
The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order

Updated Explanatory Memorandum

Planning Act 2008

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INTRODUCTION

This document is submitted in relation to the application for a Development Consent Order by Norfolk County Council to the Secretary of State, under the Planning Act 2008.

The application is for the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order, to grant development consent for the construction of a new highway running west to east, to south, between the A1067 Fakenham Road and the A47 Trunk Road at Postwick, including improvements to the existing highway network, to the north and north east of Norwich.

This document is the Updated Explanatory Memorandum, submitted in relation to Deadline 10 (20 November 2014) alongside the Applicant's Updated Development Consent Order.

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1 Summary

- 1.1 This explanatory memorandum is prepared to explain the purpose and effect of each Article of, and the Schedules to, the draft Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order ("the Order").
- 1.2 The Order is based on the model provisions (see paragraph 2 below for further information on these), but where necessary departs from them. Where there is a significant departure from the model provisions, an explanation of the departure is provided.

2 Introduction

- 2.1 This explanatory memorandum seeks to explain the purpose and effect of each Article of, and the Schedules to, the draft Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order ("the Order"). It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ("the model provisions"). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the applicant considers it is still relevant to note and explain variations made in the Order compared to the model provisions. The wording of the model provisions has generally been updated in line with modern statutory instrument drafting practice and guidance.

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3 The Purpose of the Order

- 3.1 Norfolk County Council (NCC or the applicant) made an application to the Secretary of State for a development consent order for the construction and operation of the Norwich Northern Distributor Road in the County of Norfolk ("the Scheme", or as referred to in the Order "the authorised development"). The Order refers to the person authorised to exercise the powers in the Order as "the undertaker", and defines the undertaker as Norfolk County Council.
- 3.2 The Secretary of State made a direction under section 35 Planning Act 2008 on 9 August 2013 that the Scheme is to be treated as development for which development consent is required under the Planning Act 2008 ("the Direction"). A copy of the Direction is at Appendix C to the Introduction to the Application (Document 1.1).
- 3.3 The applicant therefore requires development consent under the Planning Act 2008 in order to construct the Scheme. Development consent may only be granted by order, following an application to the Secretary of State (section 37 Planning Act 2008).
- 3.4 In addition to providing for the construction and operation of the authorised development, the Order will, in accordance with section 122 and section 120(3) / Schedule 5 of the Planning Act 2008, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land. The Book of Reference (Document 4.3) sets out what land is to be acquired and what other rights and interests will be affected. The Order and the Updated Book of Reference (NCC/EX/79) should be read together with the Statement of Reasons (Document 4.1) which sets out the justification for the acquisition or interference with the Order land. The plots of land listed in the Updated Book of Reference are shown on the Updated Land Plans (part of NCC/EX/73).
- 3.5 The matters for which development consent is sought are summarised briefly below – the formal description is provided in Schedule 1 to the draft DCO:
- 3.5.1 The main component of the Scheme is the Norwich Northern Distributor Road itself (known as "the NDR"). This is defined in the Order as the "NDR classified road", and Part 2 of Schedule 5 to the Order describes which parts of the Scheme will be formally part of the NDR classified road (which once operational will be classified as the A1270);
- 3.5.2 In addition, the authorised development also includes works which are proposed as well or which are required as a result of the NDR classified road, such as:

- a. new highways (other than the NDR classified road) and private accesses, and stopping up, diversion of and alterations to existing highways (including public rights of way) and accesses;
- b. landscaping, habitats and other environmental or ecological mitigation measures;
- c. drainage infrastructure;
- d. demolition of two barns and construction of two bat barns;
- e. closures of, alterations to and new private means of access;
- f. various other works associated with the construction of the Scheme (as set out in Schedule 1 to the Order); and
- g. various temporary works and sites required for the construction of the Scheme.

