
Great Yarmouth Third River Crossing

Application for Development Consent Order

Document 3.2: Explanatory Memorandum

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (“APFP”)

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Foreword

This document accompanies an application ('the Application') submitted by Norfolk County Council ('the Applicant') to the Secretary of State for a Development Consent Order ('DCO') under the Planning Act 2008¹.

If made by the Secretary of State, the DCO would grant development consent for construction, operation and maintenance of a new bascule bridge highway crossing of the River Yare in Great Yarmouth, and which is referred to in the Application as the Great Yarmouth Third River Crossing (or 'the Scheme').

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) require that an application for a DCO be accompanied by the documents specified at Regulation 5(2)(a) to (r). This is one of those documents and is specified at Regulation 5(2)(c).

¹ References to legislation in this document are to that legislation as amended at the date of this document

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Glossary of Defined Terms and Acronyms

Note on the Glossary

Whilst the purpose of this document is to explain the Order, it is designed to be read alongside other documents accompanying the application. It follows that terms drawn from both the Order and other application documents are used. In the latter documents, a more descriptive and informal approach to defined terms is appropriate, so these differ from those used in the Order in some instances (for example the terms “crossing” and “knuckles” are together equivalent to the Order’s “new bridge” and “new bridge approaches”).

Term	Definition
1980 Act	The Highways Act 1980
1984 Act	The Road Traffic Regulation Act 1984
1990 Act	The Town and Country Planning Act 1990
1991 Act	The New Roads and Street Works Act 1991
A14 Order	The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (S.I. 2016/547)
A556 order	A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 (S.I.2014/2269)
The Applicant	Norfolk County Council (in its capacity as Highway Authority and promoter of the Scheme).
Crossing	The combined double leaf bascule bridge and the Southtown Road bridge structure (i.e. from its junction with the new roundabout on William Adams Way to the new junction on South Denes Road).
Double Leaf Bascule Bridge	Opening span and mechanism needed to operate the bridge.
Knuckles	The areas of the River Yare into which the proposed development extends (from the existing quay walls). These areas consist of the following: <ul style="list-style-type: none"> - Physical protection systems (which are protective structures provided adjacent to the bascule abutments) to fully or partial absorb the design ship collision loads from an aberrant ship or vessel. These protection systems are located on both the south and north of each bascule abutment. They consist of sheet piles driven to

Term	Definition
	<p>dense sands infilled with stone or granular material and capped with a reinforced concrete slab.</p> <ul style="list-style-type: none"> - A bascule abutment which accommodates and allows the movement of the counterweight and houses the mechanical, electrical, instrumentation, control and automation systems. The bascule abutment consists of driven piles and reinforced concrete slabs and walls. - Plant and control rooms on the western side and plant rooms on the eastern side. - Vessel Impact Protection Systems located at the interface between the physical protection systems, the bascule abutments and the River Yare. <p>There are knuckles on both the east and west sides of the River Yare.</p>
M6 Link order	The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 (S.I. 2103/675)
M20 order	The M20 Junction 10a Development Consent Order 2017 (S.I. 2017/1202)
Mersey Gateway order	The River Mersey (Mersey Gateway Bridge) Order 2011 (S.I. 2011/41)
Model Provisions	The model DCO provisions contained in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265).
New bridge	The bridge over the river Yare and the vessel impact protection systems.
New bridge approaches	The western approach (from the new roundabout on William Adams Way) and eastern approach (from the new junction on South Denes Road) to the new bridge.
NDR order	The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T)) Order 2015 (S.I. 2015/1347)
Order	The draft DCO accompanying the application for development consent.
Order Land	Land that is proposed to be acquired and land over which new rights are proposed to be created and acquired, as shown on the Land Plans (document reference 2.5).

Term	Definition
Order Limits	Limits of land within which the authorised development may be carried out, as shown on the Land Plans (document reference 2.5) and the Works Plans (document reference 2.6).
Planning Act	The Planning Act 2008.
Scheme	The Great Yarmouth Third River Crossing project for which the Applicant seeks development consent.
Silvertown Tunnel order	The Silvertown Tunnel Order 2018 (S.I. 2018/574)
Testo's Junction order	The A19/A184 Testo's Junction Alteration Development Consent Order 2018 (S.I. 2018/994)
Thames Tideway order	The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I.2014/2384)
Underpass	The underpass beneath the Crossing, located on the east side of the River Yare, to be constructed to provide a new private means of access for the benefit of owners and occupiers of adjoining land.
Undertaker	The person granted development consent by the Order i.e. Norfolk County Council.
Vessel Impact Protection Systems	These are specific protection systems located at the interface between the physical protection system, the bascule abutments and the River Yare. These systems will take the form of fenders or equivalent (formed of different materials) which are used to deflect or redirect an aberrant vessel away from the knuckles. The fenders are designed to provide required levels of protection to both vessels, the "knuckles" and the fenders themselves in accordance with national and international recommendations for the protection of bridge structures on navigable waterways.
Vessel Waiting Facilities	Provision of vessel waiting facilities to the north and south of the Crossing, either as floating pontoons or additional fendering to the existing berths, including any dredging and quay strengthening works that may be required.

ACRONYMS

Acronym	Definition
CPA	Norfolk County Council in its capacity as county planning authority under the 1990 Act
DCO	Development Consent Order
FPN	Fixed Penalty Notice
GYPA	Great Yarmouth Port Authority
NSIP	Nationally Significant Infrastructure Project
RTRA	Road Traffic Regulation Act 1984
TPO	Tree Preservation Order
TRO	Traffic Regulation Order (made under the RTRA)
TWAO	Order made under the Transport and Works Act 1992

1 Summary

This memorandum explains the purpose and effect of the draft Great Yarmouth Third River Crossing Development Consent Order 202[] (“the Order”). A general account of the purpose of the Order is provided, followed by an explanation of each article of the Order and any Schedule introduced by the article.

2 Purpose of the Order

- 2.1 The overall purpose of the Order is to authorise the construction, operation and maintenance of the Great Yarmouth Third River Crossing project (“the Scheme”).
- 2.2 The Scheme consists of a new dual carriageway road, including a road bridge across the river, linking the A47 at Harfrey’s Roundabout on the western side of the river to the A1243 South Denes Road on the eastern side. The Scheme would feature an opening span double leaf bascule (lifting) bridge across the river, involving the construction of two new ‘knuckles’ extending the quay wall into the river to support the bridge. The Scheme would include a bridge span over the existing Southtown Road on the western side of the river, and a bridge span on the eastern side of the river to provide an underpass for existing businesses, enabling the new road to rise westwards towards the crest of the new Crossing.
- 2.3 A full description of the Scheme is provided by Chapter 2 of Volume 1 of the Environmental Statement (document reference **6.1**). The background to and justification for the Scheme are explained in the Case for the Scheme (document reference **7.1**).
- 2.4 The Planning Act 2008 (“the Planning Act”) provides that various specified categories of infrastructure projects are to be “nationally significant infrastructure projects” (“NSIPs”). If development is, or forms part of, an NSIP, it requires development consent under the Planning Act². The categories of NSIPs specified by the Act include, at section 22(1), the construction, alteration and improvement of highways, but the Scheme would not comply with the requirement³ that the highway authority must be either the Secretary of State or Highways England.
- 2.5 It follows that the Scheme would not ordinarily be an NSIP. However, section 35 of the Planning Act enables the Secretary of State to direct that a development be treated as development for which development consent is required. A direction (“the Direction”) was made in relation to the Scheme on 26 February 2018 following a request by Norfolk County Council.

² Section 31

³ Section 22(2)(b), (3)(b) and (5)(b)

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- 2.6 The Scheme therefore requires development consent, which would be granted by way of an order made by the relevant Secretary of State⁴. The Order sought here must be contained in a statutory instrument⁵, because it includes provision within the scope of section 120(5)(a) and (b) of the Planning Act (exclusions and modifications etc. of existing statutory provisions) and paragraphs 32A and 32B of Schedule 5 to the Planning Act (making of byelaws and their enforcement).

Grant of development consent

- 2.7 Development consent is granted by the Order, at article 4, for the “authorised development” (defined by article 2 as the development described in Schedule 1 and any other development authorised by the Order). This is in accordance with section 115 of the Planning Act, which permits development consent to be granted for “development for which development consent is required” and also for “associated development” (i.e. development which is associated with development requiring development consent). The Secretary of State’s section 115 power to grant development consent, and the provisions made by section 120 concerning what may be included in a DCO, apply equally to both development for which development consent is required and associated development. It is thus unnecessary for the Order to distinguish between them. This approach is taken by the recent Silvertown Tunnel Order 2018⁶ (the “Silvertown Tunnel order”) and the A19/A184 Testo’s Junction Alteration Development Consent Order 2018⁷ (the “Testo’s Junction order”).

Supplementary powers

- 2.8 As is usual, the Order also contains a wide range of powers and other provisions to enable the construction, operation and maintenance of the Scheme. This reflects the integrated consenting objective of the Planning Act regime. The provisions have been drafted to accord with the wide-ranging powers at section 120 of the Act, but also the limitations, requirements and exceptions imposed by section 120(8) and sections 121 to 152 so far as these are relevant to the Scheme.
- 2.9 The supplementary provisions contained in the Order include powers to compulsorily acquire land and rights in and over land, and to take temporary possession of land. The undertaker is also empowered to stop up lengths of existing highway and private accesses, and undertake other matters arising

⁴ Section 114(1)(a)

⁵ Section 117(4)

⁶ S.I. 2018/574

⁷ S.I.2018/994

from the construction of the Scheme, such as street works, traffic regulation measures and highway classification.

- 2.10 The Order also includes various provisions relating to the operation and maintenance of the Scheme, including general powers and specific provisions relating to particular matters, including the making and enforcement of byelaws relating to the crossing and adjoining public realm. The Order also contains protective provisions to ensure the appropriate protection of the interests of specified statutory undertakers and other bodies.
- 2.11 The Order also contains provision relating to other regulatory consents which the Scheme would ordinarily require and statutory restrictions which the Scheme would engage. A deemed marine licence is included, and some specified consents and other statutory provisions are disapplied (in relation to specified trees, for example, the Order disapplies the requirements for consent to works to specified trees protected by a tree preservation order, together with the statutory offence and procedure relating to trees in conservation areas).

