West Leicestershire	The length of road shown coloured green and following a circular route around points 38 to 39 and returning to 38 on the highway classifications plans (Document 2.5B).	Principal	All purpose	Leicestershire County Council	Deleted: d
In the District of North West Leicestershire	The length of road shown coloured pink and between the points 33 and 34 on the highway	Classified	All purpose	Leicestershire County Council	Deleted: d

	classifications plans (Document 2.3B).			
In the District of North West Leicestershire	The length of road shown coloured pink and between the points 35 and 36 on the highway classifications plans (Document 2.5B).	Classified	All purpose	Leicestershire County Council
In the District of North West Leicestershire	The length of road shown coloured pink and between the points 43 and 44 on the highway classifications plans (Document 2.3B).	Classified	All purpose	Leicestershire County Council
In the District of North West Leicestershire	The length of road shown coloured brown and between the points 23 and 24 on the highway classifications plans (Document 2.5A).	Unclassified	All purpose	Leicestershire County Council
In the District of North West Leicestershire	The length of road shown coloured brown and between the points 25 and 26 on the highway classifications plans (Document 2.5A).	Unclassified	All purpose	Leicestershire County Council
In the District of North West Leicestershire	The length of road shown coloured brown and between the points 27 and 28 on the highway classifications plans (Document 2.5B).	Unclassified	All purpose	Leicestershire County Council
In the District of North West Leicestershire	The length of road shown coloured brown and between points 41 and 42 on the highway classifications plans (Document 2.5A).	Unclassified	All purpose	Leicestershire County Council

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PART 2

EXISTING ROADS

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Area	Extent of Street	(i) Current Classification and Highway Authority	(ii) Event determining change of classification	Proposed Classification	Classes of Traffic	Highway Authority
In the District	The length of	(i) All Purpose	Opening of new road	Special Road	Class I and	Highways England

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of North West Leicestershire	street shown coloured dark blue and between the points 1 and 2 on the highway classifications plans (Document 2.5A).	Trunk Road (ii) The Secretary of State for Transport	shown coloured light blue between points 2 and 3 as shown on the highway classifications plans (Document 2.5A).		Class II	
In the District of North West Leicestershire	The length of street shown coloured red and between the points 20 and 21 on the highway classifications plans (Document 2.5A).	(i) Special Road (ii) The Secretary of State for Transport	Stopping up of M1 southbound slip road within area viii shown by red and white hatching on the access and rights of way plans (Document 2.3C).	Trunk Road	All Purpose	Highways England
In the District of North West Leicestershire	The length of street shown coloured orange and between the points 22 and 23 on the highway classifications plans (Document 2.5A).	(i) All Purpose Trunk Road (ii) The Secretary of State for Transport	Opening of new roads shown coloured green between points 8-9, 10-11 and 12-13 as shown on the highway classifications plans (Document 2.5A).	Unclassified Road	All Purpose	Leicestershire County Council
In the District of North West Leicestershire	The length of street shown coloured orange	(i) All purpose Trunk Road (ii) The Secretary of	Opening of new roads shown coloured green between points 8-9, 10-11 and	Unclassified Road	All Purpose	Leicestershire County Council

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	and between points 25 and 40 on the highway classifications plans (Document 2.5A).	State for Transport	12-13 as shown on the highway classifications plans (Document 2.5A).			
In the District of North West Leicestershire	The length of street shown coloured dark green and between the points 31 and 32 on the highway classifications plans (Document 2.5B).	(i) Classified All Purpose Road (ii) Leicestershire County Council	Opening of new road shown coloured pink between points 35-36 as shown on the highway classifications plans (Document 2.5B).	Unclassified Road	All Purpose	Leicestershire County Council

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**SCHEDULE 8
SPEED LIMITS**

Article 17

**PART 1
EXISTING ORDERS**

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Statutory Instrument Title</i>	<i>SI Number</i>	<i>Changes</i>	<i>Event</i>
The A50 Trunk Road (Derby Southern Bypass) (Derestriction) Order 1998	1998 Nr. 378	Delete (x) from the Schedule to that Order and substitute “(x) the eastbound carriageway of the A50 from a point 600 metres west of the A6/A50 Aston Interchange overbridge to a point 138 metres west of the centre point of the M1 Junction 24A underbridge, and the westbound carriageway of the A50 from a point 410 metres north of its roundabout junction with the A453 (M1 Junction 24) to a point 600 metres west of the A6/A50 Aston Interchange overbridge”.	Opening of the new road shown coloured green between points 8-9, 10-11 and 12-13 as shown on the highway classifications plans (Document 2.5A).
The A453 and A50 Trunk Roads (M1 Junction 24, Kegworth, Leicestershire) (40 and 50 Miles Per Hour Speed Limit and Derestriction) Order 2015	2015 Nr. 1072	Delete from Article 2 the definition of “the link road” Delete Article 3 Delete from Article 4(b) “120 metres north of its junction with Church Street” and substitute “410 metres north of its junction with the roundabout” Delete Article 4(c) Delete Article 5 Delete Article 7(a).	Opening of the new road shown coloured green between points 8-9, 10-11 and 12-13 as shown on the highway classifications plans (Document 2.5A).

PART 2
ROADS SUBJECT TO 30MPH SPEED LIMIT

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

PART 3
ROADS SUBJECT TO 50MPH SPEED LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>
A50 eastbound	From a point 138 metres west of the centre point of the M1 underbridge at Junction 24A to its roundabout junction with the A453 (M1 Junction 24) as shown coloured green between points marked B and C as shown on the speed limit plans (Document 2.7A).
Lockington local access road	Shown coloured orange between points F and G as shown on the speed limit plans (Document 2.7A).
A453 southbound	From a point 190 metres south of the circulatory carriageway at M1 Junction 24 to a point 43 metres south of the circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange access road; shown coloured green between points K, L, N and O as shown on the speed limit plans (Document 2.7B).
A453 northbound	From a point 122 metres south of the circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange access road to a point 345m south of the circulatory carriageway at M1 Junction 24; shown coloured green between points P, Q, R and S as shown on the speed limit plans (Document 2.7B).
A453 signalised roundabout	The circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange to a point 25 metres east of that junction; shown coloured green between points N and Q and R and L as shown on the speed limit plans (Document 2.7B).
A6 Kegworth Bypass	From the circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange to a point 25 metres east of that junction; shown coloured green between points N and M, and L and M as shown on the speed limit plans (Document 2.7B).
A6 Kegworth Bypass	Shown coloured orange between points M, T and U as shown on the speed limit plans (Document 2.7B).
C8211 Ashby Road	Shown coloured orange between points T and V as shown on the speed limit plans (Document 2.7B).
A6 London Road	Shown coloured orange forming a circular route between points W, X and returning to W as shown on the speed limit plans (Document 2.7B).
A6 London Road	Shown coloured orange between points X and Y as shown on the speed limit plans (Document 2.7B).
M1 motorway southbound	Between the M1 motorway merge slip road overbridge and its

diverge slip road at Junction 24	junction with the A50; shown coloured light blue between points Z and AA as shown on the speed limit plans (Document 2.7A).
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SCHEDULE 9