- 3.6 A description of the route of the NDR classified road is provided in paragraph 1 of the Introduction to the Application (Document 1.1) and a more detailed description of the various elements of the authorised development is provided in Chapter 2 of the Environmental Statement (Volume 1, Document 6.1).
- 3.7 Section 115(1) of the Planning Act 2008 provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development".
- 3.8 The Order includes associated development pursuant to section 115(1)(b) of the Planning Act 2008 (as set out in Schedule 1 to the Order), including the 'off-line' highway works (i.e. to existing highways off the line of the NDR itself), bat barns, bat gantries and the diversion of a high pressure gas main. Having regard to the Department for Communities and Local Government's 'Guidance on associated development applications for major infrastructure projects' (April 2013), it is clear that these are all 'associated development' in relation to the NDR. Considering the general principles at paragraph 5 of that guidance, they all have a direct relationship with the NDR, support its construction and/or operation or help to address its impacts. None are an aim in themselves, and they are all proportionate in nature and scale to the NDR, being only what is required to address matters such as traffic or safety (the off-line highway works), potential environmental impacts (bat barns and gantries) and undertakers' equipment (the gas main diversion). Categories similar to all three are mentioned in the (non-exhaustive) list of examples of highways associated development in Annex A to the guidance (page 10).

4 The Provisions of the Order

- 4.1 The Order consists of 47 operative provisions, each referred to as Articles, and 16 Schedules. The Articles are considered below in numerical order, and Schedules are considered along with the corresponding Article.

Parts 1 (Preliminary) and 2 (Principal Powers)

- 4.2 Articles 1 and 2 are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect. Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions, including:
- 4.2.1 As the Order relates to a highways development, various definitions have been added which are relevant to that type of development and which are used in the Order. These include "apparatus", "bridleway", "highway", "restricted byway" and "trunk road". Wherever possible terms are defined are by reference to existing legislation;
 - 4.2.2 Certain definitions have been added so that documents relating to the Application can be referred to, including "environmental impact assessment", "environmental statement", "the land plan(s)", "the landscaping plans", "the sections", "the street plans" and "the works plans";
 - 4.2.3 The Order provides a definition for "maintain" in order to provide clarity as to what the undertaker is permitted to do under the power of maintenance (see further below);
 - 4.2.4 The "limits of deviation" for the authorised development are defined so as to set out the extent to which the undertaker may deviate from the Scheme as shown on the updated works plans (part of NCC/EX/73) when it is constructing the Scheme;
 - 4.2.5 Two bodies – National Grid and Network Rail – are defined as their apparatus is crossed by the NDR and they are therefore referred to in the Order;
 - 4.2.6 The NDR is defined as "the NDR classified road"; and
 - 4.2.7 Norfolk County Council is defined as the "relevant planning authority", which is the body who will approve matters pursuant to the requirements (in Schedule 2, see further below). Norfolk County Council acting in this

role is standard for similar road schemes promoted under other legislation and has been agreed with the host local authorities.

- 4.3 Article 3 grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into 'work numbers' each of which represents different sections or parts of the Scheme. This split of the Scheme between different work numbers enables the Order to refer to certain parts of the Scheme with clarity, by simply citing the relevant work number. The work numbers are delineated on the updated works plans (part of NCC/EX/73).
- 4.4 Article 3 also requires the works authorised by the Order to be constructed in the lines or situations shown on the works plans (part of NCC/EX/73), in accordance with the drawings specified in the requirements and only within the 'Order limits' (the boundary of the Scheme, as shown on the works plans). Article 3 also permits construction within limits of deviation which are specified in article 5 and are shown on the works plans. This approach, whilst going beyond the model provisions, reflects a standard approach used in orders made under the Transport and Works Act 1992 as well as a number of recent development consent orders for highways developments, and serves to precisely define the authorised development by reference to the plans. The Environmental Statement (Documents 6.1 – 6.3) has taken account of the limits of deviation.
- 4.5 Article 4 provides for the maintenance of the authorised development. Article 4(1) closely reflects the terms of the model provisions. Article 4(2) goes beyond the model provisions to reflect the particular maintenance needs of the authorised development itself. This includes the carrying out and maintenance of such works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development including altering the position of apparatus. Article 4(2) is provided for the avoidance of doubt, and the list of matters falling within 'maintenance' is not exhaustive. Whilst this approach departs from the model provisions, it provides greater clarity and ensures the maintenance provisions meet the specific needs of the project. Article 4(3) is included to ensure that the power to carry out maintenance only arises within the Order limits.
- 4.6 Article 5 permits the construction of the authorised development to deviate laterally or vertically within limits set by reference to the parameters within the Article. The parameters in the tables in article 5(2) and 5(3) apply to the elements of the Scheme set out in the second column, within those work numbers listed in the first column. The table in article 5(2) applies to all the work numbers in Schedule 1 (i.e. the whole Scheme), whereas the table in

