

# Draft Explanatory Memorandum

Eversheds Sutherland (International) LLP

The West Midlands Rail Freight Interchange Order 201X

Stage 2 Consultation Draft (July 2017)



**West Midlands**  
Interchange

**Four Ashes Ltd**

**THE WEST MIDLANDS RAIL FREIGHT INTERCHANGE ORDER 201X**

**DRAFT EXPLANATORY MEMORANDUM**

**July 2017**

**Pursuant to Regulation 5(2)(c) Infrastructure Planning  
(Applications: Prescribed Forms and Procedure) Regulations 2009**

**DOCUMENT 3.2**

## EXPLANATORY MEMORANDUM

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## **1. Introduction**

- 1.1 This memorandum accompanies an application for a development consent order (“the Application”) submitted on behalf of Four Ashes Limited (“the Applicant”). The Application seeks approval of the Draft West Midlands Rail Freight Interchange Order 201X (“the DCO”).
- 1.2 As required by Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, as amended, (“the Regulations”), this memorandum explains the purpose and the effect of provisions in the draft Order. It has been prepared taking into account the guidance set out in the Advice Note 13: Preparing the Draft Order and Explanatory Memorandum (April 2012).
- 1.3 The Applicant is Four Ashes Limited, a special purpose vehicle set up to promote and develop the development applied for. The company is a joint venture between:
- Kilbride Holdings – a company specializing in rail infrastructure to serve business and industry;
  - the Grosvenor Group – a privately owned international property group; and
  - Piers Monckton – the primary land owner.
- 1.4 This Explanatory Memorandum relates to the draft DCO submitted to the Planning Inspectorate with the application for a Development Consent Order (Document 3.1).

## **2. The Purpose of the Order**

### *NSIP Criteria*

- 2.1 Section 14 of the Planning Act 2008 (as amended) (“the 2008 Act”) sets out the type of projects that are classified as nationally significant infrastructure projects

(“NSIP”). Section 14(1)(l) of the 2008 Act identifies “the construction or alteration of a rail freight interchange”.

2.2 Section 26 of the 2008 Act sets out the conditions which must be satisfied for the construction of a rail freight interchange to be classified as an NSIP. Section 26(1) advises that a rail freight interchange will only be treated as an NSIP when each of the conditions set out in subsections (3) to (7) are expected to be met.

2.3 The authorised development accords with these conditions as the proposed development includes the construction of a new rail freight interchange that will:

- 1) be situated in England and be at least 60 hectares in area (section 26(3)(a) and (b));
- 2) be capable of handling consignments of goods from more than one consignor and to more than one consignee and at least four goods trains per day (section 26(4)(a) and (b));
- 3) be part of the railway network in England (section 26(5));
- 4) include warehouses to which goods can be delivered from the railway network in England either directly or by means of another form of transport (section 26(6)); and
- 5) not be part of a military establishment (section 26(7)).

2.4 The proposed development therefore falls within the definition of a rail freight interchange NSIP as set out in the 2008 Act.

#### *Scope of the proposed development*

2.5 The DCO sought will permit, in summary, the following works:-

- i) An intermodal freight terminal with direct connections to the West Coast Main Line capable of accommodating up to 10 trains per

day and trains of up to 775m long, including container storage, associated Heavy Goods Vehicle parking, rail control building and staff facilities;

- ii) Up to 743,200 sq m of rail served warehousing and ancillary service buildings;
- iii) New road infrastructure and works to the existing road infrastructure;
- iv) Demolition of existing structures and earthworks to create development plots and landscape zones;
- v) Repositioning and burying of electricity pylons and cables; and
- vi) Strategic landscaping and open space, including alterations to public rights of way and the creation of new publicly accessible open areas.

2.6 The proposed development is more fully described in Schedule 1 of the draft DCO (Document 3.1) and in the other application documentation. The draft DCO also authorises associated development (see paragraph 2.7 below). Provision for ancillary matters is made in the body of the draft DCO (see paragraph 2.9 below).

#### *Associated Development*

2.7 The draft DCO specifically authorises development which is not part of the NSIP itself but is associated with it, as provided for by section 115(2) of the Act. This comprises Works No.s 6, 7, 8, 9a and 9b. These aspects of the authorised development are considered to be associated development as they each are *“typical of development brought forward”* with the NSIP or *“help address its impacts”*. They are *“not an aim in itself”* but are *“subordinate to the principal development”*<sup>1</sup>.

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<sup>1</sup> See paragraph 5(ii) Guidance on associated development applications for major infrastructure projects April 2013

2.8 The individual works are described in Section 5.

#### *Ancillary Matters*

2.9 The draft DCO also deals with some ancillary matters – that is, provisions not dealing with development.

2.10 For example, it seeks powers for the purposes of carrying out the authorised development to acquire rights and land pursuant to section 120 of the Act and powers, under section 120 (3) and (4) and Part 1 of Schedule 5, paragraph 2, to authorise the creation, extinguishment and interference with interests in, or rights over, land (including the stopping up and diversion of public rights of way).

2.11 [The compulsory purchase powers sought are explained within the Statement of Reasons (Document 4.1)].

#### *Development Consent Obligations*

2.12 [ ].

### **3. Location of the development to be authorised**

3.1 The Application relates to land lying approximately 10km to the north of Wolverhampton and west of Cannock. It is located within South Staffordshire District. Whilst the majority of the site is within the parish of Penkridge, parts are also within the parishes of Brewood and Coven, and Hatherton. The boundaries of the parishes are shown on the Parish Boundaries Plan (Document 2.17).