3 The Draft Order

- 3.1** The following sections of this memorandum correspond to the Parts of the draft Order and explain the effect and purpose of each article and schedule. With the exception of Schedule 2 (requirements), Schedules are explained alongside the articles which introduce them.
- 3.2** An account is also provided of the precedents from which provisions are derived. The model provisions contained in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009⁸ (the “Model Provisions”) are now of some age and this order has lapsed following the repeal of its enabling power⁹. Nevertheless, the present draft Order is broadly based on the relevant general Model Provisions, although also taking account of the precedent provided by DCOs made under the Planning Act, relevant orders (“TWAO”s) made under the Transport and Works Act 1992¹⁰ and relevant Acts (for example, the Crossrail Act 2008¹¹).

⁸ S.I. 2009/2265

⁹ Section 38: repealed 1.4.2012 by the Localism Act 2011

¹⁰ 1992 c.42

¹¹ 2008 c.18

4 PART 1 - PRELIMINARY

Article 1 – citation and commencement

- 4.1 An article of this nature is found in every statutory instrument. Its purpose is to give the Order a definitive name to which it can be referred in future legislation or in legal and other proceedings. The article also confirms when the Order will come into effect. This may be the date on which it is made, or a later date.

Article 2 - Interpretation

- 4.2 This article defines key words and expressions for the purposes of the Order, commencing with a list of various Acts with which the Order provisions interact. To ensure consistency with those Acts, several definitions are included simply to ensure that specified words have the same meaning in the Order as they do in the related Act. Examples include “carriageway” and “owner” in relation to land. The approach to plans is that of the Model Provisions, i.e. to define them simply by way of reference to the plans certified by the Secretary of State (as provided for by Article 64)

- 4.3 Some definitions are required to enable the Order to respond to the unique features and circumstances of the project. They include:-

“authorised person” (relevant to enforcement of operational provisions in Part 5)

“Borough of Great Yarmouth”;

“the GYPA”; and

“the new bridge” (and related terms).

- 4.4 Attention is also drawn to the following definitions:

4.4.1 “authorised development” – this is defined to mean the development described in Schedule 1, together with any development (within the meaning given by section 32 of the Planning Act) authorised by the Order.

4.4.2 “commence” – some of the requirements in Schedule 2 (see section 11 of this memorandum) must be complied with before the authorised development is commenced. The starting position in this definition is that carrying out any activity which would amount to a “material operation” under the Town and Country Planning Act 1990 (“the 1990 Act”) will constitute commencement. However, several specified investigatory and other preliminary works are excluded, in order to

achieve efficiency and flexibility in carrying out the authorised development. As all the specified activities are minor and preparatory in nature, rather than amounting to substantive implementation of the Scheme, it is considered that the definition would not prejudice the effectiveness of the requirements. The approach follows that taken in recent DCOs including the M20 Junction 10a Development Consent Order 2017¹² (the “M20 order”) and the Silvertown Tunnel order.

4.4.3 “highway” and associated terms are given the meaning that they have in the Highways Act 1980. It should be noted that:

- a) the undertaker is the highway authority for all highways engaged by the Scheme save the A47 (for which the highway authority is Highways England); and
- b) where a body is the highway authority for a highway engaged by the Scheme, it is also the traffic authority¹³ and street authority¹⁴ for that highway. This reflects the close practical relationship between the regimes established by the 1980 Act, the Road Traffic Regulation Act 1984 (“the 1984 Act”) and Part III of the New Roads and Street Works Act 1991 (“the 1991 Act”). The Order gives “traffic authority” and “street authority” the meanings that they have in the 1984 and 1991 Acts.

4.4.4 “maintain” is given a broad definition appropriate to the anticipated lifespan of the project and its inclusion of a bridge whose operating mechanism will in time require updating, alteration and replacement rather than repair. A broad approach to “maintain” is any case taken in numerous DCOs, including the Silvertown Tunnel order, the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T)) Order 2015¹⁵ (the “NDR order”) and the Testo’s Junction order.

4.4.5 “the Order land” is defined as the land which is coloured pink, coloured blue and hatched pink and blue on the land plans. This comprises the

¹² S.I. 2017/1202

¹³ See section 121A of the 1984 Act (1984 c.27). In two tier local authority areas such as Norfolk, the County Council is the traffic authority for any road (defined by section 142 as any length of highway or road to which the public has access) other than one for which the Secretary of State or Highways England is the highways authority.

¹⁴ See section 49(1) of the 1991 Act. For streets other than highways maintainable at the public expense, the street authority is the person having liability to maintain or (if there is no such person) whoever has management or control of the street.

¹⁵ S.I. 2015/1347

land which the undertaker can permanently acquire (pink land), and the land over which the undertaker can permanently acquire new rights (blue land) and land in respect of which the undertaker can acquire airspace (pink) and rights below (land hatched pink and blue).

- 4.4.6 “the Order limits” defines the Order limits by way of reference to the land plans (land subject to permanent acquisition¹⁶ and temporary possession) and the works plans (land within which the authorised development may be carried out).
- 4.4.7 “Street” is given a meaning which expands slightly on the very broad definition provided by section 48 of the 1991 Act, which is that “street” means any highway, road, lane, footway, alley or passage, any square or court, and any land laid out as a way.
- 4.4.8 “the undertaker” (the person granted development consent by the Order) is defined as Norfolk County Council, although it should be noted that article 8 contains the standard DCO provision for the transfer or leasing of the benefit of the Order if the consent of the Secretary of State is obtained.
- 4.5 Article 2(2) defines the scope of rights over land and in the airspace above land which may be acquired under the Order. It also clarifies the nature and scope of Order provisions which allow restrictive covenants to be imposed.
- 4.6 Article 2(3) defines measurements as approximate. The purpose of this is to ensure that if, upon construction of the Scheme, it transpires that the distances are marginally different to those listed in the Order, then there is no issue over whether the works are permitted by the Order. Thus this provision allows for a small tolerance with respect to measurements, although all works will take place within the limits of deviation provided by article 6 (and these are in turn subject to an overall requirement that the Scheme is carried out within the Order limits¹⁷). It is commonplace to include such provision in an Act or instrument authorising infrastructure – examples include the Crossrail Act 2008 (see section 56(5)(c)), the M20 order, Silvertown Tunnel order and Testo’s Junction order. Article 2(4) has the same rationale, providing that areas stated in the Book of Reference are approximate (this is necessary because article 2(3) applies only to the draft order).
- 4.7 Articles 2(5)-(7) clarify and tie down references to points and other lettered or numbered matters, numbered works in the Order and plots.

¹⁶ Which will include acquisition of rights given that in the context of a DCO the definition of “land” at section 235 of the Planning Act is supplemented by the definition at section 159

¹⁷ see article 6(1)

Article 3 - disapplication of legislation etc.

- 4.8 Section 120 of the Planning Act makes very comprehensive and wide-ranging provision about what may be included in a DCO. It is a central pillar of the Act's integrated approach to consenting. Section 120(5) provides (subject to specified limitations and requirements) that a DCO may, amongst other things,:-
- (a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order; and
 - (b) make amendments, repeals or revocations of statutory provisions of local application.
- 4.9 Such provisions are common in DCOs. Although their content differs widely according to the circumstances of individual projects, precedent for most of the provisions sought by the present Order can be found in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016¹⁸ (the "A14 Order").
- 4.10 Article 3(1) and (2) therefore provides for the disapplication of various specified provisions:-
- (a) section 23 of the Land Drainage Act 1991 – which prohibits obstruction and other works in watercourses with the consent of the appropriate Internal Drainage Board.
 - (b) section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the draft DCO relating to drainage to be revisited.
 - (c) byelaws made by drainage bodies under section 66 of the Land Drainage Act 1991. The Scheme engages the Waveney, Lower Yare and Lothingland Internal Drainage Board's Land Drainage Byelaws.
 - (d) Environment Agency byelaws made, or having effect under, Schedule 25 of the Water Resources Act 1991.
 - (e) byelaws 20, 48 and 56 of the Great Yarmouth Port Authority Navigation (Haven) Byelaws 1997.

¹⁸ S.I. 2016/547

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- (f) Regulation 12 of the Environmental Permitting (E&W) Regulations 2016, insofar as it requires an environmental permit for flood risk activities.
 - (g) the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under articles 35 and 36 of this Order. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced. When this may happen is uncertain, as are the detailed implications of implementation for the Scheme. A DCO should achieve certainty, and it is therefore appropriate and necessary to disapply the reforms whilst taking account of their principles in the relevant articles of the Order.¹⁹

4.11 These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the DCO is made. Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and unjustifiably delay the implementation of the Scheme.

4.12 However, section 150 of the Planning Act only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. The relevant consents, where applicable, are being sought in parallel with the negotiation of appropriate protective provisions²⁰, which will ensure that the disapplications will not prejudice the statutory objectives and responsibilities of the relevant regulators. The Applicant's approach to obtaining the consents required for the Scheme is set out in greater detail in the Consents and Agreements Position statement (document reference **7.3**).

4.13 The Community Infrastructure Levy (CIL) has not yet been implemented by Great Yarmouth Borough Council. However, it is considered that as the project comprises public infrastructure, it would be appropriate to secure that CIL will not apply in any event. This is the effect of article 3(2), achieved by specifying that any building comprised in the authorised development is to be deemed to be of a type that does not trigger liability for payment of CIL.

¹⁹ See in particular articles 35 and 36.

²⁰ See Schedule 14 of the Order.

5 PART 2 – PRINCIPAL POWERS

Article 4 – development consent granted by the Order

- 5.1 Authorisation of a project under the Planning Act is achieved by way of the grant of development consent. Article 4 is thus key to the Order, as it grants development consent for the authorised development.
- 5.2 However, the article also provides clarificatory statements which confirm the overall basis on which the Order operates. The grant of development consent is subject to the other provisions of the draft order, in particular the requirements at Schedule 2. At the same time, article 4(2) clarifies that legislation applying to land within or adjacent to the order limits has effect subject to what is stated by the Order. There is precedent for article 4(2) in many DCOs: the A14 order, Silvertown Tunnel order and Testo's Junction order are examples.