Article 18

AMENDMENTS TO EXISTING ORDERS

<i>(1)</i> <i>Statutory Instrument/ Order Title</i>	<i>(2)</i> <i>Statutory Instrument Number applicable</i> <i>if</i>	<i>(3)</i> <i>Changes</i>	<i>(4)</i> <i>Event</i>
The Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963	1963 Nr. 1172	(77) is to read "Between a point 60 metres north west of its junction with C8207 Side Ley to a point where it meets with the roundabout at M1 Junction 24".	Opening of the new road shown coloured green between points 37 and 38 as shown on the highway classifications plans (Document 2.5B).
The North East of Birmingham-Nottingham A453 Trunk Road (Prohibition of Waiting) (Clearways) Order 1974	1974 Nr. 1663	To be revoked in its entirety.	Opening of the A453 signalised roundabout shown coloured green between the points marked 15-16-19-18 and returning to 15 as shown on the highway classifications plans (Document 2.5B).
The A50 Trunk Road (Derby Southern Bypass) (Prohibition of Right Turns and U-Turns) Order 1998	1998 Nr. 377	To be revoked in its entirety.	Stopping up of Church Street as shown marked xvii on the access and rights of way plans (Document 2.3C) shown by red and white hatching.
The A50 Trunk Road (Southbound carriageway between M1 Junctions 24 and 24A, Leicestershire) (Prohibition of Entry in Layby) Order 2005	2005 Nr. 3067	To be revoked in its entirety.	Removal of the lay-by referred to in the Order.
The A50 Trunk Road (Church Street, Lockington, Leicestershire)	2006 Nr. 1144	To be revoked in its entirety.	Stopping up of Church Street as shown marked xviii on the

(Prohibition of Traffic Movements) Order 2006			access and rights of way plans (Document 2.3C) shown by red and white hatching.
The Leicestershire County Council (Prohibition of Commercial Vehicles Over 7.5 Tonnes) (Various Parishes) (Western Division) Order 1990 (Amendment No.6) (Parishes of Castle Donington, Isley Cum Langley, Breedon on the Hill, Swannington, Long Whatton, Belton, Osgathorpe, Worthington, Coleorton, Lockington and Hemington and Hathern) Order 1994		In Schedule 2 to the Order after “the A6 Parishes of Hathern, Long Whatton and Kegworth (from its junction with the B5234, Parish of Hathern, to its junction with the A453” insert “east of the M1 motorway, between M1 Junction 23A and M1 Junction 24”. In Schedule 3 to the Order replace all references to “A6” with “A50”.	(i) Opening of the new road shown coloured green between points 37-38 as shown on the highway classifications plans (Document 2.5B). (ii) Opening of the new roads shown coloured green between points 8-9, 10-11 and 12-13 as shown on the highway classifications plans (Document 2.5A).

SCHEDULE 10

Article 19

CLEARWAYS AND NO WAITING

PART 1

CLEARWAYS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Prohibition of waiting on verges</i>	<i>(4)</i> <i>Event</i>
The roundabout at M1 Junction 24	The circulatory carriageway at the roundabout junction of the A453, A50, A6 and the slip roads leading to and from the M1 Motorway at Junction 24, including all the dedicated filter lanes and segregated left turn lanes at that roundabout; as shown between points i and ii, and from point iii returning to point iii, along the centrelines	No	Opening of the A453 signalised roundabout shown coloured green between points 15-16-19-18 and returning to 15 as shown on the highway classifications plans

	shown red on the traffic regulation plans (Document 2.6A).		(Document 2.5B).
A453	From the circulatory carriageway at roundabout at M1 Junction 24 to the circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange; as shown between points iv and v along the centreline shown red on the traffic regulation plans (Document 2.6A and 2.6B).	No	Opening of the A453 signalised roundabout shown coloured green between points 15-16-19-18 and returning to 15 as shown on the highway classifications plans (Document 2.5B).
The roundabout junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange	The circulatory carriageway at the roundabout junction of the A453 and the East Midlands Gateway Strategic Rail Freight Interchange; as shown from point vi returning to point vi along the centreline shown green on the traffic regulation plans (Document 2.6B).	Yes	Opening to traffic of the length of road described in columns (1) and (2).
A453	From the circulatory carriageway at the junction between the A453 and the East Midlands Gateway Strategic Rail Freight Interchange, to a point 492 metres south of that junction; as shown between points vii and viii along the centreline shown green on the traffic regulation plans (Document 2.6B).	Yes	Opening of the A453 signalised roundabout shown coloured green between points 15-16-19-18 and returning to 15 as shown on the highway classifications plans (Document 2.5B).
A6 Kegworth Bypass	Between points ix and x along the centreline shown light blue on the traffic regulation plans (Document 2.6B).	No	Opening to traffic of the length of road described in columns (1) and (2).
The roundabout between the A6 London Road and A6 Kegworth Bypass	From point xii returning to point xii along the centreline shown light blue on the traffic	No	Opening to traffic of the length of road described in

	regulation plans (Document 2.6B).		columns (1) and (2).
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PART 2
NO WAITING AT ANY TIME

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

SCHEDULE 11

Article 20

MOTOR VEHICLE RESTRICTIONS

PART 1

MOTOR VEHICLE ACCESS ONLY RESTRICTIONS

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

PART 2

ONE WAY STREETS

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

PART 3

PROHIBITION OF ENTRY TO ABNORMAL LOADS LAYBY

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

PART 4

BUSES AND CYCLISTS ONLY

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

SCHEDULE 12

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1)	(2)	(3)	(4)
<i>Area</i>	<i>Number of land shown on land plan</i>	<i>Purpose for which temporary possession may be taken</i>	<i>Relevant part of the authorised development</i>
District of North West Leicestershire	1/1, 1/7, 1/8	Alteration to existing railway line to facilitate connection to the rail freight interchange	Works No. 1
	1/2, 1/3	Diversion of footpath L83	Works No. 1
	1/6, 3/3, 3/8, 3/9, 3/10, 3.14	Alterations to existing highway	Works No. 8
	2/15, 2/16, 2/22	Temporary construction access	Works No. 7
	2/21	Diversion of footpath L73	Works No. 10
	3/6	Temporary stock piling area for topsoil and subsoil material	Works No. 7
	4/4, 5/1, 5/2	Alteration to emergency access to East Midlands Airport	Works No. 6
	5/7	Stopping up of footpath L45	Works No. 8
	5/11, 6/7	Temporary construction compounds	Works No. 11
	5/12, 5/16, 5/18, 5/20, 5/21 and 6/5	Removal of existing hedgerows and amending ground levels	Works No. 11
	5/13, 5/14, 5/15, 5/17	Stopping up of footpath L45A	Works No. 11
	6/4	Stopping up of footpath L64	Works No. 11
	6/6, 6/8	Construction of a farm track	Works No. 11

SCHEDULE 13

Article 25

LAND TO WHICH POWERS TO EXTINGUISH RIGHTS DO NOT APPLY

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

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Leicestershire		
	2/9	Works No.8
	2/20	Works No.10
	2/25	Works No.8
	2/38	Works No.8

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

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

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

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

- (a) for the word “part” in paragraphs (a) and (b) there is substituted the words “a right over land consisting”;
- (b) for the word “severance” there is substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there is substituted the words “right proposed”; and
- (d) for the words “part is” there is substituted the words “right is”.