3.2 The land affected by the proposed development is referred to in the draft DCO as the Order limits. These are shown on the Order Limits Plan (Document 2.4). The Order limits comprise approximately 297 hectares of land lying to the west of Junction 12 of the M6.

## 4. Plans

4.1 The plans submitted with the Application are as follows:

- i) An Order Limits Plan enabling the identification of the land affected and; the existing development in the immediate locality (Document 2.17);
- ii) [Land Plans (pursuant to Regulation 5(2)(i) - Documents 2.1A to and 2.1E) showing the land affected by the development and the land subject to compulsory purchase powers.]
- iii) Works Plans (pursuant to Regulation 5(2)(j) - Documents 2.2A to 2.2E) identifying the areas for the different works which cross refer to Schedule 1 in the Draft DCO (Document 3.1) and, where appropriate, show the limits of deviation.
- iv) Access and Rights of Way Plan (pursuant to Regulation 5(2)(k) - Documents 2.3[ ]) which identifies new and altered means of access, stopping up of streets and roads and new public footpaths, bridleways, cycle tracks and diversions.
- v) Parameters Plans (pursuant to regulation 5(2)(o) - Documents 2.5 A-D, 2.6A-D and 2.7A-D) which identify the parameters with which the Works must comply. The parameters plans are the plans upon which the environmental assessment reflected in the Environmental Statement has been based. The approach taken by the parameters plans is described in more detail in paragraphs [ ] below.
- vi) [Highway General Arrangement Plans, Rail Plans and Bridge Plans] (pursuant to Regulation 5(2)(o) - Documents 2.9, 2.14, 2.15 and 2.18) which describe various aspects of the road and rail infrastructure.

- vii) Other Plans – these comprise the remainder of the plans submitted with the Application. Some are cross referred to within the description of the Works in Schedule 1 of the Draft DCO and/or the requirements in Schedule 2 of the Draft DCO. Some are supplied for illustrative purposes only. These plans include:
- a) [Highway Classifications Plans (Documents [ ]) which identify the altered classification of the roads following the construction of the authorised development;]
  - b) Traffic Regulation Order Plans (Documents [ ]);
  - c) New Speed Limit Plans (Documents [ ]);
  - d) An Illustrative Masterplan (Document 2.[ ]), provided to assist in demonstrating a form of development which would comply with the parameters which have been assessed (as shown on the parameter plans). It is not the basis for the environmental assessment reflected in the Environmental Statement and it identifies simply one way in which a development may come forward in conformity with the parameters plans.

## **5. Summary of the Works**

- 5.1 The authorised development is divided up into separate works that describe the different aspects of the proposal. The works numbers relate to areas on the Works Plans (Documents 2.2A to 2.2E).
- 5.2 The site for the rail freight terminal, warehouses, related on site infrastructure and on plot landscaping comprises Works No.s 1 to 5. Additional land is required for associated development comprising structural landscaping including community parks and off site highway works being Works No.s 6 and 7 respectively.

- 5.3 Works No.8 comprises the use of existing buildings and potentially some new build to accommodate estate management offices, welfare and amenity facilities.
- 5.4 Works No.s 9a and 9b relate to works be carried out to enable the undergrounding of electricity cabling currently running across the site in a broadly north to south direction.
- 5.5 The detail of the works are set out in Schedule 1 of the Draft DCO and can be further summarised as follows:

***NSIP***

**Works No 1**

This is the new rail infrastructure works from the existing West Coast Main Line Loop to connect to the new rail terminal to be provided in Works No 2. This includes the alteration of some of the existing rail track and the provision of additional rail infrastructure.

**Works No 2**

This is the construction of the new rail freight terminal and rail tracks to connect with Works No 1. It includes the provision of freight storage areas, rail sidings, refuelling and maintenance areas, earthworks and other administrative buildings etc.

**Works No 3**

This is the construction of the rail served warehousing along with ancillary development such as buildings, service yards, storage areas and infrastructure to serve.

**Works No 4**

The A5/A449 Link Road which is to become an adopted road.

## **Works No 5**

The provision of internal estate (private) roads, footpaths and cycle tracks and site access.

### ***Associated development***

## **Works No 6**

This comprises structural landscaping surrounding the built development and includes two community parks being one in the northern part of the site (Croft Lane Community Park) and one, in two parts, in the southern part (Calf Heath Community Park (North) and Calf Heath Community Park (South)).

## **Works No 7**

These works include the off site highway works the totality of which is shown on the highway plans (Document 2.9) and associated landscaping and related works.

## **Works No 8**

These works relate to the Gravelly Way Farm buildings and authorise the conversion and use of the buildings, and new build, for the purposes of estate management offices, amenity and welfare facilities with ancillary parking and landscaping. Details of the conversion and new build will need to be submitted to and approved by the local planning authority pursuant to requirement 5 (3).

## **Works 9a**

[pylon works and undergrounding]

## **Works 9b**

[pylon works and undergrounding]

- 5.2 Schedule 1 also includes “**Further Works**” being diverse items the precise locations of which it is not possible to identify at this stage<sup>2</sup>.
- 5.3 These works have been divided into three separate sections of further works. These apply additional, further, works to firstly, Works Nos. 1 to 3 being the rail infrastructure, rail terminal and warehouses; secondly, Works Nos. 1 to 6 and Works No. 8, being the above and principal on site infrastructure, and, thirdly, Works No. 7, being the off site highway works.
- 5.4 All the “Further Works” are subject to the provisos contained in article 42 that they do not give rise to any new or materially worse significant environmental effects not assessed in the environmental statement.
- 5.5 The above approach is consistent with the other approved Rail Freight DCO.