Article 5 - maintenance of authorised development

- 5.3 This article is found in the Model Provisions and many subsequent orders. Attention has already been drawn to the definition of “maintain”, which sets the boundaries of this power. As is necessary in the context of a complex bridge, it supplements the standard maintenance powers available to the undertaker as highway authority. In relation to the river Yare, this article is supplemented by Article 49 (1), which authorises specific activities for maintenance purposes. However, the power to maintain is made subject to contrary provision made by the Order: article 12(1) is of particular relevance as the Scheme includes works to the A47 for which the highway authority is Highways England, not the undertaker.

Article 6 – limits of deviation

- 5.4 A provision creating defined limits of deviation is usual in DCOs for highway projects. The purpose of the provision is to grant the undertaker a necessary but proportionate degree of flexibility in constructing the Scheme. It allows minor variations to be made to the works, within appropriate boundaries, so that unforeseen circumstances can be accommodated rather than preventing implementation of the Scheme. The Environmental Statement (document reference 6) takes account of the range of Scheme outcomes permitted by this article.
- 5.5 The limits of deviation reflect the mixture of linear and non-linear works comprised in the project. In relation to non-linear works, the approach to lateral limits of deviation is to define an area on the works plans within which the work may be carried out. For linear works, centre lines are defined on the works plans and the approach is to allow this to be varied by up to 3 metres.

Work 8C is an exception: a variation of 1 metre is permitted, to protect the operations of adjoining businesses. This is also the reason for the headroom requirement at paragraph 8(a) applied to the new underpass on the east side of the river, whilst the headroom requirement at 8(b) is imposed to protect the interest of highway users and the air draught requirement at 8(c) is imposed to protect the interests of river users and port operations, as is the requirement to preserve a minimum channel width at paragraph (4).

- 5.6** Paragraph (5) provides for a general upward vertical limit of deviation of 1 metre. However, paragraph (6) provides maximum heights for the control tower and plant room to allow an appropriate degree of flexibility in the design and functionality of these key operational elements of the Scheme. In relation to downwards vertical limits, the starting point (paragraph(5)(b)) is a general power to deviate as found necessary or convenient, but for many works a specific limit is imposed (see table below (5)(b)). However, to ensure that appropriate account can be taken of ground conditions encountered when the works are carried out, paragraph (7) allows downwards deviation as necessary in relation to drainage infrastructure works and the piling works which will be necessary for various elements of the highway works.
- 5.7** Paragraph (9)(a) allows the commencement and termination points of linear works to be varied by up to 3 metres. Paragraph (9)(b) complements requirement 4 (see section 11 of this memorandum) by permitting deviation from the engineering plans, drawings and sections, subject to general accordance with the approach to detailed design set out in Appendix A to the Design Report (document reference **7.4a**).

Article 7 – benefit of the Order

- 5.8** This and the following article 8 adopt the standard approach taken by recent DCOs. Section 156(1) of the Planning Act provides that a DCO has effect for the benefit of the relevant land and all persons for the time being interested in that land. However, that would be inappropriate for this Scheme, which requires to be constructed, maintained and operated under a consistent and coherent regime. Therefore, as permitted by section 156(2), article 7 gives the benefit of the Order to the undertaker, subject to the exceptions set out in paragraph (2). These are limited to circumstances where the Order will self-evidently benefit others, for example where it provide rights to statutory undertakers.

Article 8 – consent to transfer benefit of Order

- 5.9** This standard article makes provision for the benefit of the Order to be transferred or leased to others by the undertaker. The consent of the Secretary of State will be required to any proposed agreement to transfer or lease.

6 PART 3 – STREETS

Article 9 and Schedule 3 – power to alter layout etc. of streets

- 6.1 The Scheme incorporates comprehensive measures to appropriately manage all classes of vehicular traffic and pedestrians, and to integrate the new highways comprised in the Crossing into the existing highway network in this densely packed urban environment. This important element of the Scheme is key to its successful functioning and is not simply a matter of imposing traffic restrictions and prohibitions. Physical alterations and other works will also be required; for example, to realign existing highways and vary the relative widths of carriageway and footway. This article, which is preceded by the NDR order, is therefore intended to provide a clear authority for those works.
- 6.2 This is provided both in relation to the streets and alterations specified in Schedule 3 to the Order, and also by way of a general power. The latter requires the consent of the relevant Street Authority (where it is not the undertaker - see article 19). Where consent is required, this is subject to the provisions of article 66, which seeks to ensure that the consenting process does not inappropriately delay the implementation of the project. It should be noted that, to avoid duplication, article 66 also applies to articles 12, 15, 16 in this Part of the Order, and to articles 20 and 22 in Part 4.

Article 10 – street works

- 6.3 Implementation of the Scheme will require the provision and alteration of services and other apparatus, for example to supply power to the bridge and variable message signs. This article is necessary to provide a clear authority for such works. It is derived from the Model Provisions and is also included in the NDR order and the Silvertown Tunnel order. It provides comprehensive powers, equivalent to those provided to statutory undertakers, to carry out a wide range of works in streets within and adjacent to the Order limits as required in the implementation of the Scheme.

Article 11 – Application of the 1991 Act

- 6.4 Article 11 provides for the application of the New Roads and Street Works Act 1991 ("the 1991 Act") to highway works executed under the Order. This article is included in many DCOs relating to highway schemes, including the A14 order, the Silvertown Tunnel order and the Testo's Junction order.
- 6.5 Paragraphs (1) and (2) provide that certain works carried out under the authority of the Order are to be "major highway works" for the purposes of the 1991 Act. The effect of this is to clarify that the cost-sharing provisions relevant to the diversion of utility apparatus (which would apply to such works under the 1991 Act if carried out by the highway authority under authority of

powers conferred by the Highways Act 1980) will apply in respect of the works carried out by the undertaker under authority of the Order.

- 6.6 Paragraph (3) provides that specified provisions of the 1991 Act will not apply. These provisions are designed primarily to regulate the carrying out of day-to-day street works by utility companies in respect of their apparatus, and it is appropriate to disapply them given the scale of works proposed under the Order, the specific authorisation given for those works by the Order and the comprehensive process of assessment which will have preceded the making of the Order.
- 6.7 Paragraphs (4) to (6) apply specified provisions of the 1991 Act (listed in paragraph (5)) to streets which are to be temporarily stopped up under the Order. This will avoid any uncertainty as to whether works in respect of a temporarily stopped-up street will be "street works" for the purposes of the 1991 Act. It also simplifies the implementation of the works by providing for a single process in respect of streets which are stopped up and those which are not.
- 6.8 Paragraph (7)(a) provides that nothing in article 12 of the Order (which makes provision about maintenance of streets constructed, altered or diverted under the Order) affects the power of the local highway authority (under s.87 of the 1991 Act) to apply the street works regime comprised in Part 3 of the 1991 Act to such streets in advance of those streets becoming publicly maintainable. It also clarifies that the temporary duty to maintain under article 12(3) does not have effect to make the undertaker the street authority for relevant streets. Paragraph (7)(b) excludes the operation of article 12 from street works to which the 1991 Act regime applies (as that regime makes adequate provision).

Article 12 – construction and maintenance of new, altered or diverted streets and other structures

- 6.9 This is a standard article in DCOs for highway schemes (versions of it are found, for example, in the NDR order, the A14 order and the Testo's Junction order). Its purpose is to define who will be responsible for the maintenance of new, altered or diverted streets (and associated structures) following the carrying out of works. The principal provision is at paragraph (1), which states that where the street is a highway, the highway authority will maintain it. That will generally be Norfolk County Council (the undertaker), but the Scheme also includes some works to the A47, for which Highways England is the highway authority.
- 6.10 Paragraph (2) is an exception to paragraph (1) – it secures that all the variable message signs, even where installed in the A47, will be maintained by the undertaker. Paragraph (3) makes provision in respect of streets which are not (and will not be) highways: here the undertaker must maintain for a 12

month period. Paragraph (4) clarifies that the entirety of the Crossing (not merely the highway surfaces) is to be maintained by the local highway authority (Norfolk County Council).

- 6.11** Section 58 of the Highways Act 1980 provides a special defence to a highway authority in an action against it for damages for non-repair of highway. Paragraphs (5) and (6) achieve consistency in the context of the Scheme by applying this defence to all maintenance duties of the undertaker under article 12. Paragraphs (6) and (7) make provision for the completion date for works to highways for which the undertaker is not the highway authority and any works to which paragraph (3) applies.

Article 13 classification of road

- 6.12** Whilst not featured in the Model Provisions, this is now a standard article in highway DCOs. It efficiently secures that the DCO deals with the consequential task of classifying (or reclassifying) affected highways following the completion of works. The present Scheme requires only that the new highway it will create is given a classification. The classification number has not yet been determined.

Article 14 and Schedule 4 – permanent stopping up of streets and private means of access

- 6.13** This article is preceded in an essentially standard form in many highway scheme DCOs. It provides for the stopping up of streets and private means of access as necessary to allow the Scheme to be implemented. “Stopping up” means the extinguishment of all rights of way (see paragraph (5)(a)).
- 6.14** For the streets specified in Part 1 of the Schedule and the private means of access specified in Part 3 which are to be stopped up, a substitute street or private means of access is to be provided. The existing street or private means of access is not to be stopped up until either the street authority is satisfied that the new street or private means of access is fit for purpose, or a temporary alternative route is made available until the substitute street or private means of access is ready (paragraph (2)). Parts 1 and 3 also specify the new streets and private means of access which are to be provided by the Scheme.
- 6.15** Where the street specified in Part 2 and the private means of access specified in Part 4 of the Schedule are stopped up, no substitute is to be provided. Such a private means of access may not be stopped up unless the conditions referred to in paragraph (4) of article 14 are met in relation to all the land which abuts either side of the street or access to be stopped up.

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- 6.16 Paragraph (6) makes provision for the payment of compensation in relation to private rights of way, and paragraph (7) provides a signpost to article 38, which makes provision about statutory undertakers in stopped up streets.
- 6.17 This article is often accompanied by a similar article providing for the stopping up of public rights of way. No such article is required in this Order as the scheme does not require the stopping up of public rights of way.