article 5(3) applies to the specified work numbers only. The undertaker requires the (lower) limits of deviation in article 5(2) generally across the Scheme, and has identified the need for certain areas of the Scheme to have slightly increased flexibility, which is provided for in article 5(3).

- 4.7 Article 6(1) overrides section 156(1) Planning Act 2008 (which is permitted by section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. It would be impracticable and inappropriate for a variety of landowners to implement parts of the Order, as might occur without this provision. The undertaker is defined in Article 2 as Norfolk County Council, as promoter of the Scheme.
- 4.8 Articles 6(2) and 7 provide for exceptions to Article 6(1). Article 6(2) provides that Article 6(1) does not apply to numbered works which are for the benefit of the specified statutory undertakers. Article 7 makes provision for the transfer of the benefit of the Order, is similar to the model provision and requires the consent of the Secretary of State to any transfer other than to a statutory undertaker.

Part 3 (Streets)

- 4.9 Article 8 allows the undertaker to alter the layout of and carry out works within certain streets, being both those identified in Parts 1 and 2 of Schedule 3 and those within the Order limits generally. Where works are carried out temporarily the street must be restored, and other than in situations where the undertaker is the street authority (i.e. where they are the same body, as at present), then the consent of the street authority is required before works can be carried out under Article 8(2). Article 8(5) provides for the consent of the street authority to be deemed to be given if it receives an application under article 8(4) and does not determine it within 28 days – this is provided to ensure that the undertaker is not held up in its implementation of the Scheme, although as noted above in relation to article 8(2), this would not apply whilst Norfolk County Council is the undertaker (as at present, and as proposed).
- 4.10 Article 9 allows the undertaker to carry out street works in accordance with the statutory rights under the New Roads and Street Works Act 1991. It is based on the model provision intended to permit the laying of utilities in streets for the purposes of the authorised project. Articles 9(3) and 9(4) have been added to the model provision – respectively they ensure that any streets which are temporarily altered are restored and require the consent of the street authority before the powers in Article 9(1) are exercised.

- 4.11 Article 10 provides for the maintenance of all streets to be constructed or altered as part of the authorised development. Those which are to be public highway (including the NDR itself) will be maintained by the highway authority. Those which are not intended to be highway (such as private accesses which the undertaker is altering or creating) will be maintained by the undertaker for 12 months from completion, and then by the street authority. Article 10(3) incorporates a defence from the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic.
- 4.12 Article 10(4) is not a model provision – it provides for the undertaker to be responsible for maintaining three specific structures which will cross the NDR, and which will not be highways. This liability is placed on the undertaker for clarity for those that will rely on these structures to pass over the NDR for access.
- 4.13 Article 11 provides for the classification of roads that are to be constructed or altered as part of the authorised development. This is not a model provision but is integral to the implementation and use of the Scheme. The highway specified in Part 1 of Schedule 5 (at the Postwick end of the NDR at the A47(T)) will become trunk roads, with the Secretary of State as highway authority, through Article 11(1). The NDR classified road will become a principal road (the A1270) (Article 11(2) and Part 2 of Schedule 5). In addition, Article 11(3), 11(4), 11(5) and 11(6) provide either for the classification (or where necessary for the de-classification and then re-classification) of certain other highways affected by the Scheme. De-classification of existing highways must occur first, since a highway cannot have two classifications simultaneously.
- 4.14 Article 12 permits the stopping up of the streets and private accesses which are identified in Schedule 6. It is based on the model provision, with the addition of private accesses utilising the same power. In general the streets or accesses are required to be stopped up as their continued existence would be inconsistent with the Scheme. Where substitutes are to be provided (Parts 1 and 2 of Schedule 6), the existing street or access cannot be stopped up until either the permanent replacement or a temporary alternative has been provided (article 12(2)).
- 4.15 Paragraphs 12(3) and (4) permits the stopping up of the private accesses listed in Part 3 of Schedule 6 in certain circumstances, designed to ensure that third parties who own land either side of the relevant street are not adversely affected.