## **6. The Assessment Parameters**

- 6.1 The parameters plans are the plans which identify the parameters of the authorised development and are the basis of the environmental assessment that has been carried out.
- 6.2 The parameters plans (Document 2.4 to 2.7) identify, in respect of each development zone, the parameters which apply to that zone. These include the maximum overall floorspace, the building height range and the green infrastructure to be provided. These provide the “Rochdale Envelope” for the purposes of the environmental assessment of the development on the site. This is in line with Advice Note 9 “Using the Rochdale Envelope”.

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<sup>2</sup> This approach is consistent with other approved DCO eg. The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 S.I. 2013 675), The Daventry International Rail Freight Interchange Order S.I. 2014 1796 and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 S.I. 17.

6.3 The control of the development is secured by reference to:

- articles [4] (*Parameters of authorised development*) and [42] (*Governance of requirements and protective provisions relating to highway works*);
- the description of the works in Schedule 1;
- the requirements in Schedule 2; and
- the parameters on the parameters plans and the limits of deviation shown on the Works Plans.

6.4 Details over and above those shown on the parameters plans, including, for example, the precise location and height of buildings within the development zones; the detailed design of the rail infrastructure; detailed landscaping scheme and ecological mitigation details, are to be approved following the grant of the DCO and following the submission of details to the local planning authority pursuant to the requirements contained in Schedule 2 of the DCO.

6.5 In the case of highway works comprised in Works No. 4 and 7, and any parts of works number 5 that involve the public highway, the detailed working drawings of the works involved will be governed by Parts 2 and 3 of Schedule 15. Those designs are required to be in accordance with the Highway General Arrangement Plans.

6.6 The approved details cannot however stray outside the authorised development or beyond the parameters as is made clear by articles [4] and [42]. The approval of details subsequent to the making of the Order, and the ability to change details approved, as provided for in Article 42(2), is in accordance with paragraph 19.4 of Advice Notice 15: Drafting Development Consent Orders.

## **7. The Draft Order**

7.1 This section of the memorandum explains the provisions of the draft Order as submitted to the Planning Inspectorate with the Application (Document 3.1). It refers to the model provisions, however, there are substantive departures from those provisions in view of the revocation of Section 38(3) of the Act 2008 and

repeal of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. The model provisions are therefore taken only as a starting point along with articles used in other approved Development Consent Orders. In particular regard has been had to The Daventry International Rail Freight Interchange Alteration Order 2014<sup>3</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>4</sup>.

## **PART 1**

### **PRELIMINARY**

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

7.2 This article provides for citation and commencement of the Order.

#### *Article 2 (Interpretation)*

7.3 This article provides for the interpretation of the Order principally including the definition of terms. It includes the matters listed in the model provisions to be defined along with additional definitions to facilitate the drafting.

7.4 The terms “relevant highway authority” and “relevant street authority” have both been included as defined terms as, whilst some articles apply only to public highways (e.g. article [12] public rights of way – creation[, diversion] and stopping up) and therefore refer to the highway authority, the term street authority is also needed, as some articles apply to private streets (e.g. article [9] power to alter layout, etc., of streets).

7.5 Other definitions to note are:

- i) “authorised development” has been amended to include any works carried out pursuant to the requirements.

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<sup>3</sup> S.I. 2014 No. 1796

<sup>4</sup> S.I. 2016 No. 17

- ii) “the Order limits” has been amended for clarity by describing how they are represented on the works plans.
- iii) The definition of “undertaker” has been amended as permitted by section 156(2) of the Act to expressly refer to Four Ashes Limited and includes those persons who have the benefit of the Order in accordance with Section 156 of the Planning Act 2008. Article [7] restricts the benefit of the order in certain respects to Four Ashes Limited only.
- iv) The definition of works plans and land plans have been amended to reflect there being multiple sheets for these plans submitted in respect of the application and the “rights plan” has been renamed the “access and rights of way plans” to better reflect the information shown on this plan and the wording used in Regulation 5(2)(k) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

7.6 Article 2 (2) expands the definition of rights over land and clarifies that the power to impose restrictive covenants includes a reference to the creation of rights over land which interfere with the interests or rights of another.

7.7 Article 2 (3) makes it clear that measurements are approximate to take account of marginal differences arising out of construction of the works. This allows only small tolerances since the works are still subject to the constraints imposed by Articles [4] and [42]. This provision is normal and most recently was included in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016<sup>5</sup> and The Keuper Gas Underground Storage Facility Order 2017<sup>6</sup>.

7.8 Article 2 (4) ties in references to work numbers to the works in Schedule 1.

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<sup>5</sup> S.I. 2016 No. 547

<sup>6</sup> S.I. 2017 No. 433

- 7.9 Article 2 (5) provides that areas referred to in the Book of Reference (Document [4.3]) are approximate – for the same reason as Article 2 (3) is required.
- 7.10 Article 2 (6) clarifies that where the word approximate is used prior to a quantum does not provide latitude for going beyond the parameters and works that have not been assessed.