Article 15 – temporary stopping up and restriction of use of streets

- 6.18 This article, which is based on the Model Provisions, provides for the temporary stopping up, alteration, diversion or restriction of streets for the purposes of the Scheme. Paragraph (1)(b) provides that the undertaker may prevent passage along the street, either wholly or to a limited specified extent: reasonable access for pedestrians must always be provided (paragraph (3)). Where the undertaker is not the street authority, consent to any such stopping up or restriction must be obtained (see paragraph (4) and also articles 19 and 66).
- 6.19 Paragraph (2) confers a power on the undertaker to use a street temporarily stopped up under this article as a temporary working site, a provision which has precedent in recent DCOs, including the A14 order and the Testo's Junction order. This power is necessary because it will often be the case that where a street is temporarily stopped up to allow works to be carried out, the undertaker will need to place plant, equipment and materials in the street. This paragraph provides authority to do that where required.

Article 16 – access to works

- 6.20 This article allows works accesses to public highways to be created and the improvement of existing accesses. The article derives from the Model Provisions and, as drafted here, is found in various recent DCOs for highway schemes. The article is necessary to allow the undertaker to make effective use of land where a site compound is to be located, and to ensure that vehicles, plant and materials can efficiently be brought to where they are needed for the carrying out of the authorised development.

Article 17 – agreements with street authorities

- 6.21 This article derives from the Model Provisions and is preceded by the NDR order and the Silvertown Tunnel order. In circumstances where the undertaker is not the street authority, the article provides a comprehensive authority for the two bodies to enter into agreements in respect of a broad range of matters listed in paragraph (2). Paragraph (3) provides a non-exclusive list of example provisions which an agreement may contain.

Article 18 – traffic regulation measures

- 6.22** Waiting restrictions and other measures to control traffic are an important component of the Scheme. As explained above, the undertaker is the traffic authority for the roads for which it is the highway authority and is therefore able to make Traffic Regulation Orders (“TROs”) under the Road Traffic Regulation Act 1984 (“RTRA”). However, traffic measures will be integral to the safe and efficient operation of the new bridge, and temporary controls will be needed to facilitate construction of the Scheme as it proceeds. Given also that authority for the Scheme will have been given by the Order, it is considered that reliance on the RTRA powers and procedures would be inappropriate and inefficient, and that the Order should instead provide authority. In so doing, this article follows the precedent established by previous highway DCOs, including the NDR order and the Testo’s Junction order.
- 6.23** The two key components of the article are a power to implement the measures forming part of the Scheme that are specified in Schedule 5 (paragraph (1)) and a temporary general power (paragraphs (2) and (3)) to implement further measures as required: these might be temporary restrictions to enable construction activities, or additional permanent measures which are found to be necessary to highway safety in the light of experience following the opening of the Scheme to the public. Comprehensive control of the highways comprised in the Crossing is particularly important; for this reason, paragraph (15) has the effect of allowing provision to be made concerning persons riding or leading horses and other animals in relation to these highways.
- 6.24** Paragraph (4) clarifies the nature of the detailed provision that can be made, and paragraphs (6), (7) and (9)(b)) impose procedural requirements. Paragraph (5) imposes, for consistency, an exception to speed limits that applies to speed limits created under RTRA powers, and paragraph (8) clarifies that the powers conferred by this article may, for a temporary period, be used more than once (so that measures can if required be varied, suspended or revoked).
- 6.25** Paragraphs (8) and (9) have two purposes. Firstly, for clarity and for efficient enforcement and administration, it is necessary to specify that provisions made under the powers under paragraphs (1) and (2) in this article are to be implemented by way of a written instrument (which will in practice be very similar to a TRO). Paragraphs (9)(a) and (10) give effect to this, the latter giving necessary flexibility as to the drafting of the instrument. Secondly, paragraph (9)(c) provides that measures implemented under this article have effect as if they were RTRA orders. This will allow effective enforcement, and permit amendments to be promoted and effected under the normal RTRA procedures if this is required at a future time when the powers conferred by this article have long since expired.

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- 6.26 The Scheme also includes crossings: paragraphs (11) to (13) therefore make similar provision to the preceding paragraphs in relation to these crossings.

Article 19 – disapplication of obligations where undertaker is the street authority

- 6.27 Where the undertaker and the street authority are the same body, obligations on the undertaker to seek the street authority’s consent will lack meaning and be inappropriate. This article resolves the issue by providing for disapplication in such circumstances. As it is of general application, it avoids the repetitive provisions in numerous individual articles which would otherwise be necessary.

7 PART 4 – SUPPLEMENTAL POWERS

Article 20 - discharge of water

- 7.1 This article sets out the circumstances in which the undertaker is empowered to discharge water into public sewers, watercourses or drains, and its purpose is to establish a clear statutory authority for doing so.
- 7.2 Paragraphs (3) and (4) contain procedural provisions. Of particular note is that discharge can only be effected with the consent of the owner of the sewer, watercourse or drain into which water is being discharged (but such consent must not be unreasonably withheld). However, in relation to the Waveney, Lower Yare and Lothingland Internal Drainage Board, these provisions are disapplied as sufficiently detailed provision will be made by the protective provisions currently under negotiation with the Board²¹. Paragraph (8) makes clear that this article does not obviate the need for an environmental permit for discharge of water.

Article 21 – protective works to buildings

- 7.3 This article is long-established, being found in the Model Provisions and the majority of DCOs made to date. Its purpose is to allow the undertaker to investigate the need for protective works to buildings affected by the authorised development (for example, if it is asserted that vibration arising from the piling works necessary for the construction of the new bridge has adversely affecting adjacent properties). The article also sets out the procedure for carrying out such works if they are found to be necessary.
- 7.4 The article thus includes (paragraphs (3) to (6)) ancillary powers to enter buildings and land for the purposes of survey and to carry out protective works – here exclusive possession can be taken, but only if this is necessary. The article applies (paragraph 12) section 13 of the Compulsory Purchase Act 1965, which provides an enforcement mechanism (by way of a warrant) where entry or possession is refused. However, provision is made for a counter-notice procedure where the undertaker proposes to exercise the powers conferred by this article (paragraph (7)) and for compensation (paragraphs (8) and (9)).

Article 22 – authority to survey and investigate land

- 7.5 This is a further long-established article, originating in the Model Provisions. It is a general power to enter, survey and investigate land within the Order limits and land which may be affected by the authorised development. This is

²¹ see Part 5 of Schedule 14 (protective provisions)

essential to implementation of the authorised development, for example in verifying ground conditions or the presence of statutory undertakers' apparatus. As the power will in practice need to be exercised by individuals, the undertaker is enabled to authorise any person to exercise the power (as is common practice with powers of entry conferred on local authorities). Apart from this refinement, the provisions of the article follow those of recent DCOs including the A14 order and the Silvertown Tunnel order. As with the previous article, enforcement via application of the Compulsory Purchase Act 1965 is included, but also provision for compensation for loss or damage.

Article 23 – temporary suspension of navigation in connection with authorised development

- 7.6** This article provides for the temporary suspension of navigation within the part of the river Yare which lies within the Order limits, where required in connection with the construction, inspection and maintenance of the authorised development. The intention of the article is to strike a reasonable balance between the interests of river users and the need to achieve and preserve the public benefits of the Scheme in an effective manner.
- 7.7** The article firstly provides for whole width closures which will be necessary to the construction of the new bridge. There are to be a maximum of three such closures, each with a maximum duration of 72 hours. Further partial width closures to enable construction may only be implemented if the Great Yarmouth Port Authority (“GYPA”) consents. Consent is also required for any closures for the purposes of maintenance and inspection. These are not limited to partial closures given that the Order must provide all powers necessary over the anticipated lifespan of the new bridge. GYPA consent is required not to be unreasonably withheld or delayed, and a non-exclusive list of factors relevant to this is provided. Before a closure is implemented, specified publicity must be carried out, except in case of emergency.
- 7.8** No provision is made for compensation deriving from the utilisation of this power. This is because it involves interference with a public, not a private, right. The Applicant notes that the absence of such provision is reflected in the comparable articles in the Burbo Bank Extension Offshore Wind Farm Order 2014²², the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014²³, (“Thames Tideway order”) and the National Grid (Richborough Connection Project) Development Consent Order 2017²⁴. This is also consistent with other statutory powers whose exercise would result in public rights being restricted: for example, no compensation is payable where the

²² S.I.2014/2594

²³ S.I.2014/2384

²⁴ S.I. 2017/817

vehicular right of public passage along a highway is temporarily restricted by the making of a TRO.

Article 24 – Removal of vessels

- 7.9** This provision is required to avoid the construction or maintenance of the new bridge from being delayed and/or impeded by abandoned, moored or laid up vessels. In recognition of the role of the GYPA, the provision operates by obliging the GYPA to remove vessels at the undertaker's request and expense.
- 7.10** Before the power is exercised, provision is made (except in case of emergency) for the owner or master of the vessel to be notified and given an opportunity to remove the vessel themselves. If they do not, they will be responsible for meeting the undertaker's costs of removal (including any costs of the GYPA which the undertaker has had to reimburse). In an emergency, advance notice of removal is not required, but the owner /master is not liable for any costs as they will have had no opportunity to undertake removal themselves.
- 7.11** The article has precedent in the Borough of Poole (Poole Harbour Opening Bridges) Order 2006²⁵ and in the River Mersey (Mersey Gateway Bridge) Order 2011²⁶ (the "Mersey Gateway order"). It is appreciated that these are not DCOs. However, they illustrate that provision similar to this article has been found necessary in the context of statutory orders concerning the construction of bridges. In any case, the absence of DCO precedent is not in itself a bar to inclusion of a provision: the subject matter of this article is a "matter ancillary to" the authorised development and thus section 120(3) of the Planning Act allows provision to be made for it in a DCO. The key issue is whether the provision is merited in the circumstances, and it would clearly be undesirable for the undertaker to be unable to proceed with construction or maintenance of the new bridge merely because it had no means of securing the removal of an abandoned vessel.