- 4.16 Article 12(6) provides that anyone suffering loss due to the operation of Article 12 is entitled to compensation, and the whole Article is subject to the operation of Article 33 which therefore provides protection in respect of statutory undertakers' equipment which may be within roads or accesses being stopped up.
- 4.17 The principle of Article 13 is based on the model provision although the wording used has been heavily adapted. Article 13(1) provides for the three rights of way listed in paragraph (a) of each of Parts 1, 2 and 3 of Schedule 7 to be stopped up. Article 13(2) requires the provision of the alternative rights of way as set out in paragraph (b) of each of Parts 1, 2 and 3 of Schedule 7. The timing of the stopping up and re-provision in Article 13 is amended from the model provision. The rights of way are (legally) stopped up from the date of their being physically stopped up by the undertaker. In addition, the new rights of way cannot be provided from the date of the closure of the existing rights of way (i.e. around the start of construction), as the new rights of way are part of the Scheme. They are therefore to become public rights of way (restricted byways in all three cases) once they are constructed and open to the public.
- 4.18 Article 14 is a model provision which provides for the temporary stopping up of streets for the purposes of carrying out the authorised project. As per the model provision it applies generally, and also applies specifically to certain streets – those are set out in Schedule 8 to the Order. Paragraph (2) confers a power on the undertaker where the use of a street has been temporarily stopped up under the article 14 power to use it as a temporary working site. Any person suffering loss due to the stopping up of a private right of way under article 14 is entitled to compensation (article 14(6)). As for article 8, the provisions relating to consulting with and consent from the street authority (including deemed consent under article 14(7)) are not relevant whilst Norfolk County Council is the undertaker, but they are retained to provide for the possible future situation (although not anticipated) that that position changes.
- 4.19 Article 15 is an adaptation of a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Schedule 9. Such means of access or works can also occur in other locations reasonably required for the authorised development with the approval of the relevant planning authority in consultation with the highway authority. The model provision relates this article to the authorised development generally, whereas this article 15 relates only to construction of the Scheme – that is because accesses to the NDR (once built) are effectively part of the Scheme itself (i.e. the new side roads etc which will be adopted highway). Therefore Article 15 just provides for construction stage accesses – this is in any case largely 'confirmatory' as the Order land construction area can (and will) be

accessed using the various public highways which intersect it, which would therefore be available even without Article 15.

- 4.20 Article 16 is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the stopping up, alteration and diversion of the street. As above, this article is retained for the scenario in which the undertaker is no longer Norfolk County Council – whilst it is, this Article will not be needed.

Part 4 (Supplemental Powers)

- 4.21 Article 17 is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. It has been updated to refer to the Environmental Permitting (England and Wales) Regulations 2010, now the relevant legislation in relation to discharges into watercourses.
- 4.22 Article 18 is a model provision which allows the undertaker to carry out protective works to buildings within the Order limits, subject to a number of conditions including the service of 14 days' notice (except in the case of emergency) and the payment of compensation.
- 4.23 Article 19 is a model provision which allows the undertaker to survey and/or investigate land including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given, and is subject to the payment of compensation.