Application of the 1965 Act

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

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

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

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

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

(a) 1973 c.26.

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

5.—(1) For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

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

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

in relation to that person, the Order ceases to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

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

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

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

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

section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 15

Article 38

FOR THE PROTECTION OF NATIONAL GRID

Application

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

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Interpretation

2. The terms used in this Schedule are defined in article 2 (interpretation) of this Order save where inconsistent with this paragraph 2—

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

“apparatus” means—

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

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

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

“National Grid” means National Grid Gas Plc and National Grid Electricity Plc; and

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed.

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

Apparatus of Undertakers in stopped up streets

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

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(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 13 (temporary stopping up of streets), National Grid is at liberty at all times to take all necessary access across any such stopped up street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

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Acquisition of land

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

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Removal of apparatus

6.—(1) If, in the exercise of the agreement reached in accordance with ~~sub-~~paragraph (5) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus ~~must not~~ be removed and any right of National Grid to maintain that apparatus in that land ~~must not~~ be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

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(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it ~~must~~ give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker ~~must~~, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account ~~paragraph~~ 7(1) below) the necessary facilities and rights for—

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- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

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(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid, on receipt of a written notice to that effect from the undertaker, ~~must take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.~~

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

(5) National Grid must after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

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

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Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights ~~are to~~ be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and ~~must~~ be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

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(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under ~~sub-paragraph~~ (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on

the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject then the matter **must** be referred to arbitration and, the arbitrator **must** make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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Retained apparatus: protection Gas Undertakers

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

(2) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker **must** submit to National Grid a plan of such works.

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

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) intended maintenance regimes.

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

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
- (b) **must** not be unreasonably withheld.

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

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

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

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(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (2) to (4) and (6) to (8) ~~apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).~~

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(10) Nothing in this paragraph ~~precludes~~ the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph ~~apply~~ to and in respect of the new plan.

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

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

(12) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

Retained apparatus: Protection: Electricity Undertakers

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

(2) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker ~~must~~ submit to the undertaker in question a plan of such works and seek from National Grid details of the underground extent of its electricity tower foundations.

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

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

(4) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted to National Grid under sub-paragraph (2) ~~must~~ be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (3)-

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- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;

- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; **and**
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of **overhead** lines (OHL) construction traffic.

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

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

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

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

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

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

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(10) If National Grid in accordance with sub-paragraphs (7) or (9) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (2) to (4) and (7) to (9) **apply** as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

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(11) Nothing in this paragraph **precludes** the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph **apply** to and in respect of the new plan.

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

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

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

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker ~~must~~ pay to National Grid on demand all charges, costs and expenses reasonably incurred by it in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

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- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory powers to acquire any necessary rights under paragraph 6(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

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

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) ~~is to~~ be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs ~~must~~ be borne by the undertaker.

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(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus ~~is not to~~ be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

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(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole ~~is to~~ be treated as if it also had been agreed or had been so determined.

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(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, ~~is to~~ be reduced by the amount which represents that benefit.

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Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, ~~any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—~~

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(a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by an undertaker or in accordance with any requirement of an undertaker or under its supervision ~~does not~~ (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of sub-paragraph (1).

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(3) Nothing in sub-paragraph (1) ~~imposes~~ any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

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

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Ground subsidence monitoring scheme in respect of Undertaker's apparatus

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

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

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(a) the apparatus which is to be subject to such monitoring;

(b) the extent of land to be monitored;

(c) the manner in which ground levels are to be monitored;

(d) the timescales of any monitoring activities; and

(e) the extent of ground subsidence which, if exceeded, would require the undertaker to submit for National Grid's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

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

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

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Enactments and agreements

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

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Co-operation

14. Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraphs 8 or 9 the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its reasonable endeavours to co-operate with the undertaker for that purpose.

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Access

15. If in consequence of the agreement reached in accordance with paragraph 5, or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as would enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

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Arbitration

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

SCHEDULE 16

Article 38

FOR THE PROTECTION OF THE AIRPORT OPERATOR

1. The undertaker must carry out the authorised development in accordance with the management strategy for the safeguarding of East Midlands Airport (Document 6.12).

2. The undertaker must produce a Bird Management Plan to minimise any bird hazard impact (as envisaged in section 4 of the management strategy for the safeguarding of East Midlands Airport (Document 6.12)) covering the design, construction and operation of the main site and obtain approval thereof from the airport operator prior to the submission of any details for approval ~~under~~ requirement 7 (detailed design approval). ~~The approval of the Bird Management Plan must not be unreasonably withheld or delayed.~~ ~~The approved Bird Management Plan must thereafter be complied with at all times.~~

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

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

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

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

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SCHEDULE 17

Article 38

FOR THE PROTECTION OF SEVERN TRENT WATER LIMITED

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

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SCHEDULE 18

Article 38

FOR THE PROTECTION OF NETWORK RAIL

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

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2. In this Schedule—

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

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

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

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

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

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

“railway property” means any railway belonging to Network Rail Infrastructure Limited and:

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

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

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

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

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

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4.—(1) The undertaker must not exercise the powers conferred by articles 14 (accesses), 23 (authority to survey and investigate the land), 25 (compulsory acquisition of land and rights), 26

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(power to override easements and other rights), 27 (compulsory acquisition of land – incorporation of the mineral code), 31 (temporary use of land for carrying out the authorised development), 33 (operation and use of railways) and 37 (felling or lopping of trees) and section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

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(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

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

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

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

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(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

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(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works are to be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

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

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- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

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

7. The undertaker ~~must~~—

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

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

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which ~~must be specified in the notice~~), the undertaker ~~must~~ pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

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

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

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(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving ~~is~~ **to** be set off against any sum payable by the undertaker to Network Rail under this paragraph.

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10. The undertaker ~~must~~ repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

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- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it ~~is~~ **is** reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

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11.—(1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signaling or other communications.

(2) This paragraph ~~applies~~ **applies** to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph ~~5~~ **5**(1) for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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(3) Subject to sub-paragraph (5), the undertaker ~~must~~ **must** in the design and construction of the authorised works take all measures necessary to prevent EMI and ~~must~~ **must** establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

- (a) the undertaker ~~must~~ **must** consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter ~~must~~ **must** continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail ~~must~~ **must** make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified ~~under~~ **under** sub-paragraph (a); and
- (c) Network Rail ~~must~~ **must** allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified ~~under~~ **under** sub-paragraph (a).