²⁵ S.I. 2006/2310

²⁶ S.I. 2011/41

8 PART 5 – POWERS OF ACQUISITION

Article 25 – compulsory acquisition of land

- 8.1 This article authorises the compulsory acquisition of the Order land. It grants the undertaker the power to acquire such land as is required for the authorised development. This is subject to articles 28 (compulsory acquisition of rights), article 33 (acquisition of subsoil or airspace etc., only) and article 35 (temporary use of land for carrying out the authorised development), which are explained below.
- 8.2 The drafting of this provision broadly follows the approach taken in the Network Rail (North Doncaster Chord) Order 2012²⁷, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013²⁸ (the “M6 Link order”), the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014²⁹ (the “A556 order”) and the Silvertown Tunnel order. The provision is necessary to secure the delivery of the Scheme as set out in more detail in the Statement of Reasons accompanying the application.

Article 26 – compulsory acquisition of land – incorporation of the mineral code

- 8.3 By incorporating Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981, this article exempts existing rights in minerals from the scope of compulsory acquisition unless they are expressly named and conveyed. It also makes provision for a situation where the owner of mines or minerals wishes to work such mines or minerals. Such an article is included in the Model Provisions and the majority of made DCOs to date.

Article 27 – time limit for exercise of powers to possess land temporarily and to acquire land compulsorily

- 8.4 This article gives the undertaker five years to issue ‘notices to treat’ or to execute ‘general vesting declarations’ to acquire the land that is subject to the power of compulsory acquisition. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made.

²⁷ S.I. 2012/2635.

²⁸ S.I. 2013/675, as amended by The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) (Amendment) Order 2015 (S.I.2015 No. 571).

²⁹ S.I.2014/2269.

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- 8.5 The article also provides that land subject to the power of temporary possession for the carrying out of the authorised development – under article 35 (temporary use of land for carrying out the authorised development) - may not be occupied after the end of that same period unless the land is already being occupied by the undertaker in exercise of the powers of the Order.
- 8.6 Such an article is included in the Model Provisions and the majority of made DCOs to date.

Article 28 and Schedules 6 and 7 – compulsory acquisition of rights

- 8.7 This article allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land.
- 8.8 It provides for such rights as may be required to be acquired by the undertaker over land which it is authorised to acquire under article 25 (compulsory acquisition of land). The public benefit of this is that it would allow the undertaker, if appropriate, to reduce the area of outright acquisition and rely on the creation and acquisition of rights instead. A provision of this kind is usual in TWAOs and Hybrid Bills, and has been followed in a number of DCOs, for example the Network Rail (North Doncaster Chord) Order 2012³⁰, the M6 Link order and the A556 order.
- 8.9 Paragraph (2) provides that, for the land described in Schedule 6, 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 of the authorised development as specified in Schedule 6.
- 8.10 The power to impose restrictive covenants allows for the possibility of reducing the area of outright acquisition and therefore enables a more proportionate exercise of compulsory acquisition powers. It is in the public interest and has precedent in TWAOs and the Silvertown Tunnel order. This is of particular importance to the Scheme for the purposes of constructing and maintaining the new bridge, as the use of restrictive covenants would impose a lesser burden on the retained surface of the land than would be the case if it were to be acquired outright.
- 8.11 Paragraph (3) provides that, where the undertaker needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.

³⁰ S.I. 2012/2635.

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- 8.12** Paragraph (4) introduces Schedule 7. Its purpose is to impose modifications to the compulsory purchase and compensation provisions under general legislation. The modifications do not affect the entitlement to compensation, but generally ensure that the compensation code applies equally 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 and is commonplace in TWAOs and DCOs such as the A14 order and the Silvertown Tunnel order. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
- 8.13** The Applicant confirms that this article and Schedule 7 have been drafted to take account of the Housing and Planning Act 2016 and the precedent in this regard created by the Silvertown Tunnel order.

Article 29 – private rights over land

- 8.14** This article applies to extinguish private rights generally. This enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the Scheme. It also provides for the extinguishment of private rights over such parts of the Order land as are already in the ownership of the undertaker, when any activity authorised by the Order interferes with or breaches those rights. In respect of land subject to the compulsory acquisition of rights or imposition of restrictive covenants, existing rights are extinguished only to the extent that the continued exercise of the existing right would be inconsistent with the enjoyment by the undertaker of the rights acquired, or restrictive covenants imposed, compulsorily. This approach is proportionate and draws on the precedents of Rookery South (Resource Recovery Facility) Order 2011³¹, the M6 Link order, the A556 order and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016³². Further information on the undertaker's requirement for this provision is set out in the Statement of Reasons accompanying the application.

Article 30 – power to override easements and other rights

- 8.15** This article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 to the Act. This article has precedent in, for example, article 24 of the Silvertown Tunnel order. It provides that land vested in the undertaker

³¹ S.I. 2013/680.

³² S.I.2016/73.

is discharged from all rights, trusts and incidents to which it was previously subject at the point of vesting, together with 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 authorised development occurs before vesting.

Article 31 – modification of Part 1 of the Compulsory Purchase Act 1965

- 8.16 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the Planning Act.
- 8.17 This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 35 and 36 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017³³ and the Silvertown Tunnel order.

Article 32 – application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 8.18 This article applies the provisions of the 1981 Act to compulsory acquisition under the Order. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of serving a notice to treat). They allow title in the land concerned to pass to the acquiring authority more expeditiously than it would through the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.
- 8.19 Such an article has been included in the Model Provisions and the majority of DCOs made to date but the drafting used in the Order has been adapted, following the M20 order, the Silvertown Tunnel order and the Testo's Junction order, to take account of the Housing and Planning Act 2016.

Article 33 and Schedule 8 – acquisition of subsoil or airspace etc., only

- 8.20 This article allows the undertaker to compulsorily acquire land and/or new rights below the surface or in the airspace, as required for the new bridge, instead of acquiring all of the land up to and including the surface and

³³ 2017 c. 7.

airspace. The purpose of article 33 is to give the undertaker the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners and lower compensation payments. It is considered to be in the public interest to provide this flexibility at the point at which the undertaker begins to acquire the necessary land.

- 8.21 Paragraph (2) references Schedule 8 (Land in which only airspace and new rights may be acquired) and provides that only the subsoil or airspace contained in the plot listed in that schedule can be acquired.
- 8.22 The drafting of this article is based on the precedents found in the Model Provisions and DCOs such as the Northumberland County Council (A1-South East Northumberland Link Road (Morpeth Northern Bypass) Development Consent Order 2015³⁴ and the Silvertown Tunnel order but with a specific focus on airspace for this bridge project.

Article 34 – rights over or under streets

- 8.23 The purpose of this article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.
- 8.24 It has been included in the Model Provisions and the majority of DCOs made to date. It is considered that this article should be retained notwithstanding the Housing and Planning Act 2016, and it was retained in the Silvertown Tunnel order.

Article 35 and Schedule 9 – temporary use of land for carrying out the authorised development

- 8.25 The purpose of this article is to allow the land set out in Schedule 9 to be occupied and used temporarily while the works are carried out. This is land which is required during construction of the authorised development but not required permanently.
- 8.26 Article 35 also allows for the temporary occupation of any of the land intended for permanent acquisition, or for the acquisition of new rights, but which has, or which have, not yet been acquired.

³⁴ S.I.2015/23.

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- 8.27 The drafting is broadly in line with such articles in made DCOs such as the A556 order, but has been adapted to make it clear as to what can be done on Schedule 9 land, and what can be done on land intended for permanent acquisition.
- 8.28 Such possession requires prior notification to the owner and occupier of the land. The notice period is a minimum of 28 days which reflects that of more recent DCOs. The Applicant is aware of the proposed changes to the temporary possession regime envisaged by the Neighbourhood Planning Act 2017 but these are not yet in force and no regulations or guidance have been issued by the government as to how the changes may be implemented.
- 8.29 The time limits set out in article 27 (Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) apply to this article.

Article 36 - temporary use of land for maintaining the authorised development

- 8.30 This article provides that the undertaker may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose.
- 8.31 Owners and occupiers of the land must be given a minimum of 28 days' notice and that notice must include details of the purpose for which the undertaker requires the land. This period is in line with more recent DCOs.
- 8.32 Owners and occupiers are also entitled to compensation, where the power is exercised. The power is exercisable within a period of 5 years from the date on which that part of the authorised development is first opened for public use or that part is first brought into operational use by the undertaker.
- 8.33 This power does not apply to houses, gardens or any other buildings for the time being occupied.
- 8.34 The drafting reflects precedents such as the Northumberland County Council (A1-South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015³⁵, the A14 order and the Silvertown Tunnel order. This article is required to enable the undertaker to carry out maintenance during the maintenance period and is considered appropriate as it would impose a lesser burden than acquiring rights to achieve the same purpose.

³⁵ S.I.2015/23.

Article 37 - statutory undertakers and utilities

- 8.35** This article provides the undertaker with clear statutory authority to acquire rights over land owned by statutory undertakers (i.e. utilities such as electricity and gas companies). It also allows the undertaker to extinguish rights that statutory undertakers have over the Order land, and to remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the book of reference. In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order land is required.
- 8.36** Paragraph (2) restricts the undertaker's power to extinguish rights or move apparatus by excluding apparatus in streets. It applies alternative provisions more appropriate to balancing the interests of the various affected parties where the apparatus in question is in a street.
- 8.37** This article is subject to Schedule 14 which contains provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions despite the interference with their rights / apparatus required to facilitate the proposed development.
- 8.38** As the land where this power may be exercised is shown on the land plans (document reference 2.5), and the beneficiaries of such rights are identified in the Book of Reference (document reference 4.3), the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 8.39** This article has precedent in a number of made orders including, for example, the M20 order and is necessary to ensure the timely delivery of the proposed development.

Article 38 – apparatus and rights of statutory undertakers in stopped up streets

- 8.40** This article (which reflects the Model Provisions) governs what happens to utilities' apparatus (pipes, cables, etc.) under streets that are stopped up by the Order. Without the article, the statutory utility would not have access to the apparatus, since there would no longer be a right of way along the street. The undertaker may require such a statutory utility to relocate the apparatus elsewhere, although it will compensate the statutory utility for doing so. Paragraph (6) discounts from this compensation the increase in value to the statutory utility of having new rather than old (i.e. older than 7½ years) apparatus.