## **PART 2**

### **PRINCIPAL POWERS**

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

- 7.11 This article provides development consent for the authorised development to be carried out within the Order limits subject to the provisions of the Order. It also allows for some preparatory works to proceed in advance of the rest of the authorised development

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

- 7.12 This article is included to allow flexibility for the works to be carried out within the parameters identified on the parameters plans. The parameters identified on the parameters plans have been used for the purposes of environmental assessment of the authorised development.
- 7.13 As explained above, this approach is in line with the Rochdale Envelope approach and the guidance set out in Planning Inspectorate's Advice Notes 9 and 15.
- 7.14 The article also provides for limits of deviation as shown on the Works Plans [and highway plans] and limited flexibility between boundaries between the Works areas.
- 7.15 As in recent orders the article allows for exceptions to the application of the limits where the local planning authority are satisfied that it would not result in any

materially new or materially worse environmental effects than those assessed in the environmental statement<sup>7</sup>.

*Article 5 (Authorisation of Use)*

- 7.16 This article authorises the operation and use of the RFI development and ensures that the concept of ancillary uses applies to the warehousing built pursuant to the DCO as it would had the warehousing been built pursuant to a planning permission.

*Article 6 (Maintenance of authorised development)*

- 7.17 This article is based upon article 3 of the model provisions and provides for the maintenance of the authorised development by the undertaker. The definition of maintenance is identical to that contained in the recently approved East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>8</sup> except that a caveat in respect of works which would result in a significant environmental effect which had not been assessed has been deleted from the definition and is instead in Article 6(2). This follows the advice in Advice Note 15: Drafting Development Consent Orders<sup>9</sup> to the effect that operative provisions should not be contained in definitions (paragraph 6.1).

*Article 7 (Benefit of the Order)*

- 7.18 The Order will benefit all persons for the time being interested in the land within the Order limits in accordance with Section 156 of the 2008 Act, except that:
- (a) articles [23 to 35 ] (Powers of Acquisition) will be for the sole benefit of Four Ashes Limited to ensure that the articles relating to the exercise of compulsory acquisition powers cannot be transferred unless the Secretary of State consents; and

<sup>7</sup> For example Article 7 The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016

<sup>8</sup> S.I. 2016 17

<sup>9</sup> The Planning Inspectorate, Version 1 (October 2014)

- (b) [only Four Ashes Limited have the power to carry out the highway works and deliver them in accordance with the protective provisions in Parts 2 and 3 of Schedule 15 unless the Secretary of State consents to a transfer of those powers.]

7.19 [In respect of (b) above, it is felt that the power to carry out the highway works should be restricted to the named undertaker rather than be available to all the owners of the land interests within the Order limits to ensure an orderly and comprehensive approach to the carrying out of the works.]

### **PART 3**

#### **STREETS**

##### *Article 8 (Street works)*

7.20 This article is broadly based on article 8 of the general model provisions. It makes provision for the undertaker to carry out the works described in article 8 (a) – (j) for the purposes of the authorised development affecting the streets specified in Schedule 3. Ordinarily the undertaker would require a street works licence pursuant to the New Roads and Street Works Act 1991 to carry out such works, however, the inclusion of this article in the Order will provide a statutory right to undertake street works within the specified streets without the need for the undertaker to obtain a separate licence from the street authority.

##### *Article 9 (Power to alter layout, etc., of streets)*

7.21 This article is not contained in the model provisions but is based upon one that has precedent in other draft Development Consent Orders, for example the

Heysham to M6 Link Road Order<sup>10</sup>, North Doncaster Chord Order<sup>11</sup> and the recently approved Keuper Underground Gas Storage Facility Order<sup>12</sup>.

- 7.22 This article is confined to the roads which will be maintained as private roads. Any alteration to those roads, although private, will still require the consent of the local highway authority who will be concerned to ensure that the arrangement of streets within the main site is acceptable.

*Article 10 (Permanent stopping up of streets)*

- 7.23 This article makes provision for the stopping up of streets permanently where a substitute is to be provided. The drafting of this article largely reflects that of article 9 in the model provisions and Schedule 4 of the Order has been completed to identify the street[s] that is to be permanently stopped up subject to this article and alternative street to be provided.

- 7.24 This article also makes provision for all rights of way (both public and private) in the stopped up streets to be extinguished and provision is made for the payment of compensation.

*Article 11 (Temporary stopping up of streets)*

- 7.25 This article deals with the temporary stopping up of streets for the purpose of carrying out the authorised development. It is included in the Order as it may be necessary for the undertaker to stop up streets temporarily.

- 7.26 The drafting of this article generally reflects that provided for by the model provisions, however, paragraphs 3 and 4(a) of the model provisions have not been included as it is considered that it is not necessary to specify any streets to be temporarily stopped up at this stage and it is drafted so that the prior

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<sup>10</sup> The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 S.I. 2013 675

<sup>11</sup> The Network Rail (North Doncaster Chord) Order 2012 S.I. 2635

<sup>12</sup> 2017 S.I. No. 433

consent of the street authority is required before any streets are stopped up temporarily.