Part 5 (Compulsory acquisition of land)

- 4.24 Article 20 provides for the compulsory acquisition of land as shown on the land plans and described in the book of reference so far as it is required for the authorised development (or to facilitate the authorised development or if incidental to the authorised development). Land can also be acquired compulsorily if required as replacement land for special category land (see Article 32 below).
- 4.25 Article 20 makes consequential provision for the extinguishment of rights in the land in order to ensure that such rights cannot impact on implementation or use

of the authorised development, and provides for the payment of compensation. Article 20 is also subject to two articles which provide for a lesser interference with land (Article 22, compulsory acquisition of rights and Article 28, temporary use of land for carrying out the authorised development). Those articles are explained below. Article 20 follows the model provision.

- 4.26 Article 21 follows the model provision and incorporates the minerals code into the Order. Article 21 has been included within the Order as mineral rights have been identified within the Order land, and the mineral code provides a statutory process for dealing with the purchase of and compensation for minerals within compulsory acquisition under the Order.
- 4.27 Article 22 is a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 Planning Act 2008. This Article is not a model provision but has a precedent in the Rookery South (Resource Recovery Facility) Order 2011. While the model provisions state that land vested in the undertaker would be discharged from all rights, trusts and incidents to which it was previously subject at the point of vesting it is not clear whether this covers the benefit of restrictive covenants and instances where land subject to third party rights is acquired by agreement rather than through compulsory acquisition. It also provides for the situation where access to the land for the purposes of the Scheme occurs before vesting.
- 4.28 Provision is made for the payment of compensation for any interests which are overridden by Article 22.
- 4.29 Article 23 is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition.
- 4.30 Article 24 is based on but departs from a model provision which entitles the undertaker to acquire rights over land which may be compulsorily acquired, including rights already in existence or by creating new ones. The revised Article 24(1) provides for such rights as may be required to be acquired by the undertaker over land which it is authorised to acquire under Article 20, instead of referring to specific rights to be acquired. In addition, it also permits the undertaker to impose restrictive covenants, but this power is limited (by 20(3)) to those plots relevant to the diversion of the gas main.
- 4.31 The public benefit of this is that it would allow the undertaker, if possible, to reduce the area of outright acquisition and rely on rights instead. A provision of this kind is usual in Transport and Works Act orders and Hybrid Bills, and without it this flexibility would not be possible. This is subject to new paragraph

(2), which provides that for the land described in Schedule 10, the undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes set out in that Schedule. Outright acquisition is not required for the Schedule 10 land, and a provision such as this was included in the Network Rail (Nuneaton North Chord) Order 2010 and the M1 Junction 10a (Grade Separation) Order 2013.

- 4.32 Article 24(5) and Schedule 11 provide for modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired), and is commonplace in Transport and Works Act orders. For the purpose of section 126(2) of the Planning Act 2008, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
- 4.33 Article 25 is based on a model provision and has the effect of extinguishing private rights over land compulsorily acquired – it departs from the model provision in that it relates to all rights over land (including trusts and incidents), not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation or use of the Scheme. It provides for the extinguishment of private rights over Order land already owned by the undertaker, when any activity authorised by the Order interferes with or breaches those rights. It follows the approach in the Rookery South (Resource Recovery Facility) Order 2012 and the M1 Junction 10a (Grade Separation) Order 2013. A provision has also been added for the protection of statutory undertakers, which matches that in the The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.
- 4.34 Article 26 applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order and is a model provision.
- 4.35 Article 27 permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This is a model provision.