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- 8.41 Paragraph (7) provides that in certain cases where statutory undertakers are affected by a stopping up in relation to those parts of the project that constitute “major bridge work”, “major transport works” or “major highways works”, as defined in the New Roads and Street Works Act 1991, the cost sharing provisions under section 85 of the 1991 Act will apply instead of the compensation provision in this article.

Article 39 – recovery of costs of new connection

- 8.42 This article (which reflects the Model Provisions) provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs incurred in obtaining a new service can be recovered from the undertaker.

Article 40 – disregard of certain interests and improvements

- 8.43 This article provides for the Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.
- 8.44 It complies with section 126 of the Planning Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Tideway order and the River Humber Gas Pipeline Replacement Order 2016³⁶, and TWAOs such as the London Underground (Northern Line Extension) Order 2014³⁷ and the Midland Metro (Wolverhampton City Centre Extension) Order 2016³⁸.
- 8.45 The wording of this article mirrors section 4 (Assessment of compensation) of the Acquisition of Land Act 1981 (in this paragraph “the 1981 Act”). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the Planning Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the Planning Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

³⁶ S.I.2016/853.

³⁷ S.I.2014/3102.

³⁸ S.I.2016/684.

Article 41 – set-off for enhancement in value of retained land

- 8.46 This article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.
- 8.47 This article complies with section 126(2) of the Planning Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Tideway order and TWAOs such as the London Underground (Northern Line Extension) Order 2014³⁹ and the Midland Metro (Wolverhampton City Centre Extension) Order 2016⁴⁰.
- 8.48 The principle in this article is established in section 7 of the Land Compensation Act 1961 (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the Planning Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 42 – no double recovery

- 8.49 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.
- 8.50 The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle.
- 8.51 This article is preceded by the Thames Tideway order, the National Grid (Richborough Connection Project) Development Consent Order 2017⁴¹ and the Silvertown Tunnel order.

³⁹ S.I.2014/3102.

⁴⁰ S.I.2016/684.

⁴¹ S.I. 2017/817

9 PART 6 – OPERATIONAL PROVISIONS

Article 43 – Operation of the new bridge

- 9.1 This article empowers the undertaker to operate the new bridge following its construction. The interests of highway users wishing to pass over the bridge will inevitably conflict with the interests of vessel operators wishing to pass under the bridge. It is not possible to remove that conflict, but it is possible to make provision to secure a reasonable balancing of interests which limits the impact on river users but also secures and protects the public interest benefits of providing the bridge
- 9.2 The article therefore provides for the bridge to be operated in accordance with a scheme of operation, which is initially to be that set out at Schedule 10. This provides for the new bridge to open on demand for all vessels (save recreational vessels, which are expected to avoid peak hours). However, openings are subject to adherence to a specified procedure for opening requests, designed to ensure that openings are effected in a safe and efficient manner. Provision is also made for communication and other procedures in the event that the new bridge cannot open (for example due to a collision, adverse weather conditions or mechanism failure).
- 9.3 It is recognised that the detail of the scheme of operation and the factors relevant to it may change over time. Paragraph (5) therefore provides for the scheme of operation to be amended by the undertaker. However, the GYPA's consent is required (on terms that it is not unreasonably withheld or delayed), and amendments are confined to the boundaries set by the principles set out in paragraph (6).

Article 44 – extinguishment of right of navigation within the river Yare in connection with authorised development

- 9.4 This article is partially based on equivalent provisions in the Thames Tideway order and reflects the particular circumstances of the new bridge. This will include, at each end of its span, a “knuckle”⁴² projecting into the river Yare, including vessel impact protection systems. It will therefore be necessary to extinguish rights of navigation in relation to the knuckles. This is achieved by paragraphs (1) and (2). Given that construction of the knuckles will be incompatible with navigation, paragraphs (3) to (5) provide for extinguishment to take place in accordance with a notice procedure inaugurated prior to commencement of construction of the new bridge.

⁴² See definition in the glossary

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- 9.5 To the extent that it is still physically possible and necessary for a vessel to enter into any part of the areas where rights of navigation have been extinguished, paragraphs (6) and (7) provide a mechanism for this to happen with the consent of the undertaker (e.g. for surveys and other construction activities).
- 9.6 No provision for compensation is provided in this article, for the same reasons as are set out in relation to article 23 above.

Article 45 - closing the highway comprised in the new bridge and new bridge approaches

- 9.7 The powers conferred by this article are essential to the effective and safe operation of the new bridge. A key duty of the undertaker as highway authority is to protect the public's right of passage and prevent obstructions. But clearly the public must be prevented from using the highway comprised in the new bridge whenever the bridge is opened to allow the passage of a vessel. This and other circumstances (such as bad weather, a collision, mechanism failure or maintenance) will make it necessary to close this highway and/or that comprised in the new bridge approaches.
- 9.8 It is vital therefore that the undertaker has a clear but appropriately limited authority to close these highways. That authority is provided by paragraph (1) of this article (which is based on an equivalent article in the Silvertown Tunnel order). Paragraph (2) is an ancillary power to provide barriers and signs, and paragraph (3) requires advance notice to be given in respect of maintenance-related closures (except in emergencies).

Article 46 – removal of vehicles

- 9.9 This and the next article are also based on equivalents in the Silvertown Tunnel order (which in turn are derived from long established statutory regimes for the removal, storage and disposal of vehicles⁴³), but adapted to reflect the different circumstances of the two projects.
- 9.10 It is essential that the Order provides the undertaker with a means of dealing with any incident – even if it may happen only rarely - that would prejudice or prevent the safe and effective operation of the new bridge. In some circumstances the undertaker may be able to deal easily with the incident in co-operation with the vehicle's driver. But that will not always be true: if, for example, thirty minutes before the bridge was due to open, a stolen vehicle broke down on the opening section and the driver ran off, or a trailer detached itself from a vehicle but the driver, unaware, carried on. In such circumstances

⁴³ The RTRA and the Refuse Disposal (Amenity) Act 1978 (1978 C.13) together with associated subordinate legislation.

it is essential that the undertaker has effective powers to remove, store and (if need be) dispose of the vehicle and to recover the costs it incurs. But it is equally important that the undertaker is obliged to take reasonable measures to notify the owner of any removal, and that the owner has a fair opportunity to reclaim the vehicle.

9.11 The provision made by the article is complex, but this reflects the need to deal with a wide variety of scenarios – for example:-

- a) it may or may not be possible to deal with an incident by directing the driver (paragraph (2));
- b) a removed vehicle may or may not be registered with the DVLA (paragraph 7); and
- c) a removed vehicle may have more than one owner (paragraphs (10) and (13)).

9.12 It should be noted that:-

- a) the powers apply to “vehicles” and not merely to “motor vehicles”. That is simply because some vehicles which need to be removed will not be motor vehicles (for example, a trailer or a cycle); and
- b) Schedule 5 to the Planning Act provides authority for paragraph (11), which enables the undertaker to charge for the recovery, storage and disposal of vehicles. Schedule 5 is a list of examples of matters for provision which can be made in a DCO under the broad powers at sections 120(3), and paragraph 18 states: “charging tolls, fares (including penalty fares) and other charges”. The charges enabled by this article are not fares or tolls (there will be no charge for using the new bridge) but they are clearly “other charges”. To ensure that the charges are reasonable, they are pegged to the charges prescribed by the Secretary of State in relation to removal, storage and disposal of vehicles under the RTRA (paragraph 24).

Article 47 – removal of falling loads and objects

9.13 The justification and objectives for this article are the same as those of the previous article, but the subject matter is different – loads and other objects (e.g. an exhaust pipe) falling from vehicles on the new bridge or new bridge approaches. Even if this does not cause an obstruction of the highway, it might nevertheless prejudice the operation of the new bridge or be liable to harm the environment (e.g. by releasing a harmful substance into the river Yare).

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- 9.14 The article makes provision to deal with a variety of scenarios which may arise. It may be possible for the driver (if appropriately directed) to deal with the matter but, if not, then the undertaker will be able to effect removal (paragraphs (1) and (2)). Provision is made for the owner of a removed load or object (if they can be traced) to have a 5 week opportunity to recover it. However, this will not apply to items which need to be removed and disposed of immediately (e.g. if perishable or difficult to collect up – see paragraph 9). The owner will be obliged to meet the undertaker's reasonable expenses (paragraph 6(c) applies where the item is collected and paragraph (7) where it is not).

Article 48 - No apparatus in the new bridge or new bridge approaches without consent

- 9.15 Section 88(3) of the New Roads and Street Works Act 1991 provides that where a street is carried or crossed by a bridge, any statutory right (such as those possessed by utility companies) to place apparatus in the street includes the right to place apparatus in, and attach apparatus to, the structure of the bridge. It is considered that such an uncontrolled right would clearly not be appropriate to a new opening bridge, nor would it be appropriate to the new bridge approaches, which both contain bridges (over an existing highway to the west of the new bridge and over a new underpass to the east). Moreover, placing apparatus and works to apparatus in the new bridge approaches would be likely to involve restrictions on traffic using these highways; this would in turn compromise the efficiency and benefits of the new bridge.
- 9.16 This article therefore provides that placing of apparatus, or works to it, within the new bridge or the new bridge approaches is only to take place if the undertaker consents. Consent is not to be unreasonably withheld and disputes are to be referred to the Order's arbitration procedure.
- 9.17 Comparable articles are included in the Silvertown Tunnel order, the Mersey Gateway order and the River Tyne Tunnels Order 2005⁴⁴.

Article 49 – subsidiary works and operations in the river Yare

- 9.18 This article complements Schedule 1 by providing clear authority for ancillary works and activities necessary to the maintenance and operation of the authorised development and its protection. Power is conferred (paragraph (1)(a)) to carry out various works for the accommodation and convenience of

⁴⁴ S.I.2005/2222.

vessels and (paragraph (1)(b)) to carry out dredging and other works to the river bed (this will be subject to the requirements of the deemed marine licence⁴⁵). Exercise of the powers is subject to the agreement of the GYPA, on terms that it is not unreasonably withheld or delayed (paragraph (6)). Provision is also made for compensation to be paid (paragraph (3)).