*Article 12 (Public rights of way – creation[, diversion] and stopping up)*

- 7.27 This article is a departure from article 10 of the model provisions. It has been included in the Order to allow for the creation[, diversion] and stopping up of rights of way affecting land within the Order limits. It is necessary for some public rights of way to be stopped up [and diverted] in order for the authorised development to be carried out.
- 7.28 Section 136 of the 2008 Act requires that the Order may include the stopping up of a public right of way provided that an alternative right of way will be provided, or an alternative is not required. This article makes provision for alternative public rights of way to be created for the majority of the existing public rights of way that are to be stopped up.
- 7.29 Schedule 5 of the Order identifies the public rights of way that are affected by this article. Part 1 specifies the extent of the permanent stopping up, along with the new public rights of way that are to be created. [The Schedule fixes terminus points for the new rights of way to be created; however, the exact alignment of the right of way between those points is to be agreed by the relevant highway authority. Part 2 identifies the existing rights of way which will be permanently stopped up for which no substitute is to be provided.]
- 7.30 The footpath which is proposed to be permanently stopped up for which no substitute is to be provided is [footpath Penkrige 29] to the extent shown hatched red on the Access and Rights of Way Plan (Document 2.3).
- 7.31 This article also provides for the creation of the wholly new public rights of way (i.e. not provided as a result of the stopping up and diversion of an existing right of way) comprised in the authorised development. These are set out in Part 3 of Schedule 5.

7.32 Some of the rights of way across the site are to be permissive. This is to allow flexibility in respect of their alignment during the course of the development. [The permanency of the permissive rights of way is secured by the DCOB completed with South Staffordshire Council [and SCC] (Document [ ])].

*Article 13 (Accesses)*

7.33 The new means of access is identified in Schedule 1 and is part of the highway works covered by Schedule 15. However, to allow some flexibility, this article is included to allow for modification of the access, or other means of access to be provided. This is subject to prior agreement with the relevant highway authority or, in the case of private streets, the street authority.

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

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

<i>Private Means of Access</i>	<i>Reason why it is no longer required</i>
The private means of access shaded [ ] and lettered [ ] on the access and rights of way plans (Document [ ]).	

*Article 14 (Maintenance of highway works)*

7.36 This article is based on an article found in other Development Consent Orders<sup>13</sup> and is included to provide for the maintenance of the new and altered public highways following the completion of the relevant works.

*Article 15 (Classification of A5/A449 link road)*

7.37 This article is based on articles found in other Development Consent Orders<sup>14</sup> and is included to make provision for the classification of new highways within the Order limits.

*Article 16 (Speed limits)*

7.38 This article is based upon articles in other Development Consent Orders, for example, the M1 Junction 10(a) Order<sup>15</sup> and Houghton Regis Order<sup>16</sup>. It makes provision for the lengths of road identified in Schedule 8 to be subject to new speed limits as set out in that schedule upon completion of the authorised development, as if such restrictions were imposed by an order under the Road Traffic Regulation Act 1984.

7.39 [Part 1 of Schedule 8 provides for amendments to existing orders.]

7.40 Paragraph 2 of this article makes it clear that the new speed limits set by the Order may be varied in the future by the relevant traffic authority, as they could have been had they been imposed by an order under the Road Traffic Regulation Act 1984.

*Article 17 (Amendments to Traffic Regulation Orders)*

7.41 [This article provides for the necessary amendments to existing traffic regulation orders consequent on Article 18 (Clearways and No Waiting) and Article 19 (Motor Vehicle Restrictions). Copies of the existing orders to be amended are contained in Document [ ].

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<sup>13</sup> e.g. the Heysham to M6 Link Road Order 2013 S.I. 2013 No. 675

<sup>14</sup> e.g. the Heysham to M6 Link Road Order 2013 S.I. 2013 No. 675

<sup>15</sup> The M1 Junction 10a (Grade Separation) Order 2013 S.I. 2013 No. 2808

<sup>16</sup> The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 S.I. 2014 No. 2637

*Article 18 (Clearways and No Waiting)*

- 7.42 [Article 18 provides for Clearways and No Waiting areas along lengths of the new highway works utilising the standard approach taken from orders in the area. The lengths of road affected are identified in Schedule [10].

*Article 19 (Motor Vehicle Restrictions)*

- 7.43 [Article 19 includes restrictions on use of parts of the highway consequential upon the highway works as identified in Schedule [11]. This governs access only, one way street, use of abnormal loads layby and use by bus and cyclists only.]

*Article 20 (Agreements with Highway Authorities)*

- 7.44 This article is included to allow the undertaker to enter into agreements with the relevant highway authority relating to the construction of a new highway, carrying out of works in the highway, stopping up, alteration or diversion of highways, maintenance of the structure of any bridge carrying a highway over or under a railway and landscaping.
- 7.45 All of the highway works will be carried out in accordance with the powers within the DCO and the relevant provisions of Schedule 15; however, this article is included in the Order as a precautionary measure in relation to any agreements that might be required with the Highway Authority.

**PART 4**

**SUPPLEMENTAL POWERS**

*Article 21 (Discharge of water)*

- 7.46 This article largely reflects the drafting of article 14 in the general model provisions and is required to allow for the drainage of the land within the Order limits in connection with the carrying out and maintenance of the development. Under the

provisions of this article consent is required from the person who owns the relevant watercourse, public sewer or drain but such consent may not be unreasonably withheld.

- 7.47 The drafting has been updated from the model provisions to refer to the Environmental Permitting (England and Wales) Regulations 2010 which supersede the relevant provisions of the Water Resources Act 1991.

*Article 22 (Authority to survey and investigate the land)*

- 7.48 This article is included to enable the undertaker to enter land within the Order limits to survey or investigate the land. This drafting broadly reflects that in article 16 of the model provisions save for an amendment to paragraph 2, so that notice need not be served on the undertaker in the event that they are the owner of the land.