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(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail ~~must~~ not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution ~~must~~ be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 8 ~~has~~ effect subject to this sub-paragraph.

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(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised works and notwithstanding any measures adopted ~~under~~ sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker ~~must~~ immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

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(7) In the event of EMI having occurred—

- (a) the undertaker ~~must~~ afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail ~~must~~ afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail ~~must~~ make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

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(8) Where Network Rail approved modifications to Network Rail's apparatus ~~under~~ sub-paragraphs (5) or (6)—

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- (a) Network Rail ~~must~~ allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved ~~under~~ those sub-paragraphs ~~must~~ be carried out and completed by the undertaker in accordance with paragraph 9.

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(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) ~~applies~~ to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

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(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph ~~is to be~~ deemed to be protective works referred to in that paragraph.

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

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12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker ~~must~~, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

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13. The undertaker ~~must~~ not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it ~~has~~ first consulted Network Rail and it ~~must~~ comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

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14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work ~~must~~, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

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15.—(1) The undertaker ~~must~~ pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

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- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work.

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and the undertaker ~~must~~ indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision ~~must~~ not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

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(2) Network Rail ~~must~~ give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand ~~is to~~ be made without the prior consent of the undertaker.

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(3) The sums payable by the undertaker under sub-paragraph (1) ~~must~~ include a sum equivalent to the relevant costs.

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(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail ~~must~~ promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

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(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs ~~is~~, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator ~~under~~ sub-paragraph (4).

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(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

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“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

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16. Network Rail ~~must~~, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this part of this Schedule (including the amount of the relevant costs mentioned in paragraph 18) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made ~~under~~ this part of this Schedule (including any claim relating to those relevant costs).

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17. In the assessment of any sums payable to Network Rail under this Schedule ~~no~~ account ~~is to be taken to~~ any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

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18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the work and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, must prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 39 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

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SCHEDULE 19

Article 38

FOR THE PROTECTION OF HIGHWAYS ENGLAND

1. Application

The provisions of this Schedule have effect.

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2. Interpretation

(1) The terms used in this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) below which preval; and

(2) In this Schedule:-

“As Built Information” means one digital copy of the following information:

- (a) As constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the Undertaker;
- (b) List of supplies and materials, test results and CCTV drawings;
- (c) Product data sheets, technical specifications for all materials used;
- (d) As constructed information for any Utilities discovered or moved during the works;
- (e) Method Statements for works carried out;
- (f) In relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) Organisation and methods manuals for all products used;
- (h) As constructed programme;
- (i) Test results and records; and
- (j) Other such information as may be reasonably required by Highways England to be used to update any relevant databases;

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“the Bond Sum” means the sum equal to 110 % of the cost of the carrying out of the Phase of Highway Works concerned or such other sum agreed between the undertaker and Highways England;

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

“the Commuted Sums” means the commuted sums calculated in accordance with paragraph 9 of this Schedule;

“Contractor” means any contractor or sub contractor appointed by the undertaker to carry out the Highway Works or any Phase of the Highway Works and approved by Highways England under paragraph 3(2) below;

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“Detailed Design Information” means the following drawings, specifications and other information which must be in accordance with the general arrangements shown on the Relevant Regulation 6(2) Plans;

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- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian);
- (d) drainage and ducting;
- (e) earthworks;
- (f) road pavements;
- (g) kerbs, footways and paved areas;
- (h) traffic signs, signals and road markings;
- (i) road lighting (including columns and brackets);
- (j) CCTV masts and cantilever masts;
- (k) electrical work for road lighting and traffic signs;
- (l) motorway communications;
- (m) highway structures;
- (n) landscaping; and
- (o) utilities diversions,

where relevant to the Phase concerned.

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“Estimated Costs” means the estimated costs in respect of each Phase agreed under paragraphs 5(1) and (5) of this Schedule;

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

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“Highway Works” means that part of the authorised development to be carried out in the areas identified as i, ii, vi and ix on the Highway Works Components Plans (Documents 2.13a-c), the general arrangement of which is shown on the Relevant Regulation 6(2) Plan and any works ancillary to that part of the authorised development;

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“Nominated Persons” means the undertakers representatives or the Contractors representatives on site during the carrying out of the Highway Works;

“Phase” means that part of the Highway Works which is to be carried out in separate phases in the areas identified as i, ii, vi and ix on the Highway Works Components Plan (Document 2.13a-c) except that components ii and ix is a single phase or such other phasing arrangements as must be agreed with Highways England;

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“Programme of Works” means a document setting out the sequence and timetabling of works for the Phase in question;

“Relevant Regulation 6(2) Plans” means Documents 2.4A, 2.4B, 2.4E, 2.4H, 2.4J, 2.4M and 2.4N certified under article 39 of this Order;

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

“Utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

3. Prior Approvals and Security

(1) No work is to commence on any Phase of the Highway Works until the Detailed Design Information and a Programme of Works in respect of that Phase has been submitted to and approved by Highways England and in the case of Phase ix identified on the Highway Works Component Plans (Documents 2.13a-c) also Leicestershire County Council such approvals not to be unreasonably withheld or delayed.

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

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

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

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

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

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

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4. Carrying out of works

(1) If the undertaker commences the authorised development the undertaker must design construct test and commission the Highway Works.

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

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

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(4) Each Phase of the Highways Works must be carried out to the satisfaction of Highways England in accordance with:

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(a) the relevant Detailed Design Information;

(b) a Programme of Works approved under paragraph 3(1) above or as subsequently varied by agreement between the undertaker and Highways England;

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(c) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) and any amendment to or replacement thereof for the time being in force save to the extent that they are a departure from such standards and have been approved by Highways England and such approvals or requirements of Highways England in paragraph 3 that need to be in place prior to the works being undertaken; and

(d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker **must** ensure that all client duties (as defined in the said Regulations) are satisfied and **must** indemnify Highways England against all claims damages costs losses liabilities and actions arising out of a failure to do so.

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

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(6) At any time during the carrying out of the Highway Works the Nominated Persons **must** act upon any request made by Highways England in relation to the carrying out of the Highway Works as soon as practicable following such request being made to the Nominated Persons save to the extent that the contents of such request are inconsistent with or fall outside the Contractors obligations under its contract with the undertaker or the undertakers obligations in this Order.

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(7) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any Phase of the Highway Works having been given notice of an alleged breach and an adequate opportunity to remedy it by Highways England then Highways England **is** on giving to the undertaker 14 **days' notice** in writing to that effect, entitled to carry out and complete that Phase of the Highway Works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf and the undertaker **must** within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

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(8) Nothing in this Schedule **prevents** Highways England from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public the cost to Highways England of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the Highway Works.