Article 50 – protection against dredging

- 9.19 This article controls dredging by the GYPA in the vicinity of the new bridge. This is necessary because such dredging, if carried out inappropriately, could result in damage to the structure of the new bridge. The terms of paragraphs (1) and (2) serve to limit the restrictions imposed to the minimum necessary. They distinguish between an area where any dredging will be wholly unacceptable and an area where it may be acceptable, depending on what is proposed and the prevailing circumstances.

Article 51 and Schedule 11 – byelaws

- 9.20 It will be vital to the safe and effective operation of the new bridge that the undertaker is able to appropriately control the activities and behaviour of persons using and interacting with the new bridge, its supporting infrastructure and the surrounding public realm. Byelaws provide a long-established solution to such issues, as is preceded by the Silvertown Tunnel order and the Mersey Gateway order.
- 9.21 The approach adopted by this article is to provide byelaws as part of the Order (at Schedule 11) but combine these with a byelaw-making power. This recognises that byelaws inevitably concern matters of detail and provision should be made to allow future amendments as needed in the light of experience or changes in circumstances.
- 9.22 Paragraph (1) is therefore a general byelaw power, restricted to specified purposes, and paragraph (2) provides a non-exclusive list of matters for which byelaws may make provision. Paragraphs (7) and (8) specify how byelaws can be made – either under the traditional procedure for local authority byelaws under the Local Government Act 1972, or the fast-track procedure in the Byelaws (Alternative Procedure) (England) Regulations 2016. In either case the GYPA's consent must be obtained to any byelaws which would control the navigation or mooring of vessels (paragraph (3)). Paragraph (10) provides that contravention of the byelaws is a criminal offence carrying a maximum Level 3 fine (but see the next article which provides for fixed penalty notices).

⁴⁵ see article 56 and Schedule 13

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- 9.23** As to the specific byelaws introduced by the article itself, highway users are to be regulated by the byelaws at Schedule 11, which is introduced by paragraph (4). These byelaws are a collection of conventional controls, appropriate to the sensitive context of a substantial opening bridge and adjoining public realm. They take effect on commencement of construction, so that their controls will apply to the Scheme as it proceeds through the construction phase. They also have effect as if made under paragraph (1), so that (for example) the criminal offence for contravention applies to them. One further detail of note is paragraph 7(2) of the byelaws. This gives specific recognition to the context of the public realm: although it will be provided and used primarily as public open space, it also provides access to the control tower and new bridge and the undertaker will need to use the public realm for these purposes (for example, driving vehicles across it as needed for maintenance activities).
- 9.24** Paragraph (5) introduces byelaws regulating river user activity in the light of the construction of the new bridge. These are given effect by amendment to the existing Great Yarmouth Port Authority Navigation (Haven) Byelaws 1997, rather than by inclusion in Schedule 11. The reason is to ensure that all byelaws applying to river users continue to be located in the GYPA byelaws. However, to protect the new bridge, Paragraph (6) provides that no future byelaws⁴⁶ can be made by the GYPA which will affect the new bridge and associated infrastructure without the consent of the undertaker.
- 9.25** Paragraph (11) provides that where a breach of a byelaw by a vessel leads to damage to the new bridge, the undertaker can recover expenses from the person in charge of such vessel for repairing the bridge. Paragraphs (12) and (13) require the GYPA to assist enforcement and recovery of expenses by providing reasonable information requested by the undertaker. A request can only be made where the undertaker reasonably suspects a breach of byelaws has been committed by a person in charge of a vessel. The information must be provided within ten days of the receipt of such a request.

Article 52 – fixed penalty notices

- 9.26** This article, which is preceded by the Silvertown Tunnel order, gives an authorised person (defined at article 2) the power to serve a fixed penalty notice (“FPN”) on a person who has committed an offence under byelaws made under article 51. FPNs are now an established part of the regulatory landscape, providing an effective deterrent and sanction whilst avoiding the formality of a prosecution and court proceedings where the seriousness of the contravention does not merit this.

⁴⁶ See definition of “vessel byelaws” at paragraph (15): the consent requirement applies to GYPA amendments of the byelaws inserted by paragraph (5) and to any other future GYPA byelaws affecting the new bridge and associated infrastructure.

- 9.27 Where a FPN is issued to a person, they can avoid prosecution by paying the penalty. The amount of the fixed penalty is expressed (paragraph (5)) as a percentage of the maximum fine which may be imposed, i.e. the maximum amount that applies from time to time under level 3 on the standard scale (currently £1,000). A person who pays the penalty in 7 days will only pay one fifth of the maximum amount of the fine; otherwise the penalty will be one half of the maximum amount of the fine. Failure to pay within 14 days exposes the offender to the risk of prosecution. Provision is made (paragraphs (6) and (7)) for a deposit to be taken from those offenders who cannot provide a UK residential address. Paragraphs (4)(c), (7) and the definitions at paragraph (10) provide for a wide and readily updateable range of payment methods.

10 PART 7 – MISCELLANEOUS AND GENERAL

Article 53 – felling or lopping of trees

- 10.1 Although the Scheme is located in a built up urban area, some works to existing vegetation will be necessary for its construction, operation and maintenance over its lifetime (for example if the growing branches of a tree obscure the display panel of a variable message sign). So this article, which is found in the Model Provisions and the majority of DCOs, provides a general power to fell or lop any tree or shrub that is overhanging the authorised development or to cut back the roots of any such tree or shrub.
- 10.2 The power is available only where the undertaker reasonably believes the tree or shrub is considered to obstructing the construction, operation or maintenance of the authorised development or endangering anyone using it. Compensation is payable for any loss or damage caused.

Article 54 and Schedule 12 – trees subject to tree preservation orders or within conservation areas

- 10.3 The previous article does not address the statutory protection afforded to trees by virtue of being subject to a Tree Preservation Order (“TPO”) or through being located in a conservation area. That is the purpose of this article (again derived from the Model Provisions and found in many DCOs). The application of the article is limited to the trees specified in Schedule 12: the powers to carry out works to those trees (and the required justificatory belief) are the same as those in the previous article.
- 10.4 The effect of the article is that the works it permits, where carried out to a tree protected by a TPO, are deemed to have consent under the TPO. Where the relevant tree is within a conservation area (but not subject to a TPO), section 211A of the Town and Country Planning Act 1990 has the result that the works are not subject to the usual requirement to provide advance notification to the Local Planning Authority (and in consequence the opportunity for the Authority to consider whether to make a TPO also does not apply).
- 10.5 Section 9(1) of the Forestry Act 1967 provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disapplies the requirement from felling required to implement development authorised by a planning permission – but not to development authorised by a DCO. Paragraph (3)(c) of article 54 therefore extends the exception to the trees specified in Schedule 12.

Article 55 – removal of human remains

- 10.6** The Scheme will be constructed in an urban environment of considerable age, and it is therefore possible that human remains will be encountered. However, legislation governing the removal of human remains is disparate and predates the Planning Act regime, of which it takes no effective account. This article is a necessary response to these circumstances, replacing the existing legislation⁴⁷ with provisions which provide a unified, effective but respectful procedure for managing the discovery of human remains. The article is closely based on article 17 of the general Model Provisions but departs from it in the following respects.
- 10.7** Paragraph (12) provides an exception to the requirement to give notice before the removal of remains. This is limited to circumstances where the undertaker is satisfied that the remains were interred more than 100 years ago and that no relative or personal representative of the deceased (defined at paragraph (13)) is likely to object to their removal. This approach has precedent in the Crossrail Act 2008⁴⁸.
- 10.8** Section 239 of the 1990 Act enables the use of land in accordance with planning permission (or a Ministerial acquisition) to override the provision of ecclesiastical law or any enactment relating to burial grounds. The effect of paragraph (17) of article 55 is to apply section 239 to the implementation of the Scheme, but subject to the requirement that the procedure in article 55 has been followed. Paragraphs (17) and (18) have precedent in the River Humber Gas Pipeline Replacement Order 2016⁴⁹.

Article 56 and Schedule 13 – deemed marine licence

- 10.9** This article provides (as section 149A of the Planning Act allows) that a marine licence is deemed to have been granted under section 65 of the Marine and Coastal Access Act 2009. The terms of the deemed licence, which are in the course of negotiation with the Marine Management Organisation (“MMO”), are set out in Schedule 13 which this article introduces. The final form of the deemed licence has not yet been agreed, but the mutual intention of the MMO and the undertaker is that it will be comprehensive, covering all anticipated activities comprised in the authorised development which would require a marine licence.

⁴⁷ see paragraphs (16) and (18)

⁴⁸ 2008 c.18: see in particular section 41 and Schedule 15

⁴⁹ S.I. 2016/853. See article 20: this also applies section 238 (use and development of consecrated land) of the 1990 Act, but there is no need to do so here as no consecrated ground lies within the Order limits

Article 57 – application of landlord and tenant law

- 10.10** This article is derived from the Model Provisions and is usual in highway DCOs. It deals with an issue arising from article 9, which in accordance with standard drafting refers to the grant of the benefit of the Order for an agreed period to a “lessee”. This article clarifies that, despite this terminology, landlord and tenant law is not to apply so as to prejudice such an arrangement or similar arrangements permitted by the Order. Inclusion of the article in this Order is necessary: although there is no immediate anticipation that such a grant would be made, it could become appropriate at a future time during the lifetime of the Scheme.

Article 58 - operational land for the purposes of the 1990 Act

- 10.11** This is a Model Provision and found in many DCOs. It 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 264(3) of that Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the project.

Article 59 – planning permission

- 10.12** This article is preceded by the M20 order and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016⁵⁰. It is intended to deal with a scenario in which, after the Order is made, it emerges that additional works of a subsidiary or consequential character will be required to complete part of the Scheme or enable its use or operation: for example, if experience of traffic flows following the opening of the Scheme means that a further variable message sign is necessary. The article provides clarity that there will be no breach of the Order if planning permission is obtained for such development.