- 4.36 Article 28 relates to situations where the undertaker is seeking to acquire part, rather than the whole, of properties compulsorily under the Order. It provides for a procedure whereby the owner whose land is being acquired in part may, subject to conditions, require the whole of his property to be taken. Express provision is made for the resolution of disputes in the Upper Tribunal (Lands Chamber). This is a model provision.
- 4.37 Article 29 is a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances.
- 4.38 Article 30 allows the land specified in Schedule 12 to be temporarily used for the carrying out of the authorised development. Article 30 is clarified by the addition of paragraph (11) (not a model provision) which confirms that the undertaker may take land temporarily more than once.
- 4.39 Article 31 is similar to article 30 but permits the temporary use of land for maintenance of the authorised project.
- 4.40 Both Articles 30 and 31 are model provisions and provide for the payment of compensation for that temporary use of the land.
- 4.41 Article 32 makes provision for the two types of 'special category land' applicable to the authorised development – open space and fuel allotment land. The open space (at Marriott's Way) is to be replaced as part of the Scheme by permanent provision in a similar location on a new bridge deck over the NDR. During construction of the Scheme a route between the two closure points on Marriott's Way is to be re-provided (subject to exceptions), but in a location to the side of the current area so that the bridge can be built. The provision of that route is secured by requirement 23 in Schedule 2 to the Order, and the closure of Marriott's Way open space is tied into that requirement in article 32. The article departs from the model provision in relation to Marriott's Way open space in order to allow for the gap in time between the necessary closure of the existing open space and the opening of the new open space.
- 4.42 A small area of fuel allotment land is required for the scheme, but as it is required for the widening and / or drainage of an existing highway and there will be no impact on those who have the 'benefit' of the fuel allotment land, no replacement land is to be provided (section 131(5) 2008 Act). The article therefore just provides for the discharge of all rights, trusts and incidents in the area of fuel allotment land required.

- 4.43 Article 33 provides for the acquisition of land of statutory undertakers which is identified in the Book of Reference (Document 4.3). This article includes a power to move the apparatus of those statutory undertakers and to extinguish rights. It is a model provision, except it is made subject to the protective provisions in Schedule 13, which are to apply to certain statutory undertakers as set out in that Schedule.
- 4.44 Article 34 makes provision in respect of the apparatus and rights of statutory undertakers in streets which are stopped up, including provision as to the relocation of apparatus. It is a model provision.
- 4.45 Article 35 provides that persons who have to create a new connection following the removal of apparatus from stopped up streets may recover the costs of new connections from the undertaker. It is a model provision.

Part 6 (Operations)

- 4.46 Article 36 provides that the undertaker may fell or lop or cut back the roots of any tree or shrub to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused.
- 4.47 Article 37 is in similar terms to the previous Article, but applies to trees subject to tree preservation orders, which are listed in Schedule 15. The permission granted by the article constitutes deemed consent under a tree preservation order. The article follows the model provision. Protected trees are only present in one location that may be affected by the project, as listed in Schedule 15.

Part 7 (Miscellaneous and General)

- 4.48 Article 38 is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development.
- 4.49 Article 39 is a model provision which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being “operational land” under the Town and Country Planning Act 1990 by the effect of s 263 of that Act.

- 4.50 Article 40 provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or which is an unavoidable consequence of the authorised development.
- 4.51 Article 41 provides for Schedule 13 – which protects the interests of certain statutory undertakers (as referred to in Article 33 above) – to have effect.
- 4.52 Article 42 is a model provision which provides for certification of the approved plans, etc, to which the Order relates.
- 4.53 Article 43 deals with the service of notices pursuant to the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006.
- 4.54 Article 44 provides the undertaker with powers to make traffic regulation orders in relation to roads for which it is not the highway authority. The undertaker can only do so within 12 months of the opening of the Scheme highways for public use, must consult with the police and traffic authority, and can only implement measures with the latter's approval. As the undertaker is Norfolk County Council (the local highway authority), this Article presently applies in relation to the A47(T) only.
- 4.55 Article 45 provides for applicable traffic regulation measures and speed limits for the parts of the authorised development identified in Schedule 14. In addition, Schedule 14 also provides certain traffic regulation measures which are to come into effect as part of the Scheme, and for specified existing orders to be amended or revoked in the manner set out.
- 4.56 Article 46(1) and (2) provide a procedure in relation to consents and approvals required pursuant to the Order. That applies to all such consents etc, bar those under requirements in Schedule 2, where the process for the discharge of conditions in the Town and Country Planning Act 1990 is effectively incorporated.
- 4.57 Article 47 is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is a model provision.

Requirements

4.58 Schedule 2 sets out the requirements which are a method through which the implementation and operation of the Scheme is controlled. Norfolk County Council has consulted with other local authorities relevant to the Scheme on these requirements, and those authorities have confirmed that they are content for Norfolk County Council to be the 'relevant planning authority' (see the definition in Article 1) to whom applications under requirements are made, subject to the local authorities being consulted. Such consultation is provided for in appropriate requirements.