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

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5. Payments

(1) The undertaker **must** fund the whole of the Highway Works costs and all costs incidental to the Highway Works and **must** also pay to Highways England in respect of each Phase of the Highway Works a sum equal to the whole of any costs and expenses which Highways England incur including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to the Highway Works and arising out of it and its implementation including without prejudice to the generality thereof:-

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- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that Phase;
- (b) costs in relation to agreeing the Programme of Works for that Phase;
- (c) the carrying out of supervision of that Phase of the Highway Works;
- (d) all legal and administrative costs in relation to (a) and (b) above; and
- (e) all costs in relation to the transfer of any land required for the Highway Works together ("the Estimated Costs").

(2) The sums referred to in sub-paragraph (1) above do not include any sums payable from the undertaker to the Contractor but do include any value added tax which is payable by

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Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(3) The undertaker must pay to Highways England upon demand the total costs properly and reasonably incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the Highways Works and whether or not such procedure or order is or are experimental temporary or permanent provided that this paragraph does not apply to the making of any orders which duplicate orders contained in this Order.

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

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(5) The undertaker must make the payments referred to in sub-paragraph (1) as follows:-

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(a) the undertaker must pay a sum equal to the agreed Estimated Costs in respect of a Phase prior to commencing that Phase; and

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

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(6) If Highways England have received the As Built Information within 91 days of the issue of the final certificate for each Phase of the Highway Works under paragraph 7 Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) above and within 28 days from the expiry of the 91 day period:-

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(i) if the account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it in that final account; and

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(ii) if the account shows that the payment or payments previously made have exceeded those costs Highways England must refund the difference to the undertaker.

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(7) If any payment due under any of the provisions of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of compensation under section 32 of the Land Compensation Act 1961 for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

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6. Provisional Certificate and Defects Period

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

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(2) Highways England must also issue a defects list to the undertaker together with timescales within which defects are to be resolved. The undertaker must at its own expense remedy any defects in that Phase of the Highway Works as reasonably required to be remedied by Highways England and identified by Highways England during a period of 12 months from the date of the provisional certificate in respect of that Phase.

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(3) The undertaker must submit Stage 4(a) and Stage 4(b) Road Safety audits as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Road Safety Audit Stage 4(a) and 4(b) reports inclusive of conducting any works that are required.

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

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7. Final Certificate

(1) The undertaker must apply to Highways England for the issue of the final certificate in respect of each Phase at the expiration of the 12 month period in respect of that Phase referred to in paragraph 6(2) or on a date on which any defects or damage arising from defects during that period has been made good to the reasonable satisfaction of Highways England (not to be unreasonably withheld or delayed) and when making such application the undertaker must:

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- (a) submit to Highways England the health and safety file and As Built Information of the relevant Phase; and
- (b) provide a plan clearly identifying the extent of any land which is to be highway maintainable at public expense by Highways England.

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(2) If the provisions of sub-paragraph (1) are satisfied Highways England must as soon as reasonably practicable issue a final certificate for the Phase concerned.

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8. Surety

(1) Subject to paragraph 3(3) above the undertaker must provide security for the carrying out of the Highway Works as follows:

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- (a) prior to the commencement of each Phase the Highway Works within that Phase must be secured by a bond first approved by Highways England and substantially in the form of the draft bond attached at Annex 1 or such other form that may be agreed between the undertaker and Highways England to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that Phase under the provisions of this Schedule provided that the maximum liability of the bond must not exceed the Bond Sum relating to that Phase; and
- (b) prior to the commencement of the Highway Works the undertaker must provide the Cash Surety which may be utilised by Highways England in the event of the undertaker failing to meet its obligations to make payments under paragraph 5 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which must for the avoidance of doubt be a single Cash Surety for the entirety of the Highway Works).

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(2) Each Bond Sum and the Cash Surety (the latter in respect of the final phase only) must be progressively reduced as follows:-

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- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the Contractors) from the undertaker of the payments made from time to time to the Contractor Highways England must in writing authorise the reduction of the Bond Sum and (in respect of the final Phase only) the Cash Surety by such proportion of the Surety Sum and Cash Deposit as amounts to 80% of those payments;
- (b) within 20 working days of completion of each Phase of the Highway Works (as evidenced by the issuing of the provisional certificate in respect of that Phase under paragraph 6(1)) Highways England must in writing release the bond provider from its obligations by 80% of the Bond Sum in respect of that Phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date and (in respect of the final Phase only) return 80% of the Cash Surety to the undertaker; and
- (c) within 20 working days of the issue of the final certificate for each Phase of the Highway Works referred to in paragraph 7 Highways England must in writing release the bond provider from all its obligations in respect of that Phase subject to Highways England having received the documents referred to in paragraph 7(1)(a) and (b) and save insofar as any claim or claims have been made against the bond or liability on its part has arisen

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prior to that date and (in respect of the final Phase only) must release the remainder of the Cash Surety to the undertaker.

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9. Commuted Sums

(1) Prior to the commencement of each Phase of the Highway Works the undertaker is to be provided with an estimate of the amount of the Commuted Sum in respect of the maintenance costs of that Phase of the Highway Works to be incurred following the issue of the final certificate, if any and following completion of that Phase of the Highway Works the undertaker must pay to Highways England the Commuted Sum within 28 days of the date of the final certificate. The Commuted Sum must be calculated in line with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 save that:

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- (a) the agreed commuted sum in respect of the highway bridge structures within Phase ii identified on the Highway Works Component Plans (Document 2.13a-c) is £931,197.57; and
- (b) the agreed commuted sum in respect of the highway bridge structure within Phase viii identified on the Highway Works Component Plans (Document 2.13a-c) is £1,046,151.18.

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

10. Insurance

(1) The undertaker must prior to commencement of the Highway Works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the Highway Works or any part thereof by the undertaker.

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11. Indemnification

(1) The undertaker must in relation to the carrying out of the Highway Works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify Highways England from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design, carrying out of the Highway Works and maintenance including but without prejudice to the generality of the foregoing any claim against Highways England under the Land Compensation Act 1973 or by virtue of the application of the provisions of the Noise Insulation Regulations made thereunder including any liability falling upon Highways England by virtue of its exercising its discretionary powers under the said Regulations

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12. Warranties

(1) The undertaker must procure warranties from the contractor and designer of each Phase of the Highway Works to the effect that all reasonable skill care and due diligence must be exercised in designing and constructing that Phase of the Highway Works including the selection of materials, goods, equipment and plant such warranties to be provided to Highways England before that Phase of the Highway Works commences.

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Annex 1

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] (“the undertaker”) and [] [(Company Regn No)] whose registered office is situate at [] (“the Surety”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 200[] in the sum

of [] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The East Midlands Gateway Rail Freight Interchange and Highway Order 201[] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned the DCO in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to Highways England such sums as are provided in the DCO **NOW THE CONDITIONS** of this Bond are such that if the undertaker duly observes and performs all the terms provisions covenants conditions and stipulations of Schedule 19 of the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety must satisfy and discharge the damages sustained by Highways England up to the amount of this Bond then this obligation is null and void but otherwise must be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by Highways England under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of Highways England must in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond is to be reduced and released in accordance with paragraph 8 of Schedule 19 of the DCO.