**PART 5**

**POWERS OF ACQUISITION**

*Article 23 (Guarantees in respect of payment of compensation)*

- 7.49 The Applicant has included this article as security in respect of payment of compensation for the protection of any interests which are to be compulsorily acquired. The article will ensure that no compulsory acquisition can be pursued until appropriate security for the liabilities of the undertaker to pay compensation in respect of that acquisition has been provided.

- 7.50 The article is based on Article 14 of The Hornsea One Off Shore Wind Farm Order 2014<sup>17</sup> and has subsequently been applied in various Development Consent Orders<sup>18</sup>

*Article 24 (Compulsory acquisition of land)*

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<sup>17</sup> S.I. 2014 No. 3331

<sup>18</sup> e.g. The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016 No. 17) and The York Potash Harbour Facilities Order 2016 (S.I. 2016 No. 772)

7.51 This article will authorise the compulsory acquisition of land shown on the Land Plans (Document 2.1[ ]) and described in the Book of Reference (Document [4.3]). The Applicant is seeking acquisition of the freehold in respect of the land shown coloured pink on the Land Plans.

7.52 This article also provides for the extinguishment of rights, trusts and incidents to which the land was previously subject.

7.53 Further detail on the rationale for this article is contained in the Statement of Reasons (Document [4.1]).

*Article 25 (Compulsory acquisition of rights)*

7.54 This article is included to allow the compulsory acquisition of existing rights and the power to create and acquire compulsorily new rights [and to impose restrictive covenants] over the land shown on the Land Plans (Document 2.1[ ]) and described in the Book of Reference (Document [4.3]). It departs from article 21 of the model provisions and is based on recently approved provisions in various Development Consent Orders<sup>19</sup> This approach ensures that compulsory purchase is limited only to the rights that are required.

7.55 The approach requires a modification to compulsory purchase and compensation provisions and these are dealt with in Schedule 14.

*Article 26 (Private Rights)*

7.56 This article is largely based on article 22 of the model provisions, with some amendments (most notably it applies to private rights generally rather than just private rights of way). It provides that all private rights over land which is subject to compulsory acquisition (in respect of the freehold) are extinguished and in respect of compulsory acquisition of rights, are extinguished to the extent that

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<sup>19</sup> e.g. The York Potash Harbour Facilities Order 2016 (S.I. 2016 No. 772), The Triton Knoll Electrical System Order 2016 (S.I. No 2016 No. 880) and The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014 No. 2384)

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

*Article 27 (Power to override easements and other rights)*

7.57 Article 27 ensures that where the works permitted by Order interfere with existing easements or other rights, those rights shall not present an impediment to delivery. Its purpose is to provide certainty that the carrying out of the authorised development will not be prevented as a result of any unknown third party rights.

7.58 The Article provides for compensation to be payable to the beneficiary of any right that is extinguished, abrogated or discharged.

*Article 28 (Compulsory acquisition of land – incorporation of the mineral code)*

7.59 By incorporating the ‘mineral code’ this article exempts the existing minerals under land being automatically acquired pursuant to the exercise of compulsory acquisition. It also addresses the situation where an owner wishes to work existing minerals and provides the undertaker with the ability to compensate the owner for any inability to do so as a result of the development.

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

7.60 This article imposes a time limit of [five years] from the date of the Order for the exercise of compulsory acquisition powers.

*Article 30 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)*

7.61 This article follows article 23 of the model provisions to apply for the application of the vesting declaration procedure to the compulsory acquisition under the Order. Some of those provisions are changed to clarify that the “undertaker” will be a “public authority” under the Compulsory Purchase (Vesting Declarations) Act 1981. It also departs from the model provisions to reflect the recently

enacted amendments to the Compulsory Purchase (Vesting Declarations) Act 1981 made by the Housing and Planning Act 2016.

*Article 31 (Statutory Undertakers)*

- 7.62 This article allows the undertaker to extinguish rights of statutory undertakers and to replace, renew, reposition, alter and/or supplement apparatus belonging to the statutory undertakers as shown on the [statutory undertakers' apparatus plan].

*Article 32 (Rights under or over streets)*

- 7.63 Article 32 gives the Applicant the power to occupy land above or below streets within the Order limits without having to acquire that land. Compensation is payable for any loss or damage to structures along the relevant street.

*Article 33 (Temporary use of land for carrying out the authorised development)*

- 7.64 This article allows the Applicant to occupy the land specified in Schedule 12 temporarily while the works are carried out, and also any of the land identified for the permanent acquisition that has not yet been acquired.

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

- 7.66 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 and shown coloured [yellow] on the Land Plans (Documents 2.1[ ]). Section 13, which allows enforcement of possession, is automatically applied to the powers in articles 23 – 35 by virtue of Section 125 of the 2008 Act. The power is required in relation to the temporary use of land to ensure that the undertaker will be able to enforce the taking of temporary possession of the land to carry out the relevant works in the event that the owner or occupier refuses to allow possession.

*Article 34 (Temporary use of land for maintaining authorised development)*

- 7.67 This article allows the undertaker to take temporary possession of land within the Order limits to maintain the authorised development during the 5 year maintenance period (being the five years from when the development is first brought into use).

*Article 35 (Apparatus and rights of statutory undertakers in stopped up streets)*

- 7.68 The article follows article 32 of the model provisions and protects statutory undertakers' rights where their apparatus is under, in, along or across a street which has been stopped up under the Order.
- 7.69 The article provides that a statutory undertaker must remove/relocate the apparatus at the reasonable request of the undertaker (the undertaker bearing the cost of that relocation).