4.59 The requirements are as follows:

4.59.1 Paragraph 1 contains certain definitions and preliminary matters which relate to the requirements. The definition of "relevant district authorities" is used to define those Councils which Norfolk County Council (as local planning authority) must consult in considering whether to approve something submitted pursuant to a requirement.

4.59.2 A number of the requirements include wording which allows NCC to discharge them in relation to parts of the authorised development (using the work numbers in Schedule 1 to the Order). Whilst NCC intends to discharge each requirement in one submission (i.e. not phased), this wording gives NCC flexibility in terms of how the authorised development comes forward in appropriate circumstances. It does this through allowing NCC to discharge a requirement in respect of a particular work number (or numbers) and start work on that part of the Scheme, if that was what the construction timetable required. The requirement must then be separately discharged in relation to the remainder of the Scheme before works can commence on those latter parts of it.

4.59.3 Requirement 2 requires the authorised development to commence within 5 years of the date the Order comes into force, and requirement 3 requires NCC to give notice of the commencement of the authorised development to the relevant planning authority.

4.59.4 Requirement 4 ties the implementation and construction of the authorised development to the approved plans.

4.59.5 Requirement 5 requires the approval and implementation of the detailed landscape and ecology proposals that will form part of the Scheme, as well as the replacement of trees and shrubs that require replacement following planting.

- 4.59.6 Requirement 6 requires any trees and shrubs that are to be retained within the Order land to be protected during construction, and to be replaced if any are removed or damaged. It also requires areas of soil to be kept free of noxious weeds during construction.
- 4.59.7 Requirement 7 requires the approval and implementation of measures in relation to contamination and to ensure that any contamination found during construction is appropriately dealt with, and also includes a provision setting out a process for dealing with any unexpected contamination that may be found during construction.
- 4.59.8 Requirement 8 requires the approval and implementation of measures to mitigate the noise and vibration impacts of the construction of the Scheme.
- 4.59.9 Requirement 9 limits the hours during which NCC may carry out works to construct the Scheme (including deliveries) to 7am to 7pm Mondays to Fridays and 7am to 1pm Saturdays and public holidays, subject to the exceptions listed in paragraph (2).
- 4.59.10 Requirement 10 requires the approval and implementation of a construction workers travel plan, and requirement 11 requires the details of the construction stage access points to be approved and then implemented. Construction traffic must then use the approved accesses.
- 4.59.11 Requirement 12 requires the approval and implementation of measures to ensure that vehicles' wheels are cleaned prior to them leaving the construction site, to limit the deposition of mud and dust on the public highway.
- 4.59.12 Requirement 13 requires the approval and implementation of measures to control dust or other material from being blown off the construction site, as well as requiring all vehicles carrying relevant materials to be sheeted for the same reason.
- 4.59.13 Requirement 14 requires the approval and implementation of pollution control measures to ensure that watercourses and drainage in the area of the works are protected from potential pollution sources arising from the works.
- 4.59.14 Requirement 15 requires the approval and implementation of a written scheme of archaeological investigation in relation to the route of the authorised development, as well as setting out a process to control

what must happen in the event that 'unexpected' archaeological finds are made as construction progresses.