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SCHEDULE 20

Article 38

FOR THE PROTECTION OF LEICESTERSHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY

1. Application

The provisions of this part of this Schedule have effect.

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2. Interpretation

(1) The terms used are as defined in article 2 (interpretation) of this Order save where inconsistent with paragraph (2) below which prevail; and

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(2) In this part of this Schedule

“As Built Information” means the following information:

- (a) Drawings showing the highway works as constructed;
- (b) List of supplies and materials, test results and CCTV drainage;
- (c) Product data sheets, technical specifications for all materials to be used;
- (d) As Built Information for any “stats” discovered or moved during the works and in relation to the over bridge;
- (e) Method Statements for works to be carried out;
- (f) Road lighting, signs and traffic signals “to clause 1401”;
- (g) Organisation and methods manuals for all products used;
- (h) As Built programme;
- (i) Drawings referred to in (a), (k) and (l) in Auto CAD;
- (j) Test results and records;
- (k) Landscape Drawings;

- (l) Highway Drainage Drawings; and
- (m) Plan identifying land which is highway maintainable at public expense.

“Detailed Design Information” means the following drawings, specifications and other information which must be in accordance with the general arrangements shown on the Relevant Regulation 6(2) Plans:

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- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian);
- (d) drainage and ducting;
- (e) earthworks;
- (f) road pavements;
- (g) kerbs, footways and paved areas;
- (h) traffic signs, signals and road markings;
- (i) road lighting (including columns and brackets);
- (j) CCTV masts and cantilever masts;
- (k) electrical work for road lighting and traffic signs;
- (l) motorway communications;
- (m) highway structures;
- (n) landscaping; and
- (o) utility diversions;

where relevant to the Phase concerned:-

“Director” means a director of Environment and Transportation of the Highway Authority or any successor post responsible for the Highway Authority function of Leicestershire County Council;

“Highway Works” means that part of the authorised development to be carried out in the areas identified as iii, iv, v, vii, viii on the Highway Works Component Plans (Document 2.13a-c) the general arrangement of which is shown on the Relevant Regulation 6(2) Plans;

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“Highway Authority” means Leicestershire County Council;

“Phase” means that part of the Highway Works which is to be carried out as separate phases in the areas identified as iii, iv, v, vii and viii on the highways works components plans (Document 2.13a-c) except that components vii and viii is a single phase or such other phasing arrangement as must be agreed with the Highway Authority;

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“Relevant Regulation 6(2) Plans” means Documents 2.4A, 2.4B, 2.4C, 2.4E, 2.4F, 2.4H, 2.4K, 2.4M and 2.4N;

“Specification” means

Design

- (a) The 6C’s Design Guide;
- (b) Design Manual for Roads and Bridges;

Specification

- (c) Leicestershire County Council’s Specification for highway works for new developments;
- (d) Leicestershire County Council’s Standard drawings;

Street Lighting

- (e) Design in accordance with BS5489;
- (f) Leicestershire County Council’s Street Lighting Specification;

Traffic Signs

- (g) The Traffic Signs Regulations and General Directions 2002 and any modifications thereof;
 - (h) The Traffic Signs Manual (DOT);
 - (i) Leicestershire County Council’s Traffic Signs and Road Markings Specification;
- “Supervising Officer” means the officer of the Highway Authority appointed by it to supervise the Highway Works on its behalf; and
- “Works Fees” means the actual costs incurred by the Highway Authority (utilising its standard charge out rates) in relation to:
- (j) considering and approving the Detailed Design Information;
 - (k) the work carried out by the Supervising Officer including travel expenses to and from the Highway Works and all other expenses properly incurred by the Supervising Officer in connection with his duties; and
 - (l) administration in relation to (a) and (b) above.

3. Highway Works

- (1) The undertaker must carry out and complete the Highway Works in accordance with
 - (a) the Detailed Design Information approved under paragraph 13; and
 - (b) the programme of works approved under paragraph 21 or as subsequently varied by agreement between the undertaker and the Highway Authority.

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4. Provisional Certificate and Maintenance Period

(1) When and so soon as each phase of the Highway Works has been completed including such road safety audits as required in accordance with paragraph 26 of this Schedule to the reasonable satisfaction of the Director the Director must issue a Provisional Certificate of Completion (“the Provisional Certificate”) such certificate not to be unreasonably withheld or delayed and the undertaker at his own expense must maintain that Phase of the Highway Works in a good state of repair and to the satisfaction of the Director for a period of twelve months from the date of the Provisional Certificate (“the Maintenance Period”) and must carry out such routine maintenance as may be necessary or required by the Director to facilitate use by the public **AND** for the avoidance of doubt the undertaker must undertake all other work and/or maintenance in respect thereof including but not limited to any damage until issue of the Final Certificate in respect of that Phase under paragraph 5 (“the Final Certificate”) and that Phase of the Highway Works becomes highways maintainable at the public expense.

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5. Final Certificate

(1) The undertaker must apply to the Director for issue of the Final Certificate in respect of each Phase at the expiration of the Maintenance Period in respect of that Phase or on a date (whichever is the later) on which any damage arising during the Maintenance Period is made good to the reasonable satisfaction of the Director or completion of all or any works identified by any road safety audit required in accordance with paragraph 26 of this Schedule.

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(2) Upon receipt of the “As Built” Information in respect of a Phase and approval of the same the Director must issue a Final Certificate in respect of that Phase and as from the date of such Final Certificate the Highway Works becomes highways maintainable at the public expense.

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(3) If the undertaker does not apply for and receive a Final Certificate for a Phase within two years of the issue of the Provisional Certificate in respect of that Phase the undertaker must pay to the Highway Authority a further administration charge of **FIVE HUNDRED POUNDS** (£500.00).

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6. Payment for Supplemental Maintenance

(1) Where the period from commencement of a Phase of the Highway Works to the issue of the Final Certificate in respect of that Phase exceeds a period of two years the undertaker

must pay to the Highway Authority the cost of carrying out a bulk clean and lamp change for all the street lighting provided as part of that Phase of the Highway Works.

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(2) Prior to the issue of the Final Certificate of Completion in respect of a Phase the undertaker must pay to the Highway Authority the cost of a bulk clean and lamp change of all illuminated signs and bollards erected as part of that Phase of the Highway Works.