**PART 6**

**MISCELLANEOUS AND GENERAL**

*Article 36 (Operation and Use of Railways)*

- 7.70 This article is based on the article contained within Schedule 2 of the model provisions (model provisions for Railways). It is included as part of the authorised development comprises the provision of a railway. This article has been amended from the article in the model provisions for Railways to allow only for the carriage of goods as the authorised development will not be used for the transport of passengers.

*Article 37 (Operational land for the purposes of the 1990 Act)*

- 7.71 This article declares that land within the Order Limits utilised for the highway works shall be treated as operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990.

*Article 38 (Charges)*

7.72 This article is based on an article at Schedule 2 of the model provisions (model provisions for Railways). It is included to allow the undertaker to impose charges for the carrying of goods on the railway, or for other services or facilities connected to its operation. The article has been amended from the article contained in the model provisions, as the proposed railway is to be used for the carriage of goods only.

*Article 39 (Defence to proceedings in statutory nuisance)*

7.73 This article is based upon an article in the model provisions and appears in a number of approved Development Consent Orders. It provides a defence in the circumstances specified to proceedings brought in relation to a nuisance caused by noise or vibration.

*Article 40 (Felling or lopping of trees and removal of hedgerows)*

7.74 This article is based upon an article in the model provisions. It is included to enable the undertaker to fell or lop any tree hedgerow or shrub near the authorised development, or cut back its roots, where it believes that it is necessary to prevent the tree hedgerow or shrub from interfering with the authorised development, but subject to some exceptions.

7.75 The article makes provision for compensation to be payable for any loss or damage arising.

*Article 41 (Protective Provisions)*

7.76 The article gives effect to the protective provisions which are contained in Schedule 15 referred to further below.

*Article 42 (Governance of requirements and protective provisions relating to highway works)*

7.77 The article addresses the tension between a desire to maintain flexibility on details to be approved pursuant to requirements (and in the case of the highway works, protective provisions) and the need to ensure that any details approved do

not take the development outside the scope of the authorised development or beyond the scope of what has been environmentally assessed.

- 7.78 Paragraph (1), for the avoidance of doubt, makes it clear that all initial approvals under the requirements and Part 2 and 3 of Schedule 15 are governed by Article 4 and the restriction in article 42. Paragraph (2) then follows the advice in paragraph 19.4 of Advice Note Fifteen: Drafting Development Consent Orders and makes it clear that approvals may subsequently be amended but any changes to approved details must not stray outside the parameters of what has been assessed.
- 7.79 The approaches taken to the governance of approval of details and subsequent amendments vary considerably in approved orders.
- 7.80 This article is identical to Article 42 of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>20</sup> and, is consistent with the approaches taken in requirement 34 of The White Moss Landfill Order 2015, S1 2015 No.1317 and requirement 35 of The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015<sup>21</sup>.
- 7.81 It is felt preferable that an overarching provision such as that contained in this Article 42 should be within an article rather than in the requirements. This is logically the case since the paragraph covers Schedule 15 in addition to the requirements in Schedule 2.
- 7.82 It is very important that the flexibility that is allowed for is retained. If no provision is made for details to be approved subsequently and varied (within the constraints referred to) then this development will be substantially disadvantaged in comparison to other large scale distribution sites and its ability to compete with other sites for footloose occupiers would be adversely affected.

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<sup>20</sup> S.I. 2016 No. 17

<sup>21</sup> S.I. 2015 No.1347

7.83 The opportunity is taken in this article to make it absolutely clear that the requirements are, unless otherwise stated, all to be enforced by the local planning authority.

*Article 43 (Disapplication, application and modification of legislative provisions)*

7.84 This article seeks, as permitted by section 120(5) of the 2008 Act, to incorporate and modify legislative provisions which are necessary for carrying out the authorised development.

7.85 Articles 43(1) and (2) apply conventional appeal arrangements to any refusal by the local planning authority of an application for approval pursuant to the provisions of a requirement, as if such approval was being sought in respect of a planning condition. This is required to resolve any dispute since there is no other statutory mechanism. This is also applied to the other authorities whose approval of details is needed pursuant to the requirements.

7.86 [Article 43(4) – potential Article re disapplication of consents.]

7.87 [Article 43(5) provides that development carried out pursuant to a planning permission following implementation of the DCO would not be in breach of the DCO, ensuring no risk of criminal liability pursuant to section 161 of the 2008 Act. The sub paragraph encompasses any development authorised by a general development order as well as an express planning permission. This follows Article 5 (2) of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>22</sup>].

7.88 [Article 43(6) ensures that anything permitted as a result of the provisions of this article 43(1) to (4) does not prevent the operation of the 2009 EIA Regulations, as suggested in Advice Note 15: Drafting Development Consent Orders.]

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<sup>22</sup> S.I. 2016 No. 17

[Amend when Article settled]

*Article 44 (Certification of plans and documents)*

7.89 This article reflects the drafting of the model provisions and specifies the plans and documents that must be submitted, as soon as practicable following the making of the order, to the decision maker to be certified as a true copy. The documents listed under this article are those referred to in the draft Order.

*Article 45 (Service of Notices)*

7.90 This article is a departure from the model provisions. It is included to ensure certainty regarding the procedure for service of any notice required by the Order, for example, under article 22 (Authority to survey and investigate the land).