Article 60 – undertaker’s highway, road traffic and planning functions

- 10.13** This article, which is preceded by the M20 order, is clarificatory, providing that the undertaker’s existing highway, road traffic and planning functions are not affected by the Order unless it expressly states so. This will be important in avoiding doubt and ensure that in future years the undertaker is able to call on its relevant local authority powers in operating, maintaining and protecting the Scheme over its lifetime.

⁵⁰ S.I 2016/863

Article 61 – defence to proceedings in respect of statutory nuisance

- 10.14** This article provides a defence to statutory nuisance proceedings brought under the Environmental Protection Act 1990 in respect of noise emitted from premises. The article is standard in highway DCOs, in recognition that such noise will arise and that provision to define its consequences in an appropriate and balanced manner will be needed. This will be true of the present Scheme and for this reason it is necessary to include the article in the Order.
- 10.15** The defence is only available if:
- (a) the noise is created in the course of the carrying out or maintenance of the works authorised by the Order in accordance with a notice given under section 60 (or a consent given under section 61) of the Control of Pollution Act 1974; or
 - (b) is a consequence of the construction, maintenance or use of the authorised development and cannot reasonably be avoided.
- 10.16** Section 61(9) of the Control of Pollution Act 1974 requires a statement in a section 61 consent to the effect that the consent does not of itself amount to a defence to Environment Protection Act proceedings. That requirement is disapplied by paragraph (2) of this article, as the statement would be incorrect given paragraph (1).

Article 62 and Schedule 14 – protective provisions

- 10.17** This article introduces Schedule 14, which contains provisions protecting the interests of third parties.
- 10.18** Schedule 14 currently contains protective provisions in standard DCO form for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, and electronic communications code operators at Part 2). In addition, each of Parts 3 to 6 contains provisions for the benefit of a particular body. The terms of Part 3 have been agreed with Anglian Water. The remaining Parts are at varying stages of negotiation with the relevant parties: the undertaker is committed to securing agreement as soon as possible.

Article 63 – Saving for Trinity House

- 10.19** There is no lighthouse in Great Yarmouth, but Trinity House has a broad remit in relation to lighting and other aids to navigation generally. A saving for its functions is therefore apt, and is usual in DCOs where those functions may be engaged.

Article 64 and Schedule 15 –certification of plans etc

10.20 Where provisions of the Order refer to plans or other documents, it is obviously important that there is certainty as to what they are (particularly where there have been successive versions). So, as is usual in DCOs, this article provides for certainty be achieved by way of certification by the Secretary of State. Paragraph (2) assists administration by providing for amended documents to be certified where required to accord with the Secretary of State's decision to make the Order.

Article 65 – service of notices

10.21 An article dealing with service of notices is standard in highway DCOs. It governs, in standard terms, how any notices that may be served under the Order are to be deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner or occupier.

10.22 The provision is necessary because the service of notice provisions contained in sections 229 and 230 of the Planning Act only apply to notices served under the Act itself and do not apply to notices served under the Order.

Article 66 – consents, agreements and approvals

10.23 This article provides a methodology for dealing with certain consents, agreements and approvals that need to be obtained by the undertaker under the Order. In summary, it ensures that any consents, agreements or approvals (a) cannot be unreasonably withheld or delayed; and (b) are deemed to be granted after a period of 28 days if no decision is made, beginning with the day on which the relevant application or request for a consent, agreement or approval is made. Any application or request must include a statement that the 28 day 'guillotine' provision applies.

10.24 The purpose of the article is to draw together some usual provisions for the procedure for consents, agreements and approvals under DCOs, rather than repeating them in each of the relevant articles.

Article 67 – arbitration

10.25 This article (included in similar form in the Model Provisions and in the majority of made DCOs to date) governs what happens when two parties disagree in relation to the implementation or interpretation of any provision of the Order. A dispute must be referred to arbitration, and if the parties cannot agree on an arbitrator the appointment will be decided by the President of the Institution of Civil Engineers.

11 SCHEDULE 2 – REQUIREMENTS

11.1 The requirements set out in Part 1 of Schedule 2 are, as is usual in a DCO, analogous to the conditions imposed on the grant of planning permission, both as to their subject matter and their expression. Given this analogy, the Order follows the precedent established by the NDR order in assigning the role of discharging authority to Norfolk County Council in its capacity as county planning authority (“CPA”), as it would have that role if the Scheme were to be development requiring planning permission. However, the district planning authority, Great Yarmouth Borough Council, is designated as consultee, alongside other statutory bodies according to the subject matter of particular requirements.

11.2 The content and subject matter of the requirements are the subject of continuing discussion between the undertaker and relevant stakeholders.

Requirement 1- interpretation

11.3 This supplements the definitions at article 2 of the Order by providing definitions of terms which are used in Schedule 2 but not elsewhere.

Requirement 2 – time limits

11.4 As is standard in a DCO, this requires that the authorised development commences within 5 years of the coming into force of the DCO.

Requirement 3 - commencement of the authorised development

11.5 This requires that when the authorised development is commenced, the undertaker must notify the CPA of this within 7 days. This is because many of the requirements reference commencement as a deadline.

Requirement 4 – design of the authorised development

11.6 This requires the authorised development to be designed in accordance with the general arrangements plans and the approach to detailed design. Both of these are documents defined by and certified under the Order, and the requirement therefore provides an appropriate degree of flexibility to the undertaker in defining the detailed design of the authorised development whilst setting adequate boundaries.

Requirement 5 – code of construction practice

11.7 The outline code of construction practice is a certified document under the DCO and provides a response to a comprehensive range of issues which construction of the authorised development will raise. This requirement is

intended to secure adequately detailed control of these issues, as it requires submission, approval and implementation of a code of construction practice which must conform with the outline code. The breadth of coverage is reflected by the identification of required consultees, and it should be noted that the list of matters in paragraph (2) is non-exclusive, allowing the CPA appropriate discretion in its assessment.

Requirement 6- landscaping scheme

- 11.8 This requirement provides for the submission, approval and implementation of a landscaping scheme. This must be in accordance with the landscaping plans (certified documents under the DCO) and the approach to detailed design. Paragraph (2) provides a non-exclusive list of the matters which the submitted scheme must make provision for, including a 15 year maintenance period.

Requirement 7 – existing trees and hedgerows

- 11.9 This requirement links to the previous one. Where hedges and trees are shown to be retained in the approved landscaping scheme, this requirement provides for their protection (paragraph (1)) and replacement in specified circumstances (paragraph (2)). Paragraph (3) provides, subject to an exception procedure, that no works to any hedges or trees are to be carried out during the bird nesting season.

Requirement 8 - contamination

- 11.10 Measures to deal with contamination which is anticipated to be encountered will be set out in the code of construction practice to be approved under requirement 5 before the authorised development commences. However, it is possible that unexpected contamination will be encountered during construction, and this requirement makes provision for works to be halted until appropriate measures to deal with the contamination have been identified and implemented.

Requirement 9 – emergency preparedness and response plan

- 11.11 The opening of the authorised development to public use will bring with it a risk of harm to public safety if an emergency event occurs. The purpose of this requirement is to address the need for a properly planned response to emergency events so that harm is minimised. A plan covering flood and fire events together with terrorist and other security incidents must be approved before the authorised development opens to the public, and thereafter implemented in full.

Requirement 10 – surface water drainage

- 11.12 This requirement provides for the submission, approval and implementation of a surface water drainage scheme. It must be in accordance with the drainage strategy (a certified document under the DCO) and include an implementation timetable (paragraph (2)).

Requirement 11 - lighting

- 11.13 This requirement provides for the submission, approval and implementation of a lighting scheme. This must be in accordance with the lighting report (a certified document under the DCO) and provide a timetable. However, the focus of the requirement is the permanent lighting provided for the Scheme following its completion: the requirement excludes lighting provided during the construction phase and temporary maintenance lighting.

Requirement 12 – completion and availability of particular works

- 11.14 As explained in relation to article 43 (operation of new bridge) and Schedule 10, recreational vessels will not be entitled to an opening of the new bridge on demand at all times. To reflect this, the Scheme includes the provision of vessel waiting facilities. The Scheme also includes substantive mitigation works: the provision of replacement allotments (Work No.11) and works for the benefit of Great Yarmouth and Waveney Mind (Work No.12). This requirement addresses the timely delivery of these works, providing for them to be completed and available for use prior to the opening of the highways comprised in the new bridge and the western approach (Works Nos. 11 and 12 are nearby).

Requirement 13 - archaeology

- 11.15 The archaeological written scheme of investigation is a certified document under the DCO. Paragraph (1) of this requirement provides for compliance with the written scheme, including any documents produced under it, in carrying out the authorised development. However, it is possible that remains not identified in the written scheme may be revealed during construction. Paragraphs (2) to (4) provide a response procedure. This includes investigation and recording where appropriate.

Requirement 14 – preliminary navigational risk assessment

- 11.16 This risk assessment is a certified document under the DCO. This requirement serves to give effect to the assessment in the design, construction and operation of the authorised development.

Requirement 15 – signs at vessel waiting facilities

11.17 As explained above in relation to requirement 12, the Scheme includes the provision of vessel waiting facilities at which recreational vessels will moor whilst awaiting an opening of the new bridge. To assist in minimising the impacts of the authorised development on climate change, this requirement provides for the provision of signs instructing vessel masters to switch off engines whilst moored.

Requirement 16 – amendments to approved details

11.18 The purpose of this requirement, which reflects the approach of the M20 and Testo's Junction orders, is to recognise that the circumstances of the subject matter of a requirement may change, and that it may be appropriate to respond to this by making changes to approved schemes and details. The requirement therefore makes clear that the CPA may approve amendments to details or a scheme it has approved under the preceding requirements, and that obligations relating to implementation are to be interpreted as applying to the amended scheme or details.

Part 2 – procedure for discharge of requirements

11.19 The provisions contained in Part 2 closely follow the standard drafting contained in Advice Note 15⁵¹. Some additional definitions are provided in paragraph 17, for clarity and to avoid repetition, and paragraphs 18 and 20 are drafted to capture the full range of circumstances which could arise from the requirements in Part 1.

⁵¹ Planning Inspectorate Advice Note 15: Drafting Development Consent Orders (version 2, July 2018).