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7. Indemnity

(1) The undertaker must indemnify the Highway Authority from and against all costs, expenses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design carrying out and maintenance of the Highway Works including but without prejudice to the generality of the foregoing any claim against the Highway Authority under the Land Compensation Act 1973 or by virtue of the application of the provisions of the Noise Insulation Regulations made thereunder including any liability falling upon the Highway Authority by virtue of its exercising its discretionary powers under the said Regulations **PROVIDED THAT:**

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(a) the foregoing indemnity must not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the Highway Authority or its officers servants, agents or contractors or any person or body for whom the Highway Authority is responsible;

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(b) the Highway Authority must notify the undertaker forthwith upon receipt of any claim;

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(c) the Highway Authority must not accept any such claim without first having given the undertaker details of such claim and having given the undertaker the opportunity to make representations to the Highway Authority as to the validity and quantum of such claim;

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(d) the Highway Authority must in settling any such claim give full and due regard to any representations made by the undertaker in respect thereof;

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(e) the Highway Authority must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the Highway Authority the amount specified as the quantum of such claim;

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(f) the undertaker must notify the Highway Authority of the intended date of opening of each Phase of the Highway Works to public traffic not less than 14 days in advance of the intended date; and

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(g) the undertaker must notify the Highway Authority of the actual date that each Phase of the Highway Works are open to public traffic on each occasion within 14 days of that occurrence.

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8. Construction (Design and Management) Regulations 2015

(1) The undertaker must comply with all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular must ensure that all obligations imposed on the client (as defined in the said Regulations) are satisfied and must indemnify the Highway Authority against all claims liabilities and actions arising out of a failure to so do.

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9. Security

(1) Prior to the commencement of each Phase of the Highway Works the undertaker must secure the cost thereof by the deposit with the Highway Authority of a Bond in the manner and form incorporated in Annex 1 to this Schedule in a sum equivalent to the Director's reasonable estimate of the cost of that Phase of the Highway Works (including any statutory undertakers works) or must provide some alternative form of security acceptable to the Highway Authority.

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10. Notices etc

(1) Where under the provisions of this Schedule the Highway Authority or the Director is required to agree to approve to express satisfaction with or to give notice of any matter such agreement approval satisfaction or notice is to be deemed to have not been given or expressed

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

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11. Dispute Resolution

(1) Notwithstanding article 41 (arbitration) any dispute under or arising out of the operation of this Schedule may be referred to a single arbitrator if all parties to the dispute agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

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12. Privately and Publicly Owned Apparatus

(1) For the avoidance of doubt it is hereby expressly declared that the undertaker in carrying out the Highway Works must at its own expense divert or protect all or any pipes, wires, cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act as may be necessary to enable such works properly to be carried out or may be reasonably directed by the Director and all alterations to existing services must be carried out to the reasonable satisfaction of the appropriate persons authorities and statutory undertakers.

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13. Detailed Design Approval

(1) The undertaker must take the Specifications into account in preparing the Detailed Design Information for submission to the Highway Authority.

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(2) No Phase of the Highway Works is to commence until the Detailed Design Information has been submitted to and approved by the Director and in the case of that part of component viii as shown on the Highway Works Components Plans (Documents 2.13a-c) comprising the bridge over the motorway approval of the Detailed Design Information must also be required from Highways England prior to that Phase of the Highway Works commencing.

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14. Workmanship

(1) All the Highway Work is to be carried out to the reasonable satisfaction of the Director.

15. Traffic and Safety Control

(1) In carrying out work in or adjoining the public highway the undertaker must comply in all respects with Chapter 8 of the Traffic Signs Manual.

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16. Site Safety

(1) The undertaker must in respect of each Phase of the Highway Works keep that Phase safe and in a good state of efficiency and repair including the fencing and lighting of all open trenches and must keep all building materials and plant clear of the carriageway and footways.

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17. Approval of Persons undertaking the Highway Works

(1) The undertaker must not engage or permit the engagement of any person to carry out the Highway Works (or any part thereof including their design) unless that person has first been approved by the Highway Authority as suitable to carry out such works.

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18. Inspection of the Highway Works

(1) The undertaker must permit and must require any contractor or sub-contractor engaged on the Highway Works to permit at all reasonable times persons authorised by the Highway Authority whose identity has been previously notified to the undertaker to gain access to the site of the Highway Works for the purpose of inspection to verify compliance with the provisions of this Schedule in accordance with the Highway Authority's inspection policy.

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19. Design and Inspection Payment

(1) The undertaker must pay the Highway Authority Works Fees in response to monthly invoices issued by the Highway Authority to the undertaker itemising the Works Fees payable (including time records) the first of such invoices to be issued following the first submission of Detailed Design Information for approval.

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(2) The undertaker must provide the following for the Supervising Officer:

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- (a) workplace on site including welfare facilities;
- (b) communication equipment;
- (c) suitable transport at the site; and
- (d) parking provisions.

20. Commuted Sum

(1) Immediately prior to the issue of the Final Certificate in respect of any Phase the undertaker must pay to the Highway Authority any commuted sum payable in respect of that Phase calculated as provided for in sub-paragraph (2).

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(2) The rates to be applied in calculating the commuted sums payable must be based on those contained with the 6Cs Design Guide (or any replacement thereof) or in the absence of relevant rates with that Guide must be agreed between the undertaker and the Highway Authority at the date of calculation.

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21. Programme of Works

(1) The undertaker must prior to the commencement of each Phase of the Highway Works submit to the Director for his approval a programme of works setting out the undertaker's proposed timetables for executing those works and following such approval (which may be given with or without modification but which must not be unreasonably withheld or delayed) the undertaker must use all reasonable endeavours to ensure that the programme of works is complied with.

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22. Power to Execute Works in Default or Emergency

(1) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any Phase of the Highway Works having been given notice of an alleged breach and opportunity to remedy it by the Director then the Highway Authority must on giving to the undertaker fourteen days' notice in writing to that effect be entitled to carry out and complete that Phase of the Highway Works and any maintenance works on the undertakers behalf and the undertaker must within 28 days pay to the Highway Authority the cost so incurred by the Highway Authority.

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(2) Nothing in this Schedule prevents the Highway Authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public the cost to the Highway Authority of such work or action being chargeable to and recoverable from the undertaker.

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23. Insurance

(1) The undertaker prior to commencement of the Highway Works effect public liability insurance with an insurer in the minimum sum of Ten million pounds (£10,000,000.00) for any one claim against any legal liability for damage loss or injury to any property or any persons as a direct result of the execution and maintenance of the Highway Works or any part thereof by the undertaker.

24. Notice of Commencement of Highway Works

(1) The undertaker must prior to the commencement of each Phase of the Highway Works give the Highway Authority at least five weeks' notice in writing of the proposed date on which each Phase of the Highway Works will start and such date must be subject to the agreement of the Director.

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25. Approval of Team Undertaking Road Safety Audits

(1) The undertaker must not engage or permit the engagement of any audit team unless that audit team has first been approved by the Highway Authority as suitable to undertake Road Safety Audits in accordance with The Highway Agency Standard HD 19/15 or any replacement or modification thereof.

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26. Road Safety Audits

(1) At any time during the detailed design stages the Director may require that an Interim Road Safety Audit be carried out in accordance with The Highways Agency Standard HD 19/15 and be submitted to the Director and if so required by the Director any recommendations in such Interim Report must be implemented to his satisfaction.