*Article 46 (Arbitration)*

7.91 This article reflects that contained in the model provisions and is included in case of any dispute regarding the provisions of this Order. The Lands Chamber of the Upper Tribunal has been inserted as the appropriate body for which any dispute should be referred to.

**SCHEDULES**

*Schedule 1 (Authorised Development)*

7.92 This schedule describes the authorised development for which Development Consent is sought, including associated development. The NSIP and Associated Development are identified separately.

*Schedule 2 (Requirements)*

7.93 As permitted by section 120 of the 2008 Act, the DCO also includes, requirements to govern the authorised development. The requirements are set out in Schedule 2 of the draft DCO. These have had regard to the drafting of conditions in planning permissions granted for similar schemes and also the requirements contained in

The Daventry International Rail Freight Interchange Alteration Order 2014<sup>23</sup> and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016<sup>24</sup>. They are, however, bespoke for the particular development proposed. The objective of these requirements is self-explanatory.

7.94 The requirements cover the following issues:

- Time limit for commencing the authorised development (Requirement 1)
- Phases of development (Requirement 2)
- Sustainable Transport – Framework Travel Plan (Requirement 3)
- Phasing of highways works (Requirement 4)
- Detailed design approval (Requirement 5 and 6)
- Provision of Landscaping (Requirement 7 )
- Ecological Management and Mitigation Plan (Requirement 8)
- Demolition and Construction Environmental Management Plan (Requirement 9)
- Earthworks (Requirement 10)
- Archaeology (Requirement 11)
- Lighting details (Requirement 12)
- Building Sustainability (Requirement 13)
- Flood risk and surface water drainage (Requirements 14 and 15)
- Foul water drainage (Requirement 16)
- Construction Hours (Requirement 17)
- Construction Noise (Requirement 18.)

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<sup>23</sup> S.I. 2014 No. 1796

<sup>24</sup> S.I. 2016 No. 17

- Noise during the operational phase (Requirement 19.)
- Contamination (Requirements 20 and 21)
- Waste management during the operational phase (Requirement 22)

*Schedule 3 (Streets subject to Street Works)*

7.95 This Schedule lists the streets which are to be subject to the street works pursuant to article 8.

*Schedule 4 (Streets to be permanently stopped up for which a substitute is to be provided)*

7.96 This Schedule lists the street which is to be stopped up pursuant to article 10 and details the substitution for that street with reference to the Access and Rights of Way Plan (Document 2.3[ ]).

*Schedule 5 (Public Rights of Way to be Stopped Up)*

*Part 1 - Public Rights of Way to be Stopped Up for which no substitute is to be provided.*

7.97 This Part details the public rights of way which are to be stopped up pursuant to article 12 with reference to the Access and Rights of Way Plan (Document 2.3[ ]).

*Part 2 – New Public Rights of Way to be Created.*

7.98

*Schedule 6 (Private Means of Access)*

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

7.99

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

7.100

*Part 3 – New private means of Access Created*

7.101

*Schedule 7 (Classification of Roads)*

7.102

*Part 1 – New Roads*

7.103

*Part 2 – Existing Roads*

7.104

*Schedule 8 (Speed Limits)*

*Part 1 – Existing Orders*

7.105

*Part 2 - Roads subject to 30MPH Speed Limit*

7.106

*Part 3 – Roads subject to 50MPH Speed Limit*

7.107

*Part 4 – Roads subject to 60 MPH Speed Limit*

7.108

*Schedule 9 (Amendments to Existing Orders)*

7.109

*Schedule 10 (Clearways and No Waiting)*

*Part 1 – Clearways*

7.110

*Part 2 – No waiting at any time*

7.111

*Schedule 11 (Motor Vehicle Restrictions)*

*Part 1 – Motor Vehicle Access Only Restrictions*

7.112

*Part 2 – One Way Streets*

7.113

*Part 3 – Prohibition of Entry to Abnormal Loads Layby*

7.114

*Part 4 – Buses and Cyclists Only*

7.115

*Schedule 12 (Land for temporary possession)*

7.116 This Schedule sets out the land of which temporary position may be taken as referred to in article [33].

*[Schedule 13 (Land to which powers to extinguish doesn't apply)*

7.117 This Schedule lists the plots of land over which powers to extinguish rights pursuant to article [25] do not apply.]

*Schedule 14 (Modification of compulsory purchase enactments)*

7.118 This Schedule modifies provisions for compensation following the creation of new rights.

*Schedule 15 (Protective provisions)*

7.119 Schedule 15 includes provisions to protect the interests of various bodies whose assets may be affected by the proposed development. These will comprise:

Part 1 Network Rail

Part 2 Highways England

Part 3 Staffordshire County Council

Part 4 [Western Power Distribution ]

Part 5 [Environment Agency]

Part 6 [SI Group]

Part 7 [Canal and River Trust]

7.120 Of particular note are Parts 2 and 3 of Schedule 15 which contain protective provisions to protect the interests of the highway authorities, being Highways England and Staffordshire County Council. These provisions govern the carrying out of the highway works and obviate the need for any further agreements, such as agreements pursuant to s.38 and s.278 of the Highways Act 1980.

## **8. Development Consent Obligations Agreement**

8.1 A Development Consent Obligation (between South Staffordshire Council [and Staffordshire County Council], the Applicant and the principal landowner) has been [explain status of DCOB]. The following paragraphs set out the proposed obligations.

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Eversheds Sutherland (International) LLP  
July 2017