- 4.59.15 Requirement 16 requires the approval and implementation of a site waste management plan for the construction stage of the Scheme.
- 4.59.16 Requirement 17 requires the approval and implementation of a plan to control emissions during the construction stage of the Scheme.
- 4.59.17 Requirement 18 requires the approval and implementation of a construction environmental management plan (CEMP) for the construction stage of the Scheme.
- 4.59.18 Requirement 19 requires that relevant parts of the works (that relating to Trunk Roads) are constructed in accordance with the Design Manual for Roads and Bridges (DMRB), a document published by the Department for Transport. It allows exceptions with the Secretary of State's approval, as 'departures' from DMRB can be permitted and should not be prevented by the DCO.
- 4.59.19 Requirement 20 requires the approval and implementation of both temporary and permanent fencing or other means of enclosure (so far as proposed). The temporary fencing must remain in place for the construction stage and then must be removed, whilst the permanent fencing must be in place prior to the authorised development opening for public use.
- 4.59.20 Requirement 21 requires the approval and implementation of permanent noise attenuation measures required to be in place during the operation of the authorised development (i.e. once in use).
- 4.59.21 Requirement 22 requires the approval and implementation of all public rights of way closures or diversions proposed as part of the Scheme.
- 4.59.22 Requirement 23 relates to Marriott's Way and to the provisions of Article 32 (see above). Marriott's Way is considered likely to be open space, and is to be replaced with other open space on an overbridge over the route of the NDR – this will be open to the public once constructed. The requirement secures the approval and implementation of an alternative route so that users of Marriott's Way can safely and conveniently cross the construction site whilst the overbridge is being constructed. The requirement provides limited exceptions to the obligation to keep the alternative route open, and

requires the undertaker to give public notice where closures are planned.

- 4.59.23 Requirement 24 requires the approval and implementation of a surface water management strategy relating to the Scheme.
- 4.59.24 Requirement 25 requires the approval and implementation of drainage measures at A1067 and Weston Hall Road – this is required in order to ensure that there will be no impacts on the River Wensum from highway run off.
- 4.59.25 Requirement 26 requires the approval and implementation of signage to the Airport and Cromer.
- 4.59.26 Requirement 27 requires the approval and implementation (in accordance with a programme also to be submitted) of traffic management measures in Weston Longville and Hockering.
- 4.59.27 Requirement 28 requires the approval and implementation (in accordance with a programme also to be submitted) of measures to minimise rat running through the listed areas, and includes a requirement for the feasibility of including the specified measures to be considered.
- 4.59.28 Requirement 29 requires a monitoring scheme for traffic in Lyng to be approved by the date that is 12 months from commencement of construction, and for the scheme to be implemented. Where material increases in traffic that could be directly associated with the NDR are identified, traffic management measures must be submitted for approval, and implemented in accordance with an approved programme.
- 4.59.29 Requirement 30 provides for a general scheme of traffic monitoring to be submitted and approved, and then to be implemented.
- 4.59.30 Requirement 31 requires the submission and approval of an action plan of complementary traffic measures prior to the NDR being fully open to traffic, which must have regard to the Norwich Area Transportation Strategy Implementation Plan Update 2013. Certain measures (as listed) or consideration as to their feasibility must be included. The measures must be carried out in accordance with a programme, which must also be approved, and a review of the action plan must be submitted within 18 months of the opening of the NDR.

- 4.59.31 Requirement 32 removes permitted development rights in relation to lighting not included within the Order, so that a full planning application must be made in relation to any lighting proposed in the future. Lighting is only proposed around the Postwick junction within the Order.
- 4.59.32 Requirement 33 secures the use of low noise road surfacing in constructing the NDR and when replacing the surface in the future.
- 4.59.33 Requirement 34 requires the surfacing of bridleways to be approved, to ensure the consideration of different bridleway users.
- 4.59.34 Requirement 35 confirms that where undertaker has obtained approval of a matter pursuant to a requirement, it can also obtain a 'further' approval from the relevant planning authority which will supersede the earlier one.

5 Glossary

Term	Meaning/Definition
the Application	The Application for the DCO for the Scheme
DCO	Development consent order, the type of consent that can be granted by the Secretary of State pursuant to the Planning Act 2008 and for which NCC has applied pursuant to the Application
the Order	The Norfolk County Council (Norwich Northern Distributor Road (A47 to A1067(T))) Order', being a draft development consent order and which is required for the Scheme
NCC	Norfolk County Council
NDR	Norwich Northern Distributor Road, part of the development for which consent is sought in the Order, and described in the Order as the "NDR classified road"
the Scheme	The development for which NCC is seeking consent within the Order, and described in the Order as the "authorised development"