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(2) Prior to the approval of the Detailed Design Information for a Phase a Stage 2 Road Safety Audit must be carried out in respect of that Phase in accordance with The Highways Agency Standard HD 19/15 or any replacement or modification thereof must be submitted to the Director and if so required by the Director any recommendations made in the Stage 2 Report must be implemented to his satisfaction.

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(3) Prior to the issue of the Provisional Certificate in respect of a Phase a Stage 3 Road Safety Audit must be carried out for that Phase in accordance with The Highways Agency Standard HD 19/15 and must be submitted to the Director and if so required by the Director any recommendations made in the Stage 3 Report must be implemented to his satisfaction.

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(4) A Stage 4 12 Month Monitoring Report (“the 12 Month Report”) carried out in accordance with The Highways Agency Standard HD 19/15 in respect of each Phase of the Highway Works must be submitted to the Director no sooner than 8 weeks and no later than 12 weeks from the date when a complete year of accident data is available following the first anniversary of the opening of that Phase for public use and if so required by the Director any recommendations made in the 12 Month Report must be implemented to his satisfaction.

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(5) Following receipt of the 12 Month Report in respect of a Phase the Director may require that HD 19/15 a Stage 4 36 month Monitoring Report (“the 36 Month Report”) be submitted for that Phase in accordance with The Highways Standard HD 19/15 no sooner than 8 weeks and no later than 12 weeks from the date when three complete years of accident data is available following the third anniversary of the opening of that Phase of the Highway Works for public use and if so required by the Director any recommendations in the 36 Month Report must be implemented to the satisfaction of the Director **AND** the undertaker must secure by the deposit of a Bond with the Highway Authority a sum equivalent to the Director's reasonable estimate of the cost of the potential liability of the undertaker in respect of works arising from the 36 Month Report prior to the issue of the Final Certificate.

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27. Traffic Signal Equipment

(1) The undertaker must permit the Highway Authority access at all reasonable times to any part of the site upon which the Highway Works are being carried out and in which cables pipes ducts or other apparatus associated with the traffic signal equipment is to be or are located to enable the Highway Authority to undertake works reasonably required for the maintenance of the said cables, pipes, ducts or other apparatus including any works which are undertaken to improve the performance of the traffic signals.

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28. Use of Sums Paid

(1) The Highway Authority must use such sums as are payable in accordance with the terms of this Schedule together with any interest which may accrue only for the purposes for which they are expressed to be paid.

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29. Statutory Procedures and Orders

(1) The undertaker must pay to the Highway Authority upon demand the total costs properly and reasonably incurred by the Highway Authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the Highway Works and whether or not such procedure or order is or are experimental temporary or permanent provided that this

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paragraph does not apply to the making of any orders which duplicate the orders contained in this Order.

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Annex 1

BY THIS BOND WE [the undertaker] whose registered office is situate at [] (hereinafter called “the Undertaker”) and [the Surety] (Company Registration Number []) whose registered office is situated at [] (hereinafter called “the Surety”) are held and firmly bound unto **LEICESTERSHIRE COUNTY COUNCIL** (hereinafter called “the Authority”) in the sum of [] (£[]) (“the Surety Sum”) the payment of which sum the Undertaker and the Surety bind themselves their successors and assigns jointly and severally by these presents

WHEREAS the Developer intends to carry out Phase [] of the Highway Works referred to in Schedule 20 in the East Midlands Gateway Rail Freight and Highway Order 201[X] (“the DCO”)

NOW THE CONDITION of the above written bond is such that if the Undertaker well and truly performs and fulfils its obligations in Schedule 20 of this DCO or if on failure by the Undertaker so to do the Surety must pay to the Authority the Surety Sum then the above written Bond is null and void but otherwise it must be and remain in full force and the giving by the Authority of any extension of time for the performing of the obligations in Schedule 20 of the DCO on behalf of the Undertaker to be performed or fulfilled or any forbearance or forgiveness on the part of the Authority to the Undertaker in respect of any matter referred to in or concerning provisions of Schedule 20 of the DCO must not in any way release the Surety’s liability under the above written Bond PROVIDED THAT upon the issue of the Provisional Certificate under Schedule 20 of the DCO the liability of the Undertaker and the Surety under this Bond is to be reduced to a sum equivalent to ten per cent of the cost of the Phase of the Highway Works together with the value of the commuted sum for that Phase as calculated in accordance with paragraph 20 (2) of Schedule 20 upon the issue of the Provisional Certificate in respect of that Phase or a minimum sum of one thousand pounds (£1,000) whichever is the greater and upon the issue of the Final Certificate in respect of that Phase the liability of the Undertaker and the Surety under this Bond must absolutely cease

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SCHEDULE 21

Article 38

FOR THE PROTECTION OF LAFARGE TARMAC

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

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2. In this Schedule—

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

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

“Lafarge” means Lafarge Aggregates Limited Company number 00297905 as operator of the quarry/landfill;

“Lafarge access” means the private access track to be constructed for the benefit of the Lafarge land between Warren Lane and M1 Junction 24 as shown on the regulation 6(2) plan (Document 2.4A);

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

“Lafarge leases” means the leases dated 14 February 2000 and 24 February 2009 made between Charles Henry Curzon Coaker and Lafarge;

“Maintenance Sum” means the sum of One Hundred Thousand pounds;

“quarry/landfill” means the quarry and landfill operations carried out on the Lafarge land; and
“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of the Lafarge quarry/landfill.

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

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

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

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6. The undertaker must give Lafarge a minimum of 28 days' notice of any requirement to alter the position of any of its haul roads within the Lafarge land in order to facilitate the carrying out of the specified works in the circumstances where the undertaker is constructing the altered haul road or 3 months' notice in the event of the altered haul road being constructed by Lafarge. In the event of the altered haul road being constructed by Lafarge the undertaker must recompense Lafarge for the reasonable costs incurred in connection therewith.

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

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8. Subject to the approval of Highways England the undertaker must incorporate a yellow box junction on the egress from the Lafarge access onto M1 Junction 24, the preferred design being that set out on the drawing entitled Quarry Exit at J24 (NTH/209/SK137 Revision P2) (Document 6.26).

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

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

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

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12. The undertaker must pay the Maintenance Sum to Lafarge at the end of the contractors' maintenance period in respect of the Lafarge access to fund the maintenance of the access track during the remainder period of the Lafarge Lease.

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

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

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the undertaker as defined to construct, operate and maintain, the new East Midlands Gateway Rail Freight Interchange together with associated development. Roxhill Developments Group Limited, Roxhill Developments Limited and Roxhill (Kegworth) Limited are authorised by the Order to compulsorily acquire land and rights over land. The Order also authorises the making of alterations to the highway network, stopping up and diversion of public rights of way and to discharge water.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 39 (certification of plans etc.) of this Order may be inspected free of charge at the offices of North West Leicestershire District Council at Whitwick Road Coalville Leicestershire LE67 3FJ.